

1916.  
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GANOBA.

of section 54 of the Transfer of Property Act to which attention was called by Sir Lawrence Jenkins in *Karalia Namubhai v. Mansukhran*<sup>(1)</sup> will doubtless be considered.

*Decree reversed.*

J. G. R.

## APPELLATE CIVIL.

*Before Mr. Justice Batchelor and Mr. Justice Shah.*

1916.  
March 17.

NABIBHAI VAZIRBHAI (ORIGINAL DEFENDANT), APPELLANT *v.* DAYABHAI AMULAKH AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

*Execution of the decree passed by Baroda Court—Application for execution presented to Baroda Court though within time according to Baroda law, still out of time according to British Indian law—Transfer of decree to British Indian Court—Execution barred by limitation.*

A decree was passed by the Baroda Court in 1909. The first application to execute the decree was made in 1913, it being within the time prescribed by the law in Baroda. The decree was transferred to the Ahmedabad Court (British) for execution in 1915, where the judgment-debtor contended that no application to execute the decree having been made within three years of its date, the execution of the decree was barred.

*Held*, that the decree was incapable of execution in the Ahmedabad Court having been barred according to the British Law of Limitation which governed the case.

APPLICATION under extraordinary jurisdiction against an order passed by V. M. Mehta, First Class Subordinate Judge at Ahmedabad.

Execution proceedings.

The plaintiff obtained a money decree in the Kalol Court (a Court within the Native State of Baroda) on the 11th December 1909. He first applied to execute the decree in 1913, the application having been within time allowed by the law in Baroda. In 1915, the

<sup>(1)</sup> (1900) 24 Bom. 400 at p. 402. \*

\* Civil Extraordinary Application No. 329 of 1915.

decree was transferred for execution to the Ahmedabad Court (a Court within British India). The defendant contended that the plaintiff not having applied to execute the decree within the time allowed by British Indian laws, the execution of the decree in the Ahmedabad Court was barred by limitation.

The lower Court held that the execution of the decree was not barred, following the decision at I. L. R. 15 Bom. 28.

The defendant applied to the High Court.

*G. N. Thakor*, for the applicant:—The execution of the decree is barred by limitation. No application for execution having been presented in the Baroda Court within three years of the date of the decree, the decree is, so far as the British Courts are concerned, barred. When the execution of a foreign decree is sought in British India, it is the British law of limitation that applies: see *Hukum Chand Aswal v. Gyanender Chunder Lahiri*; <sup>(1)</sup> *Leake v. Daniel* <sup>(2)</sup>; *Her Highness Ruckmaboye v. Lulloobhoy Mottichund*.<sup>(3)</sup> The executing Court is competent to go into the question whether a foreign decree sent to it for execution was time-barred: see *Leake v. Daniel* <sup>(2)</sup>; *Nursing Doyal v. Hurryhar Saha*<sup>(4)</sup>; *Chhotay Lal v. Puran Mull* <sup>(5)</sup>; and *Jeewandas Dhanji v. Ranchoddas Chaturbhuj*.<sup>(6)</sup>

*M. K. Mehta*, for the opponent:—The application for execution made to the Baroda Court, having been made within the time prescribed for it by the Baroda law, must be considered to be a valid application to execute the decree. The present application having been made within three years of the first application is within time even according to the British law.

(1) (1887) 14 Cal. 570.

(2) (1868) 10 W. R. 10 (F. B.)

(3) (1852) 5 Moo. L. A. 234.

(4) (1880) 5 Cal. 897.

(5) (1895) 23 Cal. 39.

(6) (1910) 35 Bom. 103.

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The Baroda Court having already passed an order for execution, the British Court is bound by the same and cannot go behind it : see *Husein Ahmad Kaka v. Saju Mahamad Sahid*.<sup>(1)</sup> Even if the order be treated as one transmitting a decree for execution, the executing Court cannot go into the question of limitation. As regards British decrees, the Court to which the decree has been transmitted cannot go into the question of limitation.

BATCHELOR, J. :—The present application is made by the judgment-debtor who was the 4th defendant in the suit. The suit was filed by the plaintiffs to recover upon two documents, and the Court in which the suit was instituted was the Court of Kalol in the territories of His Highness the Gaikwar of Baroda. There a decree was passed in the plaintiffs' favour, and ultimately the plaintiffs applied that this decree should be transferred for execution to the Court of the Subordinate Judge of Ahmedabad. That transfer was accordingly made, and the *darkhast* has been heard by the learned Subordinate Judge of the First Class.

The only one of his findings with which we are now concerned is the finding that the execution of this decree is not barred by time. That finding is challenged by Mr. Thakor on behalf of the present applicant, and it seems to me that Mr. Thakor's contention must be allowed.

There is some uncertainty as to what the law of limitation is in Baroda with regard to the execution of such decrees. But this much is agreed between the parties that the period of limitation is either six years or twelve years. Whether it is the one or the other is a matter of no moment. I will assume in favour of the opponent that it is six years. The decree was obtained on the 11th December 1909. Admittedly the first application made for execution was not made

till 1913. That application was, therefore, within time according to the law in Baroda. It was admittedly beyond time according to the law in British India, which prescribes a period of three years for such an application. Now suits and applications must be brought within the period prescribed by the local law of the country within which the suit or the application is brought, that is to say, it is the *lex fori* which governs. That being so, this decree became, in my opinion, incapable of execution in British India after the lapse of three years from the date the decree was made. And since the law to be applied is the law of British India, it is no answer to say that the decree was still alive and capable of execution in Baroda when the order was made transmitting it for execution to Ahmedabad. The learned Judge has, I think, misunderstood Sir Charles Sargent's decision in the case of *Husein Ahmad Kaka v. Saju Mahamad Sahid* <sup>(1)</sup> which he has construed as authority for the proposition that he had no power to determine whether execution was barred or not, being bound by the order of the transferring Baroda Court. That decision is of no authority in regard to a decree ordered for transmission by a foreign Court. The very ground of the decision is that there is outstanding an order of a competent Court binding the parties and directing the execution of the decree. No such order as this either was made, or could have been made, by the Baroda Court so as to bind the Ahmedabad Court or the parties litigating in that Court. It was, therefore, competent to, and obligatory upon, the learned Subordinate Judge to consider and determine this question of limitation.

For the reasons which I have given and which are supported by this Court's decision in *Jeevandas Dhanji v. Ranchoddas Chaturbhuj*, <sup>(2)</sup> I am of opinion that

<sup>(1)</sup> (1890) 15 Bom. 28.

<sup>(2)</sup> (1910) 35 Bom. 103.

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this decree was incapable of execution in the Court of Ahmedabad being barred by time according to the British law of Limitation which, in my view, governed the case. Therefore I would make the rule absolute and order that the *darkhast* be dismissed against the present applicant with costs here and in the Court below.

SHAH, J. :—I am of the same opinion. The question is whether the application for execution made by the plaintiffs to the First Class Subordinate Judge's Court at Ahmedabad is in time.

The decree sought to be executed is a decree of the Court at Kalol in the Baroda territory and was passed in December 1909. The application for execution was made in 1915, after the decree was transferred by the foreign Court to the British Court for execution. It must be decided with reference to the law of limitation obtaining in British India ; and it is clear that according to the provisions of the Indian Limitation Act, the application is beyond time. Even assuming, without deciding, that the applications made for the execution of the decree to the Court at Kalol could be treated as applications to the proper Court for execution within the meaning of Article 182 of the Limitation Act, it is an admitted fact in this case that no application was made even to the Court at Kalol within three years from the date of the decree for execution. The application is, therefore, clearly time-barred.

I think that it was competent to the lower Court to determine the point of limitation, and that the order of the foreign Court transmitting the decree for execution did not and could not conclude the question. The decision in *Husein Ahmad Kaka v. Saju Mahamad Sahid* <sup>(1)</sup> has no application to the present case and is

<sup>(1)</sup> (1890) 15 Bom. 28.

distinguishable on the grounds stated in the case of *Jeewanadas Dhanji v. Ranchoddas Chaturbhuj*.<sup>(1)</sup> It is not for the foreign Court to consider whether the execution in British India would be time-barred; and the order for transmission by the foreign Court cannot be treated as an order for execution.

*Rule made absolute.*

R. R.

## APPELLATE CIVIL.

*Before Mr. Justice Batchelor and Mr. Justice Shah.*

1916.

THE MUNICIPALITY OF BELGAUM (ORIGINAL PLAINTIFF), APPLICANT v. RUDRAPPA SUBRAO SUTAR AND OTHERS (ORIGINAL DEFENDANTS), OPONENTS.<sup>2</sup>

February 29.

*Civil Procedure Code (Act V of 1908), section 115—High Court—Revisional jurisdiction—Decision of District Court—Bombay District Municipalities Act (Bombay Act III of 1901), section 160.†*

No application can be made under the revisional jurisdiction of the High Court from the decision of a District Court under clause 3 of section 160 of the Bombay District Municipalities Act (Bombay Act III of 1901).

(1) (1910) 35 Bom. 103.

<sup>2</sup> Civil Extraordinary Application No. 294 of 1915.

†Section 160 of the Bombay District Municipalities Act (Bom. Act III of 1901), runs as follows :—

160. (1) If a dispute arises with respect to any compensation, damages, costs or expenses which are by this Act directed to be paid, the amount, and if necessary, the apportionment of the same, shall be ascertained and determined by a Panchayat of five persons, of whom two shall be appointed by the Municipality, two by the party (to or from whom such compensation, damages, costs or expenses may be payable or recoverable) and one, who shall be *sir-panch*, shall be selected by the members already appointed as above.

(2) If either party, or both parties fail to appoint members, or if the members fail to select a *sir-panch* within one month from the date of either party receiving written notice from the other of claim to such compensation, damages, costs or expenses, such members as may be necessary to constitute the Panchayat shall be appointed, at the instance of either party, by the District Judge.