

enactment. The Legislature enacted that the marriage of a Hindu widow should not be void ; but at the same time they declared that the right which she had taken in her deceased husband's estate should cease on her marriage. Therefore it appears to me that the provisions of this Act have no bearing on this case. The decision of Mr. Justice Markby is affirmed with costs.

1869
 SRIMATI
 MATANGINI
 DEBI
 v.
 SRIMATI
 JAYKALIDEBI.

MACPHERSON, J., concurred.

Judgment affirmed.

Attorney for the appellant : Mr. *Dover*.

Attorney for the respondent : Baboo *D. N. Bose*.

[APPELLATE CIVIL.]

Before Mr. Justice Bayley and Mr. Justice Markby

SHEO NARAYAN SING (DECREE-HOLDER) *v.* HARBANS LAL (JUDGMENT-DEBTOR.)*

Act VIII of 1859, ss. 208, 284, 285, 287, 290—Assignee of a Decree—Execution, Power of the Court to which a Decree has been transmitted for.

1870
 June 20.

The assignee of a decree should apply to the Court which passed the decree, and not to the Court to which the decree had been forwarded under section 285 Act VIII of 1859 for execution, for the purpose of being substituted in the place of the original decree-holder.

The word "Court" in section 208, Act VIII of 1859, does not include the Court to which a decree has been transferred for execution.

Baboos *Ramesh Chandra Mitter* and *Tarakanath Paulit* for the appellant.

Baboo *Mahesh Chandra Chowdhry* for the respondent.

THE facts of the case in reference to the point decided, sufficiently appear in the judgment of the Court, which was delivered by

MARKBY, J.—This is a Regular Miscellaneous Appeal from the decision of the Officiating Judge of Shahabad. The appeal

* Miscellaneous Regular Appeals, Nos. 120 and 121 of 1870, from the orders of the Officiating Judge of Shahabad, dated the 6th January 1870

1870
 SHEO NARA-
 YAN SING
 v.
 HARBANS LAL.

is by the person who describes himself as the decree-holder. It appears that, on the 14th May 1866, a decree was obtained in the Small Cause Court at Calcutta, by Bhikan Chand and Jyte Pal, against Harbans Lal and Rama Prasad. On the 13th April 1869, a certificate of non-satisfaction was asked for and obtained by the decree-holders, and the certificate with a copy of the decree was forwarded to the Judge of Shahabad for execution, under section 285 of the Civil Procedure Code. There were various applications with reference to the execution of this decree, but the execution proceedings were ultimately struck off on the 21st August 1869. On the 31st August, the decree was sold by the decree-holders to Sheo Narayan Sing, who is the appellant before us; and then on the 11th September 1869, on his application to the Judge of Shahabad, the proceedings in execution were ordered to be revived; and on the 23rd September 1869, his name was substituted for that of the decree-holders in the execution proceedings.

Now, upon this statement of the facts it was suggested that Sheo Narayan had no *locus standi* before us as an appellant in these proceedings; and that, in fact, he had no *locus standi* before the Judge of Shahabad to put the Court in motion for the execution of the decree; and after hearing the arguments of Baboo Ramesh Chandra Mitter for the appellant, we think that this objection ought to prevail.

Section 208 gives power, when a decree is transferred by assignment, to the assignee to apply for execution; and if the Court thinks proper to grant the application, the decree may be executed in the same manner as if application were made by the original decree-holder. The question then that we have to decide is whether the term "Court" in that section includes the Court to which the execution of the decree may have been transferred under section 284. Section 287 is the section which indicates the duty of the Court to which a decree may have been transferred for execution; and says: "The copy of any decree when filed in the Court to which it shall have been transmitted for the purpose of being executed, shall, for such purpose, have the same effect as a decree or order for execution made by such Court." A question has been raised somewhat similar

to this in reference to the power of the Court to which a decree is transmitted for execution to enquire into the question of limitation, and it has been held that this Court has that power, the enquiry into the question of limitation being considered to be an enquiry "for the purpose of execution" within the meaning of section 287. We in no way dissent from that decision (1), but it does not decide the present case, because it is clear from section 290 that, for some purposes, even as regards the execution, the Court which passed the decree is the Court which controls the proceedings. The Court to which a decree is transmitted for execution is empowered by section 290 to stay the execution pending an application to the Court which granted the decree "for an order to stay the execution or for any other order relating to the decree or the execution thereof." It is necessary therefore to determine whether this being an application connected with the execution ought to have been made to the Judge of Sahabad or to the Small Cause Court in Calcutta. It seems to us that this application ought to have been made to the Small Cause Court in Calcutta, and not to the Judge of Shahabad. It seems to us that any other construction of the law would give rise to great confusion. For all purposes, except that of execution under the certificate and copy of decree, and, as already pointed out, for some purposes connected with execution, the decree remains in the original Court which passed it. A copy only of the decree and none of the proceedings in the suit are transmitted under section 285. The decree itself and the whole record of the suit remain in the original Court, and we think the Court which receives the decree for execution should execute it exactly as it receives it, or not at all. We think it would lead to the greatest difficulties if, in one Court, one party was recognized as being the holder of, and having the control over, a decree; and, at the same time, in another Court, another party was recognized as being in that position. Further, under section 208, it is entirely in the discretion of the Court to grant the application of the assignee or not, and the application is one which, under some circumstances, clearly ought not

1870

SHEO NARA-
YAN SING
v.
HARBANS LAL.

(1) See *Leake v. Daniel*, Case No. 507 of 1867; March 19th, 1868.

1870
 SHEO NARA-
 YAN SING
 v.
 HARBANS LAL.

to be granted, and in no instance ought it to be granted merely as a matter of course. Now, the only Court which can have the proper knowledge and materials to deal with the application is the Court which tries the suit and passes the decree. Looking, therefore, generally to the terms of the law, and particularly to those of section 290, which show that, even for some purposes connected with execution, the proceedings remain in the original Court, we think that this application was wrongly made in the Shahabad Court, and ought to have been made in the Small Cause Court at Calcutta. Had it been likely that the original decree-holders were about to proceed to execute the decree in fraud of the assignee, the latter might probably by an application to the Court of Shahabad have stayed the execution pending his application to the Court of Small Causes.

The result is that Sheo Narayan not being on the record and not having even obtained the permission which is necessary to enable him to execute the decree, he had no right to appear in the Court below or in this Court. Without, therefore, entering into the merits of the case we dismiss this appeal with costs.

Appeal No. 121 is admittedly governed by this decision, and is also dismissed with costs.

Appeal dismissed.

[ORIGINAL CIVIL.]

Before Mr. Justice Phear and Mr. Justice Markby.

MIA KHAN AND MANU KHAN v. BIBI BIBIJAN AND BIBI AMNUJAN.

1870
August 13.

Mahomedan Law—Usury—Interest, Rate of—Act XXVIII of 1855—Small Cause Court Acts IX of 1850 and XXVI of 1864—Procedure

The custom of taking interest as between Mahomedans is recognized by the Courts.

The Small Cause court Acts, IX of 1850 and XXVI of 1864, form one procedure, and the High Court can therefore exercise, in cases referred under section 55 of