

APPELLATE CIVIL.

Before Mr. Justice Phear and Mr. Justice Ainslie.

MUSSUMMAT BIBEE LUTEEFUN AND ANOTHER (JUDGMENT-DEBTORS)
v. RAJROOP SINGH (DECREE-HOLDER).*

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Imitation—Act XIV of 1859, s. 20—Proceeding to enforce Decree—Application for Review.

An application by a decree-holder for a review of judgment is not a proceeding to enforce his decree within s. 20 of Act XIV of 1859 (1).

IN this case, the plaintiff obtained a decree on special appeal in the High Court in 1862, which affirmed the decrees of the lower Courts under which the plaintiff had been declared entitled to a portion only of certain property claimed by him in the suit. The plaintiff made various applications for a review of the judgment of the High Court; all which applications failed, and, in June 1871, he applied in the Munsif's Court to execute the decree of 1862. The Munsif dismissed the application on the ground that it was barred by the law of limitation, but his order was reversed by the Subordinate Judge, and the defendants thereupon appealed to the High Court.

Moonshee Mahomed Yoosuf for the appellants.

Baboos Romesh Chunder Mitter and Nilmadhub Sein for the respondent.

Moonshee Mahomed Yoosuf, for the appellants, contended that the applications for review were not proceedings to enforce the decree.

* Miscellaneous Special Appeal, No. 316 of 1872, from an order of the Judge of Patna, dated the 31st May, 1872, reversing an order of the Subordinate Judge of that district, dated the 19th December 1871.

(1) See Act IX of 1871, Sch. I, No. 167.

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Baboo *Nilmadhub Sein* for the respondent.—The applications for review were *bonâ fide*—*Bipro Doss Gossain v. Chunder Seekur Bhuttacharjee* (1). [AINSLIE, J.—There the application for review was by the judgment-debtor. PHEAR, J.—In this case the decree-holder was trying to get a new decree. Is such an endeavour a proceeding to keep the original decree in force?] Where a plaintiff appeals from a decree granting him only a portion of the relief asked for, and the High Court more than three years after the original decree dismisses the appeal, the period of limitation would run from the order of dismissal. [PHEAR, J.—In that case it would probably be held that the final decree affirmed such portion of the original decree as was in the plaintiff's favor.]

The following authorities were also referred to by the respondent's pleader:—Thomson on Limitation 317, *et seq*; and *Shaikh Fuzl Immam v. Doolun Singh* (2).

The judgment of the Court was delivered by

PHEAR, J. (who, after shortly stating the facts, continued).—The question now is whether the application for execution made in June 1871 is or is not barred by the operation of s. 20, Act XIV of 1859. The words of that section are:—“No process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree, or order, or to keep the same in force within three years next preceeding the application for such execution.”

Now it seems to me impossible to construe the various applications for review, which were made to this Court, as proceedings to enforce the judgment of 1862, or any of the preceeding judgments, or in the alternative, to keep the same in force. The object of those applications was distinctly to alter the judgment which had been obtained, and to procure a new judgment or decree to be passed. It appears to me that we cannot, in

(1) Case No. 583 of 1866, 31st May 1867. (2) 5 W. R., Mis., 6.

common sense, say that an endeavour to obtain a new and a more favorable judgment is a proceeding taken to enforce or to keep alive the judgment which it is thus desired to supersede.

The Full Bench decision in *Bipro Doss Gossain v. Chunder Seekur Bhattacharjee*(1) has been appealed to by the respondent. But I see nothing in that decision which tends in any way to support the respondent's case. There the Full Bench decided that appearance by a decree-holder at the hearing of the application for review in order to oppose that application, and to sustain the decree which he had got, was a proceeding taken for the purpose of keeping his decree in force. It seems to me plain enough that it was so. In this instance it is the decree-holder himself, who is making the application for review, and was using his best endeavours to get the original decree set aside, and a new one made. I may add that one, at any rate, of the applications for review was rejected so far back as 1866 ; and in the application which was made subsequently to that date, no sort of attempt appears to have been made by the applicant to show good cause for being out of time. That fact alone would go very far in my opinion, to show that these various applications were not *bona fide* proceedings on the part of the applicant. But however this may be, for the reasons I have already given, I think that the view which was taken by the Munsif in this case was correct, and that the Judge was wrong in considering that the applications for review ought to be treated as proceedings falling under s. 20 taken for the purpose of keeping the decree alive.

I think the execution of the decree is barred by lapse of time. The order of the Judge for issuing execution must be reversed with costs.

Appeal allowed.

(1) Case No. 583 of 1866 ; 31st May 1867.