

Before Sir Barnes Peacock, Kt, Chief Justice, and Mr. Justice Mitter.

1868
July 2.

TEJA SINGH v. RAJNARAYAN SINGH.

Act XIV. of 1859, s. 20—Act VIII of 1859, s. 207—Execution of Decrees—Practice.

A joint decree for damages was obtained by several plaintiffs in the Court of the Principal Sudder Ameen of Patna, in 1854, and was kept alive by end-avours to execute it till 1861. On the 15th June 1861, the Court passed an order modifying the costs of the original decree, but this order was reversed on appeal on the 19th August 1862. Some of the plaintiffs having died in the meantime, an application was made on the 29th July 1863, and an order was passed thereon on the 26th May 1864, whereby the present decree-holders were substituted for the deceased plaintiffs. A new Principal Sudder Ameen was appointed on the 10th December 1864 and he reversed that order, and required from the present decree-holders a certificate of heirship, which they obtained on the 16th September 1865. On the 20th of the same month, an order for execution was made by the Principal Sudder Ameen, but it was reversed by the Judge on appeal, on the ground that the order of the 26th May 1864, was not a proceeding within the meaning of section 20 of Act XIV of 1859; and, therefore, the application for execution was too late.

Held, that execution might have been obtained under section 207 of Act VIII. of 1859, by the survivors of the original decree-holders, for the benefit of all parties interested in it.

The order of the lower appellate Court was reversed.

The decree in this suit was passed on the 30th April 1854, and an application for execution thereof was made on the 4th May 1861, but on the 26th December 1861, the case was struck off the file. A second application for execution was made on the 28th July 1863; and on the 26th November 1864, evidence having been taken, the present decree-holders were substituted as heirs of the original decree-holder, deceased. But the case was again struck off the file (by another Principal Sudder Ameen) on the 10th December 1864, on the ground that the applicant had not filed a certificate of administration, under Act XXVII. of 1860. The present application for execution was made on the 20th September 1865. The judgment-debtors urged that it was barred by limitation.

* Miscellaneous Appeal, No. 156 of 1868, from a decree of the Judge of Patna, reversing a decree of the Principal Sudder Ameen of that district.

The Principal Sudder Ameen held that, as before the passing of Act XIV of 1859, 12 years limitation applied to the execution of decrees, the first application had been made within time; that after Act XIV of 1859, came into force, a renewed application was filed in 1863, when the present applicant was substituted in the place of the original decree-holder; and as the present application was made within 3 years after the last act of the decree-holder, and was a *bonâ fide* application, it was not barred by limitation, and he granted the application.

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On appeal, this decision was reversed by the Judge, who was of opinion that the decree-holder had not diligently and in good faith prosecuted his decree so as to keep it in force; and that the mere substitution of the name of the representative of the original decree-holder was not a sufficient proceeding within the meaning of section 20 of Act XIV. of 1859, so as to save the decree from the operation of the Act of limitation.

Baboo *Hem Chandra Banerjee* (Baboo *Krishna Sakha Mookerjee* with him) for appellant.—The Judge is wrong in holding that there was no *bonâ fide* or sufficient proceeding to keep the decree in force, when various steps were actually taken by the decree-holder to enforce his decree. Appellant was guilty of no laches in the prosecution of his rights. The lower appellate Court is in error in holding that the substitution of names by order of the Court in the execution case, after evidence adduced, was not a proceeding within the meaning of section 20 of Act XIV. of 1859. *Vide W. G. N. Pogose v. Baishnab Lal (r); Ramsahay Sing v. Degan Sing (2)*.

Mr. *Twidale* and Baboo *Lakhi Charan Bose* for respondent.

The judgment of the Court was delivered by

PEACOCK, C. J.—About 14 years and 3 months ago the plaintiffs obtained a decree, and we are now engaged in discussing whether they are barred by limitation from executing it

(1) 6 W. R., Mis. Rul., 104.

(2) Full Bench Case No. 778 of 1865, 11th September 1866.

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It appears that, from 1854 to 1861, the plaintiffs were trying to execute the decree; and that the decree was admittedly kept alive up to that time by the plaintiff's endeavours to execute it. Subsequently, upwards of a year appears to have been wasted in a discussion as to the costs in the original decree; for, on the 15th June 1861, the costs of the original decree were modified by order of the Court, whose duty it was to execute the decree, and not to amend it. That order was, on the 19th August 1862, reversed on appeal, and no doubt properly so; for the Court which had to execute the decree had no powers in the execution department to modify or alter it. During the time occupied with those unnecessary proceedings, some of the plaintiffs died, and on the 28th of July 1863, an application was made by the heirs of the deceased plaintiffs to be substituted as decree-holders. Nearly another year was occupied upon this, and on 26th May 1864, an order was made for substitution of the heirs. One would have thought that things would have been allowed to go on; but in December 1864, about 9 months after the order for substitution had been made, a new Principal Sudder Ameen came in, who appears not to have been satisfied with the order of his predecessor, and who, although he had no power to reverse the order of his predecessor upon appeal, thought fit to require a certificate of heirship before he would execute the decree. Nine months were occupied in obtaining this certificate, which was not obtained till the 16th of September 1865. On the 20th of the same month an application for execution was made, which the Judge on appeal has now held to be too late.

This case is one among many instances of the truth of the remark which I have frequently made, that as soon as a man obtains a decree, his difficulties appear to commence. I would remark that from the 28th July 1863 to the 16th September 1865, was occupied in substituting heirs of the deceased plaintiff, decree-holder, for the purpose of executing the decree. This appears to me to have been wholly unnecessary. The judgment was a joint judgment for damages obtained by several persons, and might, I think, have been executed by the survivors alone, for the benefit of all who were interested in it.