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AZIZUNNILSA KHATUN v. SHASHI BHUSHAN BOSE.

decree having taken out execution of their shares, joint decree became severed thereby, and lost its character as an entire joint decree as regards the share of the third decree-holder. There is nothing to shew that the three decree-holders, brothers, in this case, came in, stating that the alleged decree was originally joint, and that they wished it severed according to their respective shares in it. The case of *Nobin Chunder Bose* v. *Rádhábullub Ghosami* (1) is, I may here mention, one in which there was an express agreement between the parties for the severance of their joint interests in the decree; but, irrespective of that, I do not think that a decision under a different procedure can be cited as a precedent under the new Code.

HOBHOUSE, J.—The material facts are these:—Lakhikant, Bepin Behari and Nabin were the proprietors of a decree, and they jointly, up to the 13th June 1859, kept that decree alive. This is admitted by the pleader of the special appellant. Then, in December 1861, and in 1862, and in the present application, Lakhikant and Bepin Behari executed this decree so far as their shares of it were concerned; but between the 13th June 1859 and the 8th January 1868, Nabin took no proceedings in execution. On this state of facts it is contended that the proceedings of the two share-holders of 1861 and 1863, even if they be good in law, are not sufficient to keep alive the decree so far as regards the share of Nabin. Reading the provisions of section 20, Act XIV. of 1859, together with those of section 207 of Act VIII. of 1859, and looking to the precedents of this Court which Mr. Justice Bayley has quoted, and which I agree with him in thinking to be in point, I am of opinion that the first objection is not tenable.

The second objection is that the proceeding of the 30th December 1861 was not a proceeding in good faith, and, therefore, that it was not, under the Full Bench ruling, a proceeding sufficient to keep the decree alive; but looking to the record of this case and to the judgment of the Courts below, it is quite clear that this objection was not taken in those Courts in the shape in which it is now taken here; and as it is an objection which depends upon facts which had to be found, and have not been found, I think, that we cannot entertain it in special appeal.

The result, then, of our decision is, that all these appeals are dismissed with costs.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

NITTA KOLITA AND OTHERS (PLAINTIFFS) *v.* BISHURAM KOLITA (DEFENDANT.)*

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Limitation—Act VIII. of 1859, *s.* 246.

Certain lands were attached under a decree against the ancestor of the plaintiffs, but on the intervention of the defendant, under section 246, Act VIII of 1859, they were released to him.

* Special Appeal, No. 2947 of 1868, from a decree of the Judicial Commissioner of Assam, dated the 5th August 1868, affirming a decree of the Moonsiff of Gowhati, dated the 6th June 1868.

(1) S. D. R., 1856, 243.

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NITTA KOLITA v. BISHNURAM KOLITA.

Held, that was not an order made between plaintiffs and defendant, such as to make it necessary for the former to sue for declaration of title within one year.

Baboo *Abhaya Chandra Bose* for appellant.

The respondent was not represented.

The facts are set out in the judgment of

NORMAN, J.—Plaintiffs sue for declaration of their right and registration of their name, as owners of a piece of land. The facts are that Banu Kolita, having obtained a decree against Brihaspati, whose heirs the now plaintiffs are, attached the land in dispute in execution of the decree. The defendant Bishnuram Kolita, put in a claim, alleging that he had purchased the land from Brihaspati, and was in possession, and upon that, an order was made, under section 246, releasing the land to the now defendant. The Judicial Commissioner considers that, that order was an order made against Brihaspati, and that Brihaspati and his heirs were bound to bring the suit within one year from the date of that order. This appears to be a mistake. That order was not between Brihaspati and the defendant, but it was between the decree-holder and the defendant, and Brihaspati's right cannot be directly affected by that adjudication. The heirs of Brihaspati are at liberty to bring their suit within the ordinary period of limitation. The section 246 does not apply so as to limit the plaintiff's right of suit to the period of one year. It certainly does not appear to us that plaintiffs have any title to the property; because the production of the conveyance from Brihaspati and the assertion of title by the defendant as purchaser from Brihaspati in that suit, lead almost irresistibly to the inference that the defendant was either a *bona fide* purchaser from Brihaspati, who could not deny his title or purchase-deed, or that the purchase-deed was a fraudulent contrivance concocted between Brihaspati and the defendant, for the purpose of defrauding the creditors of Brihaspati. In this latter case, the heirs of Brihaspati would be precluded from suing to set aside the conveyance. However that may be, the question between these parties is not one that can be determined upon the issue of limitation, but must be tried by the Judicial Commissioner with reference to the merits of the case.

The appellant's costs in this appeal will abide the result.