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GOLAM ASHGAR v. LAKHIMANI DEBI.

The judgment of the Court was delivered by

LOCH, J.—In this case there appears to have been an application of the 13th February 1862 for execution of decree. It was struck off on the 31st January 1863. It also appears that there was another application of the 13th April 1863, upon which nothing seems to have been done, but simply an order passed upon it, to the effect that the record be sent for. A further application was made on the 9th August 1865; and on this occasion certain property was attached by the decree-holder.

It is urged by the appellant before us that, as nothing was done under the applications of February 1862 and April 1863, the proceedings taken on the 9th August 1865 were out of time, and the execution was, therefore, barred by limitation. The Judge was wrong in having refused to enter into this point. This Court, in a Full Bench Ruling, *Biswesswar Mullick* v. *The Maharaja of Burdwan* (1), has held that, where an execution is once barred by limitation, no subsequent application made within three years of a previous application, upon which something was done, is sufficient to revive the decree. We think the Lower Courts ought to have taken this matter into consideration; and we therefore remand this case to the first Court to determine whether the applications made in February 1862 and April 1863 were *bona fide* proceedings, and sufficient to keep the decree alive.

Costs will abide the final result of the case.

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

KRISHNA KANTA PARAMANIK (PLAINTIFF) *v.* BIDYA SUNDARI DASI AND OTHERS (DEFENDANTS.)*

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Feby. 5.

Arbitrators—Evidence

Arbitrators ought only to take such evidence as is required by the terms of the agreement, referring the question in dispute to arbitration.

Baboos *Srinath Doss* and *Anukul Chandra Mookerjee* for appellant

Baboos *Ashutosh Chatterjee* and *Girish Chandra Mookerjee* for respondents,

The judgment of the Court was delivered by

PEACOCK, C. J.—It appears to us that the arbitrators were not authorized, by the terms of the submission, to take any other evidence than that of the widow as to whether or not the plaintiff was entitled to an 8-pie share, in addition to the one-third share, which, according to the ordinary rules of the Hindu Law of Inheritance, descended to him from his father. It appears from

* Regular Appeal, No. 109 of 1868, from a decree of the Principal Sudder Ameen of Nuddea, dated the 7th February 1868.

(1) Case No. 436 of 1867; 19th March 1868.

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KRISHNAKANTA PARAMANIK v. BIDYA SUNDARI DASI.

the award that the arbitrators did not consider that the widow's evidence made out the plaintiff's claim to the 8-pie share. Having decided that the plaintiff's claim had not been made out by the evidence of the widow, the arbitrators went into other evidence, and gave plaintiff a decree for the 8-pie share on the evidence taken by them. That portion of the award which gave the plaintiff the 8-pie share, was properly held by the Subordinate Judge not to be binding. If the arbitrators had determined the case according to the terms of the submission, they would have decided that the plaintiff had failed to establish claim to the 8-pie share. We do not think that we ought to remand the case to the Subordinate Judge, for the purpose of taking further evidence, to enable the plaintiff to establish that which the widow's evidence failed to prove before the arbitrators; for it was the intention by both parties, when they referred the case, that it should be determined upon the evidence of the widow alone.

We think that the decision of the Subordinate Judge ought to be affirmed with costs.

Before Mr. Justice Loch and Mr. Justice Hobhouse.

1869
Feby. 11.

SRIMATI DURGADASI DEBI (PLAINTIFF) *v.* JADUNATH MOOKERJEE (DEFENDANT.)*

Certificate—Act XXVII. of 1860*—Limitation.*

A Hindu woman applied for a certificate of administration under Act XXVII. of 1860, to the estate of her brother, who had died 7 years before, and whose property had since been in the possession of his so-called heir-at-law. The applicant alleged that at the time of her brother's death, she was pregnant, and subsequently gave birth to a son, who died in infancy. As representative of that son, who was deceased's legal heir, she asked for the certificate. The lower Court summarily rejected her application on the ground of lapse of time

Held, that this was not a sufficient reason for rejecting the application, and that the Judge must proceed to an enquiry under the Act.

Baboo *Purna Chandra Shome* for appellant.

Baboo *Ananda Chandra Ghosal* for respondent.

The judgment of the Court was delivered by

LOCH, J.—The appellant, as sister to one Thakurdas Bhattacharji, applies for a certificate under Act XXVII. of 1860, to enable her to collect the debts due to the estate of the deceased. The deceased died about 7 years ago, and the whole of his property was taken possession of by the respondent, Jadunath Mookerjee, the so-called heir-at-law, who was the son of deceased's father's sister. The appellant now urges that at the time of her brother's death she was pregnant, and subsequently gave birth to a son, who died in infancy, and

* Miscellaneous Regular Appeal, No. 493 of 1868, from a decree of the Judge of the 24-Pergunnas, dated the 17th August 1868.