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APARI SEWA v. KESHRAM KUCH.

well founded. The suit is for "personal property," valued at Rs. 200, said to have been taken from the deceased in his lifetime, and carried away by the defendants. The plaintiff makes title as widow and heiress of the deceased, claiming such personal property or its value. We think this is a matter within the cognizance of a Small Cause Court, under section 6 of Act XI. of 1865. The special appellant's vakeel contends that the suit falls within the description of a suit "for a share or part of share under an intestacy" within the meaning of those words in the 2nd proviso in that section. But we think that those words are intended to apply to suits by persons claiming as heirs against other persons similarly entitled, in order to determine their respective rights and interests, and to suits against persons administering the estate of a person who has died intestate, where the share or proportion to which the claimant is entitled is in question.

It is quite clear that if the plaintiff had alleged that her husband made a will by which he devised his property to her, and she as his devisee or executrix had sued for the personal property or its value, there would be nothing in the 2nd proviso to prevent the Small Cause Court from having cognizance of this suit. It would be absurd to hold that a suit to recover the property of the deceased against a wrong-doer is maintainable in a Small Cause Court by an executor or devisee, and not by the heir. We think that no such absurdity was intended by the proviso in question.

For the above reasons, no special appeal lies. As the case has not been heard on the merits, we give no costs.

Before Mr. Justice Loch and Mr. Justice Mitter.

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GOLAM ASHGAR (JUDGMENT-DEBTOR) *v.* LAKHIMANI DEBI AND OTHERS (JUDGMENT-CREDITORS.)

Execution—Limitation—Bona fide Application.

An application was made on the 13th February 1862, for execution of a decree and was struck off on the 31st January 1863. A fresh application was made on the 13th April 1863, but nothing was then done. A further application was made on the 9th August 1865, and certain property was then attached by the decree-holder.

Held, that the Judge should have enquired whether the former applications were *bona fide* and sufficient to keep the decree alive; if not, proceedings under the latest application would be barred by limitation. Case remanded accordingly.

Baboo *Upendra Chandra Bose* for appellant.

Baboo *Girish Chandra Mookerjee* for respondents.

Miscellaneous Special Appeal, No. 496 of 1868, from a decree of the Judge of the 24-Pergunnas, dated the 22nd August 1868, affirming a decree of the Sudder Moonsiff of that district, dated the 13th July 1868.

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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.