Before Mr. Justice E. Jackson and Mr. Justice Hobhouse.

1869 Jany 30.

LACHMIPAT SING ROY BAHADUR AND OTHERS (DECREE-HOLDERS) *v.* WAHID ALI AND OTHERS (JUDGMENT DEBTORS.)*

Limitation—Act XIV. of 1859, *s.* 20—*Execution.*

A decree was obtained on the 16th April 1859, and execution was applied for on 28th December 1861, when the applicant was ordered by the Court to produce a certificate of heirship. On his failing to do so, the case was struck off. He next applied for execution on the 13th August 1864.

Held, that the proceedings taken in 1861 were not *bona fide* proceedings of Court, such as would keep the decree alive, and that the application was barred.

Baboo *Nalit Chandra Sen* for appellants.

Mr. *C Gregory* for respondents.

The judgment of the Court was delivered by

HOBHOUSE, J.—We think that the Court below was quite right in this case.

The decree-holder obtained a decree on the 16th April 1859. He made his first application to execute it on the 28th December 1861, and, in the course of that application, the Court directed him to produce a certain certificate of heirship, and in default of his doing so, struck off the application on the 18th January 1862. No second application was made to execute the decree until the 13th August 1864.

The first Court and the lower Appellate Court have held, that there was no *bona fide* proceeding to enforce the decree taken between the 16th April 1859 and the 13th August 1864, and that therefore, the decree was now incapable of execution.

In special appeal one single point has been taken before us, and it is to this effect, *viz.*, that inasmuch as the proceeding of the 16th April 1859 was a proceeding before the Court, therefore, under certain rulings of this Court, it must be presumed to be a proceeding made in good faith, and it must be held to have been

* Miscellaneous Special Appeal, No. 448 of 1868, from the decree of the Judge of Purnea, dated the 19th of May 1868, affirming a decree of the Principal Sudder Ameen of that District, dated 12th September 1867.

1869

LACHMIPAT SING ROY BAHADUR v. WAHID ALI

much while the judgment-debtor does not prove the fact of its having been made in bad faith. The decisions which have been quoted to us—*Tabbur Sing* v. *Motee Sing* (1), *Teja Sing* v. *Rajnaryan Sing* (2)—do not seem to us to be binding decisions on the point before us; they are simply decisions on other points containing *obiter* remarks made by one or two of the Judges, bearing to some extent on the point before us. Though, therefore, they are decisions containing remarks manifestly entitled to our respectful consideration, they are not decisions binding upon us. We have to look to the terms of law and to any interpretation of that law made by binding decisions of this Court. Now, as we understand the law, section 20, Act XIV. of 1859 and the leading case thereupon, *viz.*, that of *Ram Sahaya* v. *Sing Digan Sing* (3), it seems to us that, when an application for execution is sued out by any judgment-creditor, he has to show, in the words of the law, that some proceeding, construed by the Full Bench to be some *bona fide* proceedings, shall have been taken by him to enforce within three years the decree, execution of which he asks for, because the question is one of jurisdiction; and as we understand the law and the ruling, there is no jurisdiction in any Court to allow process of execution to issue, unless, in the words of the law, some proceeding shall have been taken to enforce the decree. When, therefore, the judgment-debtor contends that no such proceeding has been taken out, it is clear that the Court cannot exercise jurisdiction to execute the decree unless it is shown that a proceeding, and a *bona fide* proceeding has been taken, and the contention that the judgment-debtor is to show that the application is not a *bona fide* proceeding, seems to us to have no weight, because the application is not a proceeding on the part of the Court, but simply a proceeding on the part of the judgment-creditor.

We cannot hold that an application proceeding from the judgment-creditor himself, made by him at his own option, in his own words, and at his own time, and behind the back of the judgment-debtor, is presumptively a *bona fide* proceeding.

The appeal must be dismissed with costs.

(1) 9 W. R., 443.

(2) 1 B. L. R., (A. C.) 62.

(3) Case No. 778 of 1865, 11th September 1866.