

words, the Subordinate Judge construed the decree by the plaint instead of by its own terms.

We think the ruling of the High Court referred to by the Moonsiff has a distinct bearing on the present case. It is there clearly ruled that execution cannot proceed upon an application made with a view to execute an aliquot part of a decree. We think the Subordinate Judge, in holding that the rule laid down in the case referred to by the Moonsiff had no bearing on the present case, should have given some reasons which led him to that conclusion. The Subordinate Judge is clearly wrong in law in construing the decree by the plaint instead of by its own terms. He has simply to execute the decree according to its own terms. The decree is a joint decree, and therefore no application of the judgment-creditors for execution of an aliquot part of the decree can be entertained.

The second objection is, that the decree-holders are not entitled to interest for the period of the pendency of the suit when the decree sought to be executed did not grant such relief. This objection is also valid. No such interest was given in the decree, and no such interest therefore can be recovered in execution of that decree. If the special respondent wishes to execute the decree according to its terms,—*viz.*, jointly against the judgment-debtors, he should apply to the lower Court to allow him to do so. We cannot, as suggested by the pleader for the special appellant, allow him here to amend the application which in its present form is contrary to the terms of the decree.

The appeal is decreed with costs.

The 19th December 1871.

*Present :*

The Hon'ble H. V. Bayley and F. B. Kemp,  
Judges.

*Hindoo Widow—Sale.*

Case No. 297 of 1871.

*Miscellaneous Appeal from an order passed by the Officiating Judge of Mymensingh, dated the 6th July 1871, affirming an order of the Subordinate Judge of that district, dated the 9th August 1869.*

Gobind Narain Dey (Judgment-debtor)  
*Appellant,*

*versus*

Gour Monee Debia and another (Decree-holders) *Respondents.*

*Baboos Sreenath Doss and Nuleet Chunder Sen for Appellant.*

No one for Respondents.

A and B were two brothers. A's widow sued B's son, but being unable to carry on the litigation sold a portion of her rights and interests in the suit to G and J, and a joint decree was passed in the names of G and J as well as of the widow. The widow soon afterwards died, and B's son became A's heir. HELD that as A's widow had only a life-interest in her husband's property, on her death her rights and interests ceased as well as those of G and J as decree-holders; and that B's son, the judgment-debtor, became in effect, as A's heir, the sole judgment-creditor and entitled to the whole property.

*Bayley, J.*—No one appears on the part of the respondents. The serving peon's deposition, however, shews that the notice has been duly served.

It appears that one Bindoo Bashinee sued the special appellant, her husband's brother's son. It is stated to us, and no one appears here to contradict the statement that Bindoo Bashinee not having means to carry on the litigation sold a certain portion of her rights and interests in the suit to Gour Monee and Jugdissuree. A joint decree was passed in their names and in that of Bindoo Bashinee. The last named soon after died. By her death the special appellant, as brother's son, became heir to the husband of Bindoo Bashinee, and the question raised in this special appeal is that Bindoo Bashinee had as widow only a life-interest in the property of her husband, that consequently on her death those rights and interests ceased and determined, and that as the rights and interests of Gour Monee and Jugdissuree were derived from Bindoo Bashinee, they also ceased with her death, and the special appellant became entitled to the whole property as next heir, and therefore the present application for execution by those who have no rights or interests as decree-holders cannot proceed against the special appellant.

We think this objection valid. It is to be remembered that Bindoo Bashinee had only a life-interest in her husband's property, and the special appellant who is the judgment-debtor in the case, becomes in effect as heir to her husband, the sole judgment-creditor and entitled to the whole property.

In this view, the judgment of the Lower Appellate Court is reversed, and this appeal decreed with costs.