

of the person affected thereby ceasing, or in the event of his death, whilst so affected, after such period has expired, in which case a period of three years is allowed from the cessation of the disability or of the death of such person. Applying the rule to this case, we find that the right to sue accrued to Radha Rumon in 1266. Under article 143 of the 2nd schedule, he could have brought the suit within a period of twelve years from that date—*i. e.*, up to Magh 1278. He died in 1270, and therefore his representative in interest—that is, the present plaintiff—could not bring the suit after the limit of Magh 1278. It has been argued that the representative in interest who is allowed by the 2nd clause of section 7 to institute the suit must necessarily be a major, as no minor can institute a suit; and that therefore a representative in interest, if a minor, is entitled to sue at any time within a period of three years from the cessation of his disability. But I consider this contention to be unsound. The terms of the section do not bear this construction. Nor is it true that a representative in interest, if a minor, cannot institute a suit. He can always do so by means of his guardian or next friend. The section must be construed strictly, and where we find express provision of time given to the person suffering under a disability to whom the right to sue accrued, and no such provision to his representative in interest, the conclusion follows that the omission in respect of the latter was intentional on the part of the Legislature. In this view the suit of the plaintiff must be dismissed as being barred by the Statute of Limitation. This disposes of the appeal and renders it unnecessary to express an opinion upon the merits of the case generally. But, as the entire evidence has been read out, I think it right to say that I concur in the view that plaintiff has failed to show that the compromise entered into by Brohmo Moyee in 1266 to put an end to the two suits which had been instituted against the minor Radha Rumon, which not only impeached the title of Radha Rumon, but threatened to deprive him of certain properties which he claimed as next heir to one Nrisinga Nath, was a fraudulent and collusive transaction, and injurious to the interests of the minor. On the contrary, it seems to me that Brohmo Moyee acted wisely in warding off the threatened litigation. The terms of compromise she effected were on the whole advantageous to the minor. She secured the recognition of his

title as adopted son of Ram Nath and the undisturbed possession of his estate, also an undisputed right to 11 annas out of the 16-annas share of the property left by Nrisinga Nath. True, a 5-anna share of the property was abandoned; but as an equivalent she received a sum of Rs. 7,000 in cash under the head of proportionate share of moneys to meet possible debts of Nrisinga Nath. I observe that this compromise was subsequently confirmed by a decree of Court, and it would require much stronger evidence than has been presented in this case to justify a Court, 15 years afterwards, setting it aside as fraudulent and collusive. I think, therefore, the appeal must be dismissed with costs.

The 28th April 1875.

Present :

The Hon'ble F. A. Glover and Romesh Chunder Mitter, *Judges*.

Execution—Application by other than Decree-holder.

Case No. 516 of 1874.

Miscellaneous Appeal from an order passed by the Judge of Patna, dated the 11th September 1874, reversing an order of the Sudder Moonsiff of that District, dated the 14th March 1874.

Duriao Roy (Decree-holder), *Appellant*,

versus

Doolla Roy (Judgment-debtor), *Respondent*.

Moonshee Abdool Barea for Appellant.

Mr. C. Gregory and *Baboo Boodh Sen Singh* for Respondent.

An application not made by the decree-holder at the time on the record cannot be considered to be an application to execute the decree.

Mitter, J.—THIS appeal must be dismissed with costs. The decree which is sought to be executed is dated the 15th December 1866. An application was made on the 9th of December 1869 to execute that decree, which was subsequently struck off. The present application to execute the decree has been made on the 7th of August 1873. The judgment-debtor pleads limitation. Under the new Limitation Act, it must be shown that this is within three years either of the last application made for executing the decree or, the

date of any notice that might have been issued on the judgment-debtor upon such application. The pleader for the decree-holder relies upon an application which was made on the 31st of August 1872. This application was not made by the decree-holder then on the record. It was therefore not a petition to execute the decree, and consequently the decree-holder is not entitled to count three years from that date, and, as he is not within time from the 9th of December 1869 when a substantial application was made, the execution of the decree must be held to be barred by the Law of Limitation.

The appeal is, therefore, dismissed with costs. Pleader's fees, 1 gold mohur.

The 29th April 1875.

Present:

The Hon'ble F. A. Glover and Romesh Chunder Mitter, *Judges*.

Joint Decree—Application by Sharers for Execution—Addition of Purchasers—Act VIII. of 1859, s. 208.

Case No. 418 of 1874.

Miscellaneous Appeal from an order passed by the Judge of Patna, dated the 11th September 1874, affirming an order of the Subordinate Judge of that District, dated the 6th May 1874.

Seetaput Roy and another (Decree-holders),
Appellants,

versus

Synd Ali Hossein and others, *Respondents.*

Baboo Rajendro Nath Bose for Appellants.

Baboo Debendro Narain Bose and *Moonshee Mahomed Yusuf* for Respondents.

Where two out of several decree-holders petitioned the Court to execute their share of the decree (which was for possession and mesne-profits), and the other decree-holders, though they virtually joined in the application by signifying their consent, subsequently retracted their consent, and the original applicants declined to proceed with the execution of the decree for mesne-profits:

HELD that there was no application on the part of all the decree-holders to execute the decree for *mesne-profits*,

nor any application by some of them for execution of the whole decree, and that the Court's order directing realization of the unpaid portion of mesne-profits was passed without any proper application.

Quære:—Can the purchasers of a share in a decree be added upon the record, under Act VIII. of 1859, s. 208, as co-decree-holders?

Mitter, J.—THREE persons—namely, Begum Jan, Begoo Jan, and Ali Hossein—brought a suit to recover possession of 19 sehams of certain properties against several persons. A decree was given in their favour on the 20th August 1867, and it is alleged that that decree had been subsequently modified in favour of the two defendants, Zuhoor-ul-Huq and Mussamut Suleemun. For the purpose of deciding this miscellaneous appeal it is not necessary for us to inquire whether this was so or not. On the 24th of September 1867, the appellants now before us applied to the Court alleging that they had purchased a share in the decree. The decree-holders, by a petition of that date, signified their consent to the appellants being added as co-decree-holders. Upon that the Court ordered that the names of the appellants should be added as co-decree-holders. On the 29th of July 1873, Begoo Jan and Ali Hossein made an application asking the Court to permit them to execute their share of the decree which they alleged to amount to one-half, and their prayer was that an Ameen be deputed to make over possession of the property in respect of their share, and after ascertaining the wassilat to allow them to execute their decree for one-half of the amount that might be found due. Upon this a notice was issued upon the other two decree-holders—namely, Begoo Jan and the appellants—and, on the 3rd of September 1873, they, by petition, consented to the decree being executed in the shares mentioned in the petition of Begoo Jan and Ali Hossein of the 29th of July 1873. Accordingly, an Ameen was deputed on the 9th of March 1874, with instructions to make over the decreed property to the several decree-holders in proportion to their respective shares, and also to ascertain the respective shares of mesne-profits due to the several decree-holders. On the 23rd April 1874, two of the judgment-debtors, Zuhoor-ul-Huq and Mussamut Suleemun, made an application to the Court executing the decree, alleging that they had compromised with Ali Hossein and Begoo Jan, two of the decree-holders, whose shares amounted to 12 annas, in respect of their claim for mesne-profits, and praying that they should be released from it. Ali Hossein and Begoo Jan also, by petition,