

that, when there was an order to pay costs under section 148 by the Magistrate deciding the case, another Magistrate had jurisdiction to assess the amount of the costs. We are not, therefore, prepared to follow the case of *Bhojal Sonar v. Nirban Singh* (1), and we reject the application.

S. C. B.

*Rule discharged.*

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 SARODA  
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## APPELLATE CIVIL.

*Before Mr. Justice Prinsep and Mr. Justice Ghose.*

CHHOTAY LAL AND ANOTHER (JUDGMENT-DEBTORS) v. PURAN MULL  
 AND ANOTHER (DEGREE-HOLDERS.) \*

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 July 26.

*Limitation—Jurisdiction of the Court to which a decree is sent for execution—Code of Civil Procedure, 1882, sections 323, 328, 339.*

The Court to which a decree is sent for execution under section 223 of the Civil Procedure Code has jurisdiction to decide whether or not the execution was barred by limitation.

*Leake v. Daniel* (2), *Nursing Doyal v. Hurryhur Saha* (3), *Jassoda Kooser v. Land Mortgage Bank of India* (4), *Srihary Mundul v. Murari Chowdhry* (5) referred to.

*Soomut Dass v. Bhoobun Lall* (6); *Lootfoollah v. Keerut Chand* (7) and *Ramu Rai v. Dayal Singh* (8) dissented from.

THIS case relates to a decree which was transferred for execution by the Court of the Munsif of Patna, to the Court of the Munsif of Behar. The facts, so far as they are necessary for this report, fully appear in the judgment of the High Court. The Munsif of Behar (the Court of first instance) in his judgment said: "The decree is dated 21st July 1886 and was passed by the first Court of the Munsif, Patna, and the first petition for execution

\* Appeal from Order No. 437 of 1894, against the order of J. Tweedie, Esq., District Judge of Patna, dated the 14th of September 1894, reversing the order of Babu Jogendra Nath Mukerjee, Munsif of Behar, dated the 31st of March 1894.

(1) I. L. R., 21 Calc., 609.

(2) B. L. R., Sup. Vol., 970; 10 W. R., F. B. 10.

(3) I. L. R., 5 Calc., 897.

(4) I. L. R., 8 Calc., 916.

(5) I. L. R., 13 Calc., 257.

(6) 21 W. R., 292.

(7) 21 W. R., 330; 13 B. L. R., Ap., 30.

(8) I. L. R., 16. All., 390.

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was made in that Court on 30th November 1889 for transmission of the decree to this Court for execution. It was alleged in that petition that Rs. 119 was realized from the judgment-debtor, and the Court sent the decree to this Court with the usual certificate.

“The first contention of the judgment-debtor is that the decree was already barred when the said petition, dated 30th November 1889, was made in the first Court of the Munsif at Patna and I think the contention is right.”

He then found on an examination of the evidence adduced by the parties that the payment of Rs. 119 was not proved, and held that the decree was barred by limitation. On appeal the District Judge observed :—

“The Munsif has thrown out the execution because he held it to be barred by limitation. But he was dealing with a transferred decree; and it is argued, as I find correctly, that his duty was to execute the decree as received as a good decree and not himself to set the decree aside.

“The direction of this Court, therefore, is that the Munsif of Behar shall proceed to execute the decree as received by him. If any reasonable objection is put before him he has discretion to stay his hand for a reasonable time, so that the party objecting may have an opportunity of applying to the transferring Court for recall of its order on the Court to which the transfer was made to execute the decree. The present order of the Munsif under appeal is set aside.”

The judgment-debtors appealed to the High Court.

Babu *Umakali Mukerjee* for the appellant having stated his case, the Vakil for the respondent was called on by the Court.

Babu *Karuna Sindhu Mukerjee* for the respondent.—It was the duty of the original Court to try the question of limitation if the decree was already barred when the transfer was ordered by that Court. The judgment-debtors were bound, whether the order was with or without notice to them, to come to the original Court for a review or to appeal from the order. The latest case on the point is *Ramu Rai v. Dayal Singh* (1). [PRINSEP, J.—That case refers to the case of *Dhonkal Singh v. Phakkar Singh* (2) which I think was overruled.] So in the case

(1) I. L. R., 16 All., 390.

(2) I. L. R., 15 All., 84.



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certain payments had been made. He accordingly held that execution under the terms of the decree could have been taken out after the 11th November 1886, that being the last date on which the three instalments became due. This judgment was delivered by the Munsif of Behar to whom the decree had been transferred for execution by the Munsif of Patna who passed the decree, on an application made to him on the 30th November 1889. It is unnecessary to refer to the various attempts made to execute the decree in the Court of the Munsif of Behar, because we consider that the view taken by the District Judge of Patna on appeal from his decision is incorrect in law, and that we must remand the case in order that he may apply the law correctly to such facts as may be found by him. The District Judge seems to have misunderstood the decree itself. There was no contract of compromise, but the decree was based on an agreement between the parties under which the defendant admitted the claim of the plaintiff, and both parties agreed that the payment should be made on certain terms and conditions. It was therefore for the Court of execution only to execute the decree in its terms. The point before the District Judge for determination was simply whether the decision of the Munsif of Behar was with jurisdiction, and, if with jurisdiction, whether he was right in declaring that execution was barred by limitation. The District Judge has held that the Munsif had no jurisdiction to consider whether the decree which was transferred to him for execution under section 223 of the Civil Procedure Code was barred by limitation. He seems to have thought that that was a point which could only be determined by the Court which passed the decree. It has been held by this Court so long ago as 1868, in the case of *Leake v. Daniel* (1), that when a decree has been transmitted by the Court which passed it to another Court for execution, the latter Court has jurisdiction to try whether or not execution of the decree is barred by the law of limitation. No doubt there have been subsequently some cases by Division Benches of this Court which have somewhat limited the operation of this judgment, but we do not find that in any of those cases any reference was made to this judgment, although in some of

(1) B. L. R., Sup. Vol., 970 ; 10 W. R., F. B. 10.



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depend upon whether it could satisfactorily decide the matter upon the materials before it, or whether those materials would not be more readily available to the Court which passed the decree so as to require that the objection should be made before and decided by that Court. So again in the case of *Srihari Mundul v. Murari Chowdhry* (1) the matter was considered. The point there was whether a decree having been transferred for execution to another Court, that Court should stay execution so as to leave the objection of limitation to be decided by the Court which passed the decree, and it was decided that either Court had jurisdiction to decide this matter. We, therefore, have no doubt on the decisions of this Court that the Munsif of Behar had jurisdiction to decide whether the execution of the decree which had been transferred to him by the Munsif of Patna was barred by limitation or not. We have been referred to the case of *Ramu Rai v. Dayal Singh* (2) in which a contrary opinion is expressed. We, however, find ourselves unable to concur in the view expressed by the learned Judges in that case, which is moreover opposed to the judgments of this Court. This case, therefore, must be remanded to the District Judge in order that he may consider whether, on the facts of the case before him, the application is barred by limitation, and whether the judgment of the Munsif under appeal is correct in this respect. The costs will abide the result.

S. C. C.

*Appeal allowed: case remanded.*


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## APPELLATE CRIMINAL.

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*Before Mr. Justice Macpherson and Mr. Justice Banerjee.*1895  
July 18.NISTARINI DEBI (PETITIONER) v. A. C. GHOSE, OVERSEER, HOWRAH MUNICIPALITY (OPPOSITE PARTY).<sup>a</sup>

*Transfer of Criminal Case—Criminal Procedure Code (Act X of 1882), sections 526, 555—Incompetence of Magistrate who is Chairman of Municipality to try municipal cases—“Any case,” Meaning of—Prosecution under Bengal Municipal Act (Bengal Act III of 1884.)*

An appeal against a conviction under section 217, clause 5, of the

<sup>a</sup> Criminal Miscellaneous Case No. 29 of 1895.

(1) I. L. R., 18 Calc., 257.

(2) I. L. R., 16 All., 390.