

APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

AUTOO MISREE AND OTHERS (DECREE-HOLDERS) v. BIDHOOMOOKHEE
DABEE (JUDGMENT-DEBTOR).*

1878
June 27.

Execution of Decree—Application by Mooktear on behalf of Judgment-Creditors—Act VIII of 1859, s. 207.

An application for execution of a decree on behalf of all the judgment-creditors was presented in Court by a mooktear. The mooktear had himself appended to such application the names of all of them but one, who had signed his own name.

Held, reversing the decision of the Court below, that although exception might fairly have been taken to the form of the application at the time it was presented, yet, having once been accepted by the Court, it was substantially an application on behalf of all the judgment-creditors sufficient to prevent the operation of the law of limitation.

AN application for execution of a decree was made on the 5th June 1874. This application was struck off on the 22nd August 1876. Subsequently, on the 13th September 1876, a second application for execution was presented in Court by one Nunda Lall Singh, a mooktear, who it appeared had signed the names of all the execution-creditors (with one exception, in which case the judgment-creditor had signed his own name). The application was accepted by the Court. On the 14th July 1877, the judgment-debtor filed a petition objecting to the application of the 13th September as being irregular and invalid, and urging that, as more than three years had elapsed since the date of the last valid application, the decree was barred. The Court of first instance overruled this objection, and directed the execution-proceedings to proceed. The lower Appellate Court, on the authority of *In re Ishur Kant Bhadooree* (1), was of opinion that a mooktear has no authority to present

* Appeal from Appellate Order, No. 53 of 1878, against the order of H. L. Oliphant, Esq., Judicial Commissioner of Zilla Chota Nagpore, dated the 28th of November 1877, reversing the order of Colonel B. W. Morton, Deputy Commissioner of Manbhoom, dated the 16th of July 1877.

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an application for execution; there were further no grounds for supposing that any of the decree-holders were present in Court at the time the application was presented, and even on the supposition that some of them were present, the Court could not have complied with the application without giving effect to the provisions contained in the latter portion of s. 207 of Act VIII of 1859. For these reasons the lower Appellate Court reversed the decision of the Court below.

The judgment-creditor appealed to the High Court.

Baboo *Kali Kissen Sen* for the appellant.

Baboo *Troylokanath Mitter* for the respondent.

The judgment of the Court was delivered by

JACKSON, J. (who, after stating the facts of the case and reasons given by the lower Appellate Court, proceeded as follows):—Now s. 207 applies only to cases where only one of several decree-holders for himself claims to execute the decree. In that case the Court is authorized to allow such claim, taking proper steps to protect the interests of the other parties. This is not a case of that sort, but the application was really made on behalf of all. Even, however, if it had been dealt with under s. 207, it would equally have been an application to execute the decree, such as would avail the other decree-holders. It appears to us that, although objection might have been taken to the form of this application, and the Court might have thought it necessary to order the form to be amended, still it was an application substantially on behalf of all the parties concerned, and ought to have been treated accordingly. We think that execution is not barred, and ought to be allowed to proceed. The appeal is allowed with costs.

Appeal allowed.