

But, whether or not section 647 applies to execution proceedings, we entertain very little doubt that that section cannot operate to extend the rule laid down in respect of a suit in section 373 to an application for execution. In the first place the rule laid down in the second paragraph of that section is not a matter of procedure, but a substantive rule of law. It is a rule based on the general principle that no person shall be allowed to institute successive suits on the same cause of action. But that rule is not applicable to execution proceedings, in which the Code itself (section 230, for example) contemplates successive applications to execute the same decree. And even if the rule laid down in section 373 be held to be a rule of procedure, it is clear to our minds that it is not applicable to proceedings in execution, inasmuch as the principle of the rule is opposed to the principle of the Code in regard to those proceedings.

For these reasons we are unable to concur with the decision of the Allahabad Court, and as that decision has not been followed by any Bench of this Court, we think it unnecessary to refer the matter for the decision of a Full Bench.

This appeal will be dismissed with costs.

Appeal dismissed.

T. A. P.

Before Mr. Justice Tottenham and Mr. Justice Ghose.

JASODA DEYE (DECREE-HOLDER) v. KIRTIBASH DAS AND ANOTHER
(JUDGMENT-DEBTORS).*

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*Execution of decree—Execution of decree by recorded decree-holder—
Civil Procedure Code (Act XIV of 1882), s. 232.*

The person appearing on the face of the decree as the decree-holder is entitled to execution, unless it be shown by some other person, under section 232 of the Civil Procedure Code, that he has taken the decree-holder's place.

Khetter Mohun Chattopadhyaya v. Issur Chunder Surma (1) relied on.

THIS was an application for execution of a mortgage decree by one Jasoda Deye. The judgment-debtor objected to the execution,

* Appeal from Order No. 118 of 1891, against the order of Bahoo Dwarka Nath Bhuttacharjee, Subordinate Judge of Midnapore, dated the 14th of March 1891.

(1) 11 W. R., 271.

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on the ground that Jasoda Deye had obtained the decree in her capacity of widow of her late husband Kashinath Das, and that the decree really belonged to her husband's estate. Some time previous to Jasoda Deye's decree, the judgment-debtor, as reversioner to the estate of Kashinath Das, had instituted a suit to oust the widow from her possession of the estate of her husband. He subsequently obtained a decree in that suit, under which Jasoda Deye was removed, and a Receiver was appointed.

It appears that the Receiver did not take any steps to put himself upon the record in the place of the decree-holder, Jasoda Deye.

The Subordinate Judge held that Jasoda Deye did not pay, as alleged by her, the consideration money of the mortgage bond out of her *stridhan*; that the decree really belonged to Kashinath Das's estate, and that the Receiver to that estate was alone entitled to execute the same.

From this order the decree-holder appealed to the High Court.

Dr. Rashbehari Ghose for the appellant.

Baboo Debendro Nath Ghose for the respondent.

The judgment of the High Court (TOTTENHAM and GHOSE, JJ.) was as follows:—

This is an appeal against an order of the Subordinate Judge of Midnapore, dismissing an application for the execution of a decree.

The decree-holder is the appellant, Jasoda Deye, and the decree was in respect of a bond by which property was mortgaged. The decree-holder seeks to execute by sale of the mortgaged property in the hands of the judgment-debtor.

The application has been refused upon the objection of the judgment-debtor that the decree-holder, Jasoda Deye, obtained a decree only in her capacity of widow of her late husband, Kashinath Das, and that the property really belonged to the estate of Kashinath. Before the decree had been obtained a suit had been brought by the judgment-debtor, as reversioner to the estate of Kashinath, to obtain the removal of the widow Jasoda from her position as possessor of the estate of her husband, and in that suit a Receiver to the estate was appointed; and by the decree passed in that suit the widow was ousted. The Receiver does not appear to have

taken any steps whatever to get himself put upon the record as decree-holder in this case or to obtain execution. In fact he has not appeared at all. But, upon the objection of the judgment-debtors, the Subordinate Judge referred to the suit brought by them to oust the widow from possession of the estate, and being satisfied that the consideration for this bond really was part of the property of Kashinath's estate, he held that not the widow, but only the Receiver was competent to execute the present decree.

It has been urged before us that the Subordinate Judge had no choice under the Code of Civil Procedure but to grant execution at the instance of the recorded decree-holder, unless the assignee, whether by conveyance or, as is alleged in the present instance, by operation of the law, should come in under section 232.

Authority for this contention has been shown to us in the case of *Khettur Mohun Chuttopadhya v. Issur Chunder Surma* (1), where it was held that the Court was bound to allow execution at the instance of the recorded decree-holder, unless intimation had been given in the regular way prescribed by law for the admission of another person in the decree-holder's place. And we think that the contention is sound that the decree-holder who appears upon the face of the decree is entitled to execute, unless it be shown by some other person under section 232 that he has taken the decree-holder's place.

It seems to us, therefore, that in this case we must direct that the execution do proceed at the instance of the decree-holder, Jasoda Deye; but that, under the circumstances, the Court below, being satisfied that the decree really appertains to the estate of Jasoda's late husband, and it might be dangerous to allow her to receive the proceeds of that decree, will be at liberty to retain the money, if realized, for the purpose of being made over to the appointed Receiver, who will deal with it as part of the estate; of course paying to the decree-holder the income of the capital sum.

It is contended on her behalf that she is entitled as widow to the whole of the purchase-money of this property, and that, at all events, if it be her husband's estate, she is entitled to the value of her life-interest in that. We think it is unnecessary in these proceedings to give any opinion as to whether the decree-holder is entitled to all or any of this money. The only point we have to decide is whether

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in the eye of the law the recorded decree-holder is entitled to execute the decree, and we think she is. The result is that we must set aside the order of the Court below, and send the case back that execution may proceed. Each party will bear their own costs.

Appeal allowed.

A. F. M. A. R.

Before Mr. Justice Tottenham and Mr. Justice Ghose.

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 July 2.

KARTICK CHUNDER GHUTTUCK AND OTHERS (DEFENDANTS
 1 TO 3) v. SARODA SUNDURI DEBI (PLAINTIFF).*

Limitation Act (XV of 1877), Arts. 127, 142, and 144—Suit by a person claiming share in joint family property.

The word 'person' mentioned in Article 127 of Schedule Second to the Limitation Act means some person claiming a right to share in joint family property, upon the ground that he is a member of the family to which the property belongs.

Radanath Doss v. Gisborne (1), *Ram Lakhi v. Ambica Charan Sen* (2), and *Horendra Chunder Gupta Roy v. Aunoardi Mundul* (3) relied on.

THIS was a suit to recover possession of the share of the plaintiff's father in a Hindu joint family property. The plaintiff alleged that her father was joint in food and estate with his four brothers; that in the year 1872 her father died, leaving her surviving as his sole heiress; that she being then a minor, her paternal uncles, the defendants 1 to 3, took charge of her estate; that subsequently, when she attained majority, she held possession of her father's share jointly with her uncles. She further alleged that when she went to live in her husband's house, she used to enjoy the profits of her share. But in Falgoon 1288 the defendants 1 to 3 separated and divided her father's share among themselves. In Bysack 1289 she demanded her share, which the defendants refused to give her, and subsequently dispossessed her of the same.

* Appeal from Order No. 256 of 1890, against the order of H. F. Mathews, Esq., Judge of Burdwan, dated the 11th of August 1890, reversing the decree of Baboo Kali Dhan Chatterji, Munsiff of Ranigunge, dated the 9th of December 1889.

(1) 14 M. I. A., 1.

(2) I. L. R., 11 Calc., 680.

(3) I. L. R., 14 Calc., 544.