

lower Court to award them anything in excess of those amounts. As a matter of fact the appellant has been awarded the sum of Rs. 52,778-1-0 and the respondents the sum of Rs. 2,899 and Rs. 1,185, respectively. The proceedings on the record do not show how the total compensation money amounting to Rs. 56,864-1-0 was ascertained, but upon the evidence on the record we cannot but think that the respondents' interests in the lands have been cheaply purchased at the sums awarded to them.

We must accordingly dismiss this appeal with costs.

*Appeal dismissed.*

S. C. G.

*Before Sir W. Coner Petheram, Knight, Chief Justice, and Mr. Justice Beverley.*

AGHORE KALI DEBI (JUDGMENT-DEBTOR) *v.* PROSUNNO COOMAR BANERJEE AND OTHERS (DECREE-HOLDERS.) \*

1895  
May 28,

*Limitation Act (XV of 1877), schedule II, art. 170, clause 4—Application to receive poundage fee—Application for the return of a decree partially executed by the Court where transferred for execution—Civil Procedure Code (Act XIV of 1882), section 223—Step in aid of execution of a decree.*

Neither an application by a decree-holder to receive poundage fees from him in respect of some of his judgment-debtor's property purchased by himself, nor an application, for the return to the decree-holder of a decree, made to a Court to which it has been transferred for execution, and by which it has been partially executed, is a step in aid of execution within the meaning of the Limitation Act, schedule II, art. 170, clause 4.

*Krishnayyar v. Venkayyar* (1) distinguished.

PROSUNNO COOMAR BANERJEE and another obtained a mortgage decree against Srimati Aghore Kali Debi on the 17th December 1887 in the Munsif's Court of Baraipore. The decree-holders made an application for the execution of his decree in the said Court in 1888. The decree was subsequently transferred for execution to the Munsif's Court at Alipore. On the 26th September 1888 they made an application for execution to the latter Court

Appeal from Order No. 213 of 1893, against the order of T. D. Beighton, Esq., District Judge of 24-Pergunnahs, dated the 4th of April 1893, reversing the order of Babu Shoshi Bhushun Bose, Munsif of Baraipore, dated the 10th of December 1892.

(1) I. L. R., 6 Mad., 81.

1895  
 AGHORE  
 KALI DEBI  
 2.  
 PROSUNNO  
 GOOMAR  
 BANERJEE.

and certain property belonging to the judgment-debtor was sold, and it was purchased by them, and, on the 9th February 1889, they put in the usual poundage fee, and on the 24th January 1893 the execution case was struck off. On the 9th March 1889 they made an application to the same Court to the following effect: "As the entire amount due to your petitioners has not been realized, they beg to file this petition, and pray that the Court will be pleased to return to them the decree put into execution. The said decree is required for taking out execution in the Munsif's Court at Barui pore."

The judgment-debtor objected to the execution of the decree on the ground of limitation. The Court of first instance held that the application was barred. On appeal, the learned District Judge of 24-Pergunnahs, relying upon the case of *Krishnayyar v. Venkayyar* (1), overruled the objection of the judgment-debtor, and held that the application was within time. He, however, held that the application, paying in the poundage fee, was not a step in aid of execution.

Against this order the judgment-debtor appealed to the High Court.

Babu *Lal Behary Mitter* and Babu *Promotha Nath Sen* for the appellants.

Dr. *Ashutosh Mookerjee* for the respondents.

Babu *Lal Behary Mitter*.—The case of *Krishnayyar v. Venkayyar* (1) is not against me. It rather supports my contention, as it lays down that in order to take advantage of art. 179, cl. (4) of the Limitation Act, some order of the Court, in furtherance of the execution, is necessary. In that case an application was made to return the decree to the Court which passed it, and therefore that was held to be a step in aid of execution.

In the present case only an application was made to return the decree to the judgment-creditor, and that cannot be considered to be a step in aid of execution within the meaning of the Limitation Act, art. 179, cl. (4). The application contemplated by that article is an application to obtain some order of the Court

(1) I. L. R., 6 Mad., 81.

in furtherance of the execution of the decree. See *Umesh Chunder Dutta v. Soonder Narain Deo* (1). 1895

Dr. *Ashutosh Mookerjee* for the respondents.—An application by the decree-holder to have the sale confirmed has been held to be a step in aid of execution in the case of *Gobind Persad v. Runglal* (2). An application by the decree-holder to take out the sale proceeds is a step in aid of execution: see *Paran Singh v. Jawahar Singh* (3). In this case the application made for the return of the decree is an application within the meaning of art. 179, cl. (4) of the Limitation Act. The case of *Krishnayyar v. Venkayyar* (4) supports my contention.

AGHORE  
KALI DEBI  
v.  
PROSUNNO  
GOOMAR  
BANERJEE.

The judgment of the Court (PETHERAM, C.J., and BEVERLEY, J.) was as follows:—

The questions here are: (a) whether an application to the Court by a decree-holder, who has himself purchased some of his debtor's property at an auction sale, to receive the amount of poundage from him, is an application made in accordance with law to the proper Court to take some step in aid of execution of the decree; and (b) whether an application by him to a Court, to which his decree has been sent for execution and which has realized a portion of the debt to give him the decree as he requires it for taking out execution in the Court of another Munsif, is such an application.

The learned District Judge has answered the first question in the negative, and, as we agree with him, it is not necessary for us to say more on that point. He has, however, answered the second question in the affirmative, and in that answer we are unable to agree.

When a decree, which has been sent by the Court which passed it to another Court for execution, has been executed or partly executed by that Court, the proper procedure, as prescribed by section 223 of the Civil Procedure Code, is for that Court to certify what has been done to the Court which passed the decree, and if this is not done, the decree-holder may, no doubt,

- (1) I. L. R., 16 Calc., 747. (2) I. L. R., 21 Calc., 23.  
(3) I. L. R., 6 All., 366. (4) I. L. R., 6 Mad., 81.

1895  
 AGHORE  
 KALI DEBI  
 v.  
 PRASUNO  
 COOMAR  
 BANERJEE.

apply to the executing Court to send the necessary certificate, and though this is not expressly provided, to return the decree itself if it has not been completely executed.

This is what was done in the case of *Krishnayyar v. Venkayyar* (1), and was held by that Court to be an application to take a step in aid of execution within the meaning of the law of limitation, inasmuch as, we understand, that it was an application to a Court to take a step which it was necessary should be taken before the execution could proceed. The present case is entirely different, as this was merely an application by the decree-holder to the Court to which the decree had been sent to give the partially executed decree to him. In giving the decree to him, the Court did not take any step in aid of execution, as it is not one of the things which that Court was empowered or required to do by law for the purpose of executing or assisting to execute the decree; and although it may be that the object of the decree-holder in getting possession of the decree was to get it further executed, we do not think his application to have it given into his possession can, by any forcing of the words, be held to have been an application to a Court, according to law, to take a step in aid of execution of the decree. As for these reasons we disagree with the judgment of the learned Judge, we set aside his decision and restore that of the Munsif with costs in both Courts.

S. C. G.

*Appeal allowed.*

*Before Mr. Justice Norris and Mr. Justice Gordon.*

1895  
 July 22

NASIR ALI FAKIR (DECREE-HOLDER) v. MEHER ALI *alias* CHUTAI FAKIR (OPPOSER.) \*

*Appeal—Civil Procedure Code (Act XIV of 1882), section 331—Specific Relief Act (Act I of 1877), section 9.*

A obtained a decree for possession of certain land against B and others under section 9 of the Specific Relief Act. He was obstructed by the defendant, a third party, when he went to take possession. Thereupon he

\*Appeal from Appellate Decree No. 670 of 1894 against the decree of Babu Bulloram Mullick, Subordinate Judge of Khulna, dated the 14th December 1893, reversing the decree of Babu Sitikanta Mullick, Munsif of Baginhat, dated the 28th June 1893.

(1) I. L. R., 6 Mad., 81.