

Before Mr. Justice Pigot and Mr. Justice Stevens.

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April 18.

RAM SADAY MUKERJEE AND OTHERS (DECREE-HOLDERS) v.

DWARKA NATH MUKERJEE (JUDGMENT-DEBTOR).^{*}

Bengal Tenancy Act (VIII of 1885), Schedule III, Article 6—Limitation Act (XV of 1877), Article 179—Execution of decree—Period from which limitation runs—Date of decree—Date of payment.

On the 26th of May 1890 a rent decree was passed for the sum of Rs. 400, payable on the 15th August 1890. On the 9th August 1893 the decree-holders applied for execution of the decree :

Hold, the period of limitation ran from the date of the decree and not from the date fixed for payment, and that the application was barred by Article 6 of Schedule III, Act VIII of 1885.

On the 26th May 1890 the appellants obtained a consent decree for rent for Rs. 400. The amount decreed was made payable on 15th August 1890. An application for execution of this decree was made on the 9th August 1893, when the objection was taken by the judgment-debtor that the decree was barred by limitation under Article 6, Schedule III of Act VIII of 1885. This objection was allowed and the application for execution dismissed by the First Munsif of Bankura, and on appeal his order was affirmed by the Officiating District Judge.

Dr. *Rash Behari Ghose* and *Babu Nalini Ranjan Chatterjee* for the appellants.

Babu Degamber Chatterjee for the respondent.

Dr. *Rash Behari Ghose*.—The expression ‘date of the decree’ in Article 6, Schedule III, Bengal Tenancy Act, means the date fixed by the decree for payment. In *Sakharam Dikshit v. Ganesb Sathé* (1) West, J., says : “In the case of a decree payable by instalments it has been repeatedly held that as the command of the Judge prescribes a term for the performance of the several parts of his order, it is to be construed as becoming a judgment for purposes of limitation as to each instalment only on the day when

^{*} Appeal from Appellate Order No. 156 of 1894, against the order of B. G. Geidt, Esq., Officiating District Judge of Bankura, dated the 2nd of February 1894, affirming the order of Babu Tara Charan Sen, Munsif of Bankura, dated the 2nd of December 1893.

the payment is to be made." This applies to the present case where the entire sum decreed is made payable at a certain date. My contention is borne out by the cases of *Lakshmbai Bapuji Oka v. Madhavrav Bapuji Oka* (1) and *Gureebullah Sirkar v. Mohun Lall Shaha* (2).

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Babu *Degamber Chatterjee* for the respondent.—The words 'date of decree' should be taken in their natural sense. By Article 179 of the Limitation Act six periods are fixed from which limitation begins to run. The sixth is 'where the application is to enforce any payment which the decree or order directs to be made at a certain date, such date.'

This is omitted from Article 6 of the 3rd schedule of the Bengal Tenancy Act in which the first three periods of Article 179 are incorporated; and as the Limitation Act is referred to in Article 6, it must be taken to have been deliberately omitted. In *Mamtazul Huq v. Nirbhai Singh* (3) the case of *Gureebullah Sirkar v. Mohun Lall Shaha* (2) was dissented from, and it was held that the expression 'date of such judgment,' in section 58, Bengal Act VIII of 1869, should be taken in its ordinary sense as meaning the date on which the judgment was passed.

The judgment of the Court (PRIGOT and STEVENS, JJ.) was delivered by

PRIGOT, J.—In this case a decree was made in a suit instituted under the Bengal Tenancy Act on the 26th May 1890, ordering the sum of Rs. 400 on account of rent claimed in the suit to be paid in the month of Sraban following, that is to say, the following August. We think there is no doubt upon the face of the decree that the suit was brought under the Bengal Tenancy Act; and although the decree was had by consent, that makes, we think, no difference upon the question arising before us.

On the 9th August 1893 an application for execution was made, and it was contended that the application was barred by limitation under the provisions of Article 6, Part III, Schedule III of the Bengal Tenancy Act, inasmuch as more than three years had

(1) I. L. R., 12 Bom., 65.

(2) I. L. R., 7 Calc., 127.

(3) I. L. R., 9 Calc., 711.

1895 passed since the date of the decree at the time when the application was made for execution, on the 9th August 1893. The First Munsif of Bankura accepted the contention that was raised, and dismissed the application; and on appeal his order was affirmed by the Officiating District Judge.

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It is contended in appeal before us that, notwithstanding the express words of Article 6 of the Limitation Schedule of the Bengal Tenancy Act, those words should be so read as to cause limitation to run, not from the date of the decree or order, but from the date fixed by the decree for the payment of the sum mentioned in it, and authorities are cited before us [*Sakharam Dikshit v. Ganesh Sathe* (1), *Lakshmbai Bapuji Oka v. Madharav Bapuji Oka* (2) and one or two cases of this Court] relating to the provisions of former Limitation Acts as affecting similar questions.

We do not think it necessary to enter upon a discussion of the authorities that were cited to us, and for this reason. The result of the light thrown upon the effect of the successive Limitation Acts by the decisions of the Courts was the enactment of the Act of 1877, Article 179. In Article 179 a period of three years was allowed for the execution of a decree or order of any Civil Court not provided for by No. 180, or by the Code of Civil Procedure, section 230, and there are various periods fixed in that article according to circumstances from which the three years so provided shall run. The first is the date of the decree or order; and this and the second and third are incorporated in Article 6, Part III, Schedule III of the Bengal Tenancy Act; and there are three others which are not so incorporated; and the last of these three, namely the 6th, provides for a case where a certain date is fixed by the decree for the payment of the money decreed, that is to say, where the application is to enforce any payment which the decree or order directs to be made at a certain date, from such date the three years are to run. Now the Limitation Act of 1877 is referred to in Article 6 of the Limitation Schedule of the Bengal Tenancy Act. It is obvious that the Legislature in framing the

(1) I. L. R., 3 Bom., 193.

(2) I. L. R., 12 Bom., 65.

schedule of limitation for the Bengal Tenancy Act, had Article 179 before it, and we must suppose that the Legislature deliberately abstained from making, in the Tenancy Act, any provision such as is contained in the sixth paragraph of the third column of Article 179 of the Limitation Act of 1877, that is to say, that having before it the question whether or not the three years' limitation should run from a date fixed by the decree for the payment of the decretal money (where the decree was in that form), the Legislature deliberately abstained from making any such provision, and fixed the date of the decree or order as the date from which the three years were to run. Under these circumstances we see no alternative save to construe the words 'the date of the decree or order' in their natural sense, and to hold that whatever hardship or inconvenience might arise in some cases from the three years' limitation running from the date of the decree and not from the date, if such there be, on which the decree directs the payment to be made, that is the law, and the appellant's contention cannot succeed.

We have not thought it necessary to base our decision upon the Full Bench decision in *Mamtazul Huq v. Nirbhai Singh* (1), although no doubt the construction of the words of the section of the Act of 1869, which is there adopted, coincides with the construction which we feel bound to give to the words of the Bengal Tenancy Act Limitation article in the present case. But we think what we have said is enough to show that by the terms of the Bengal Tenancy Act we are completely bound to come to the decision at which we have arrived.

We therefore dismiss the appeal with costs.

Appeal dismissed.

F. K. D.

(1) I. L. R., 9 Calc., 711.

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