

the application of the 7th April 1892, are altogether bad by reason of no notice under section 248 having been issued upon the judgment-debtor, and the judgment-debtor having had no opportunity to show cause why the decree should not be executed, it seems to us that the sale at which Palakdhari purchased the property cannot be sustained. The matter that has been complained of in this case is not one of irregularity but one of illegality, if we may say so, and if the whole of the proceedings were altogether bad and ineffectual so as to bind the judgment-debtor, it is obvious that anything done by the Court in the course of the execution that was taken out against the judgment-debtor must fall through.

Upon these grounds, we are of opinion that the order of the lower Appellate Court ought to be sustained, and we dismiss this appeal with costs.

Appeal dismissed.

J. V. W.

Before Mr. Justice Rampini and Mr. Justice Gordon.

GOBIND PERSHAD *alias* GOBIND LAL (ONE OF THE DECREE-HOLDERS) *v.* RUNG LAL (JUDGMENT-DEBTOR).*

1893

June 22.

Limitation Act (XV of 1877), sch. II, art. 179 (4)—Application by decree-holder for rejection of petition of judgment-debtor objecting to sale, and for confirmation of sale—Step in aid of execution.

An application by a decree-holder, praying that a petition of the judgment-debtor to set aside the sale of property belonging to him should be rejected and the sale be confirmed, is an application falling within the meaning of art. 179 (4) of schedule II of the Limitation Act XV of 1877. An application for execution of the decree made within three years from such a former application is not barred.

Kewal Ram v. Khadim Husain (1) followed.

THIS was an application for execution of a decree dated 30th August 1882. Various applications for execution, all within time (though all were struck off), were made thereafter until 2nd July 1888. On that date a further application for execution was made,

* Appeal from Order No. 310 of 1892, against the order of J. Tweedie, Esq., District Judge of Patna, dated the 14th of May 1892, reversing the order of Babu Gobinda Chunder Bysack, Munsif of Behar, dated the 5th of February 1892.

1893
 GOBIND
 PERSHAD
 v.
 RUNG LAL.

and on 10th September 1888 the judgment-debtor filed a petition of objection to the execution of the decree, on the ground that it was barred by limitation. On the 24th of September 1888 the Munsif held that the application for execution was not barred, and made an order for execution to proceed, and for the sale of the judgment-debtor's property. The sale accordingly took place, and, notwithstanding an application to set it aside made by the judgment-debtor, it was confirmed by the Munsif on 26th November 1888. On the 29th November an application was made by the judgment-debtor for review of the judgment of 26th November; this application was opposed by the decree-holder, but was granted, the order of the 26th November being set aside, and the 16th February fixed for further hearing of the case. On the 28th January 1889 the decree-holder put in a petition, praying that the application of the judgment-debtor to set aside the sale might be rejected, and the sale be confirmed: the prayer of this petition was, however, rejected, and the sale was eventually set aside.

The present application for execution was made on 17th September 1891, when the judgment-debtor again objected that the execution was barred by limitation.

The Munsif was of opinion, referring to the cases of *Lalraddi Mullick v. Kala Chand Bera* (1), *Vellaya v. Jaganatha* (2), and *Chowdhry Paroosh Ram Das v. Kali Puddo Banerjee* (3), that the application was not barred, and allowed execution to proceed; but this decision was on appeal reversed by the Judge, who, relying on the case of *Raghunandun Pershad v. Bhugoo Lall* (4), held that execution of the decree was barred.

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

Babu Nil Madhab Bose for the appellant.

Babu Jogesh Chunder Roy for the respondent.

The judgment of the Court (RAMPINI and GORDON, JJ.) was as follows:—

The question raised in this appeal is whether an application for execution of a decree is barred by limitation.

(1) I. L. R., 15 Calc., 363.

(2) I. L. R., 7 Mad., 307.

(3) I. L. R., 17 Calc., 53.

(4) I. L. R., 17 Calc., 268.

The first Court holds that the application is not barred, and cites certain authorities in support of its judgment.

On appeal the District Judge has set aside the order of the first Court, being of opinion that the application is barred, and he relies on the case of *Raghnandun Pershad v. Bhugoo Lall* (1).

In second appeal it is contended that the District Judge is wrong and that the Munsif is right.

The present application for execution was made on the 17th of September 1891, and a previous application for execution was made on the 2nd of July 1888. *Prima facie*, therefore, the application of the 17th of September 1891 is barred. It appears, however, that the following proceedings were taken in connection with the application of the 2nd of July 1888. The judgment-debtor objected to the execution of the decree, as being barred by limitation, on the 10th of September 1888; and on the 24th of that month the Munsif held that the application was not barred, and on the same date he passed an order for the sale of the judgment-debtor's property in execution of the decree. The property was accordingly sold.

Thereafter the judgment-debtor applied to set aside the sale; and on the 26th of November 1888 his objections were rejected and the sale was confirmed.

The judgment-debtor then applied on the 29th November 1888 for a review of the order confirming the sale, and notice was duly issued upon the decree-holder. He appeared and unsuccessfully opposed the application for review, which was granted. Subsequently, on the 28th January 1889, the decree-holder put in an application, praying that the judgment-debtor's application to set aside the sale might be rejected, at the same time applying for confirmation of the sale. His application was, however, refused, and the sale was set aside.

It is now contended before us, with reference to the application of the 28th January 1889, that that application was in effect an application to the Court by the decree-holder to take some steps in aid of the execution of his decree; and if that be so, the present application is in time. We think on the authority of the decision

1893

 GOBIND
 PERSHAD
 v.
 BUNG LAL.

(1) I. L. R., 17 Calc., 268.

1893
 GOBIND
 PERSHAD
 v.
 RUNG LAL.

in the case of *Kewal Ram v. Khadim Husain* (1) that that application was an application to take some steps in aid of execution, and was therefore sufficient to avoid the bar of limitation. We concur in the view taken by the learned Judges who decided that case, that an application by a decree-holder, praying that a petition of the judgment-debtor to set aside the sale of property belonging to him should be rejected and the sale be confirmed (which the application of the 28th January 1889 in fact is), is an application falling within the meaning of art. 179 (4), schedule II of Act XV of 1877. The learned District Judge relies on the decision of this Court in *Raghnandan Pershad v. Bhugoo Lal* (2), which, however, we think is not applicable to the present case.

We observe that the appeal before the District Judge was argued *ex parte*, and apparently the application of the 28th January 1889 was not brought to his notice.

In this view of the case, we set aside the order of the District Judge, and restore that of the Munsif with costs.

Appeal allowed.

J. V. W.

Before Mr. Justice Rampini and Mr. Justice Gordon.

1893
 June 29.
 LALLA TIRHINI SAHAI (JUDGMENT-DEBTOR) v. LALLA HURRUK
 NARAIN (DECREE-HOLDER).*

Transfer of Property Act (IV of 1882), ss. 88, 90—Decree not satisfied after sale of mortgaged property—Procedure necessary to obtain balance of decree.

Where a decree-holder has obtained a decree under section 88 of the Transfer of Property Act, and on sale of the mortgaged property the proceeds of sale are insufficient to satisfy the decree, he must, unless the decree gives him the right to proceed against other property or against the person of his judgment-debtor, apply under section 90 of the Act for a decree for the balance remaining unsatisfied.

* Appeal from Order No. 324 of 1892, against the order of A. C. Brett, Esq., District Judge of Gaya, dated the 29th of July 1892, affirming the order of Moulvi Hamiduddin, Munsif of Gaya, dated the 18th of June 1892.

(1) I. L. R., 5 All., 576.

(2) I. L. R., 17 Calc., 268.