

1901
 UTTAM
 CHANDRA
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 v.
 KRETRA
 NATH
 CHATTOPA-
 DHYA.

December to the effect that if the money was not paid, the case would be put up on the 16th February for *bichar*, that is to say, for disposal. The District Judge has interpreted this to mean that, in accordance with the terms of the agreement, the case should be decided on that date, and the sale should hold good, and that is what the parties agreed to. The pleader for the appellant in this case says that *bichar* meant that the case should be tried on the merits. This, we think, cannot have been meant, and for the reasons given by the District Judge, *viz.*, that this would have been a most one-sided arrangement wholly in the judgment-debtor's favour, and one which could and should never have been made, and the judgment-debtor's own conduct shows that he never understood it as meaning this. Then with regard to the District Judge's finding that the judgment-debtor was bound by his agreement of the 16th of December, we can only say that we fully concur in this view. The judgment-debtor, it appears to us, is estopped from contesting the legality of the sale. He asked for time and bound himself not to contest the validity of the sale, provided he got time. He obtained time and the advantages of a postponement, and it is, we think, quite contrary to reason and equity that he should now turn round and say that he is not bound by his agreement.

We think he is estopped on the principle laid down in the case of *Protap Chunder Dass v. Arathoon* (1).

The appeal is dismissed with costs.

S. C. G.

Appeal dismissed.

Before Mr. Justice Rampini and Mr. Justice Pratt.

JAGANNATH KHAN
 v.
 BROJONATH PAL.*

1901
 Dec. 10.

Limitation Act (XV of 1877) Art. 179, cl. 4—Seal warrant—Application for, in the Presidency Small Cause Court—Whether such an application is an application in accordance with law for execution or to take steps in aid of execution.

* Appeal from Order No. 113 of 1901, against the order of Babu Kalidhan Chatterjee, Subordinate Judge of Faridpore, dated the 31st of January, 1901, reversing the order of Babu Nirmal Chunder Singha, Munsif of Chikandi, dated the 5th of August, 1900.

(1) (1882) I. L. R. 8 Calc. 455.

An application for a seal warrant to the Calcutta Small Cause Court is an application made in accordance with law for execution or to take steps in aid of execution of a decree.

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JAGANNATH KHAN and others, decree-holders, appealed to the High Court.

This appeal arose out of an application for execution of a decree. The petitioners obtained a decree against Prozanna Kumar Pal and others in the Calcutta Small Cause Court on the 16th August, 1891. An application for a seal warrant was made in the said Court on the 4th August, 1894, which was issued on the 6th of that month and was returned unexecuted on the 12th September, 1894. On the 30th July, 1897, a second application for a seal warrant was made, which was issued on the next day and was returned unexecuted on the 31st August, 1897. Jagannath Khan, one of the decree-holders, having died, his representatives were substituted in his place on the 15th January, 1897. On the 24th of January, 1897, the decree was transferred for execution to the district of Faridpore, and application for execution was made to the Subordinate Judge. The objection *inter alia* was that the application for execution was barred by limitation. The Court of First Instance overruled the objection of the judgment-debtors and allowed execution to proceed. On appeal, the Subordinate Judge of Faridpore, Babu Kalidhan Chatterjee, having held that the application was barred by limitation, set aside the decision of the First Court.

Babu Saroda Churn Mitter and Babu Hara Kumar Mitter for the appellants.

Dr. Ashutosh Mookerjee and Babu Biraj Mohun Mazumdar for the respondent.

RAMPINI AND PRATT JJ. This is an appeal against the order of the Subordinate Judge of Faridpore passed in an execution case. The Subordinate Judge has refused execution, holding that it is barred by limitation. The decree-holder appeals to this Court.

The decree which it is sought to execute was passed by the Calcutta Small Cause Court on the 16th August, 1891. Application for a seal warrant was made to the Court on the 4th August, 1894. The seal warrant was afterwards returned unexecuted.

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Another similar application was made on the 30th July, 1897. The seal warrant then issued was also returned unexecuted. On the 24th January, 1897, the decree was transferred for execution to the district of Faridpore, and application for execution was made to the Subordinate Judge.

The Subordinate Judge has found that, as the proceedings in the Small Cause Court show that, although the two applications for the issue of seal warrants were made more than one year after the passing of the decree, no notices under s. 248 were issued, and as the seal warrants could not be executed, the previous proceedings for execution in this case are all bad and null, and execution of the decree is now barred.

We think the Subordinate Judge is wrong. In the first place, we do not know how he finds that no notices under s. 248 were issued. We are told there is no record of the Small Cause Court proceedings, and the Subordinate Judge has only come to this conclusion because the decree-holder is not able to show that any notice under s. 248 was issued. That this was how the Subordinate Judge came to this conclusion appears probable from a portion of his judgment, in which he says: "The proceedings of the Calcutta Small Cause Court do not show the issue of any notice under that section (*i.e.*, s. 248), and the decree-holder did not make any attempt to prove service of such notice. *It may therefore be assumed that no such notice was served or applied for.*"

But it does not appear that it is the duty of a decree-holder under the law to apply for the issue of a notice under s. 248. He has only to apply for execution. It is the duty of the Court in certain circumstances to issue the notice under s. 248. Hence, as there is a presumption, till the contrary is shown, that all legal proceedings are regularly conducted, it does not seem that the Subordinate Judge was justified in making the assumption that he says he has done.

Further, it does not seem to follow that the execution proceedings were bad and null, merely from the facts that they were infructuous and that the seal warrants could not be executed. The decree-holder may have applied in accordance with law for execution, although his applications did not result in the satisfaction of his decree.

The applications for seal warrants appear to us to have been applications in accordance with law for execution or to take steps in aid of execution. We are not aware that it is necessary for the holder of a Small Cause Court decree, when seeking to execute his decree, to do more than apply for the issue of a seal warrant for the attachment and sale of his debtor's property. In any case, such applications would certainly seem to us to be applications made in accordance with law to take steps in aid of execution. We accordingly hold that the execution of the decree in this case is not barred. We therefore allow this appeal, set aside the order of the Subordinate Judge, and direct that execution of the decree do now proceed. This order carries costs

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Appeal allowed.

S. C. G.

Before Mr. Justice Brett and Mr. Justice Mitra.

BALDEO SONAR

v.

MOBARAK ALI KHAN.*

1902
Feb. 26.
March 3.

Hindu law—Joint family—Mitakshara—Manager—Debt contracted by a Manager for trading business of the family—Decree against managing member only—Sale of joint-family property in execution of such decree, effect of—Liability of other members not parties to the decree.

A member of a joint Hindu family, not being a son of the debtor, would be bound by a decree and sale of the family property under the decree, although he was not a party to it, if the creditor or the purchaser, as the case may be, could prove that the debt had been contracted for the benefit of the family or the purposes of a trading business in which they were interested, and if the decree was substantially one against them, although in form it might be against the head member or members of the family, who contracted the debt.

This would especially be so, if the other co-parceners were minors at the time the debt was contracted and the suit was brought.

THE plaintiffs, Baldeo Sonar and others, appealed to the High Court.

* Appeal from Appellate Decree No. 2216 of 1899, against the decree of Babu Dwarkanath Bhuttacharjee, Subordinate Judge of Shahabad, dated the 14th of June, 1899, reversing the decree of Maulvi Ali Mahomed, Munsiff of Sasseram, dated the 6th of October, 1898.