

APPELLATE CIVIL.

Before Mr. Justice Murkby and Mr. Justice Prinsep.

1877
June 21.

KALLY PROSONNO HAZRA (PLAINTIFF) v. HEERA LAL
MUNDLE (DEFENDANT).*

Limitation — Act IX of 1871, ss. 20, 21; Sch. II, arts. 167, 169—Execution Proceedings.

The word 'debt' in ss. 20 and 21 of Act IX of 1871 applies only to a liability for which a suit may be brought, and does not include a liability for which judgment has been obtained: therefore, where the last application for execution of a decree had been made on the 14th of December, 1872, and a notice under s. 216 Act VIII of 1859 issued on the 19th of January, 1873, and on the 28th of April, 1873, the judgment-debtor filed a petition notifying part-payment, which petition was signed by the judgment-creditor,—*held*, in an application for execution made on the 27th of April, 1876, that further execution was barred by limitation.

THIS was a suit in which the plaintiff, appellant, had obtained a decree on the 9th of January, 1868. The last application for execution had been filed on the 14th of December, 1872, and a notice under s. 216 of Act VIII of 1859 had been issued to the representatives of the judgment-debtor on the 19th of January, 1873. On the 28th of April, 1873, the judgment-debtor filed an application with the consent of the decree-holder, who appended his name at the bottom of the petition notifying payment of a part of the decretal amount, and the execution case was struck off the file. On the 27th of April, 1876, the judgment-creditor applied for fresh execution. The judgment-debtor pleaded limitation. The lower Appellate Court held, that further execution was barred. The judgment-creditor preferred a special appeal to the High Court.

Baboo *Rashbehari Ghose* for the appellant.—The petition presented by the judgment-debtor, and signed by the judg-

* Miscellaneous Special Appeal, No. 91 of 1877, from a decree of C. D. Field, Esq., Judge of Burdwan, dated 22nd December, 1876, confirming a decree of Baboo Amrit Lall Pal, Munsif of that district.

ment-creditor, was in fact the acknowledgment of a 'debt,' and is therefore governed by ss. 20 α and 21 of the Limitation Act. The period of limitation must, therefore, be computed from the date of the presentation of that petition.

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The respondent was unrepresented; the pleader for the appellant, however, pointed out to the Court that the proviso to art. 169 of the 2nd schedule of Act IX of 1871 would have been mere unmeaning surplusage if limitation on part-payment of money under a decree had been already provided for under s. 21 of that Act.

The following judgments were delivered:—

MARKBY, J.—In this case, whilst execution proceedings were going on, the judgment-debtor filed a petition in Court notifying payment of a part of the sum due under the decree, and asking for-a-stay of execution for four months. The judgment-creditor signified his assent to this application by signing the petition, which was granted. The question we have to determine on special appeal is, whether a new period of limitation runs either from the date of this petition under the provisions of s. 20 or from the date of the part-payment under the provisions of s. 21, Act IX of 1871. Both these sections are applicable to 'debts and legacies' only, and I do not think that the sum due under a decree is a 'debt' within the meaning of these two sections. It seems to me that the proviso to s. 21, which is general, would be unmeaning as applied to sums due under a decree; and the proviso to art. 169, sch. ii would also have been wholly useless if part-payment of money due under a decree had been already provided for under s. 21. Both these arguments, it is true, apply only to s. 21. But I cannot suppose that the word 'debt' is used in a different sense in two consecutive sections of the Act. I do not of course mean to say that the sum due under a decree may not sometimes be properly called a 'debt;' it is constantly spoken of as a judgment-debt; but taking the whole Act together, I think the 'debt' spoken of in ss. 20 and 21 is a liability to pay money for which a suit could be brought, and not for which judgment has been obtained. The Miscellaneous Special Appeal will be dismissed with costs.

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PRINSEP, J.—I am of the same opinion. I would only add that the fact that it has been thought necessary to make a special proviso in art. 169, sch. ii of the Limitation Act, seems to show that the ordinary law was not sufficient in this respect as regards decrees or orders of a High Court in its Ordinary Original Civil Jurisdiction. There is no such special provision for other decrees or orders. We cannot apply s. 20 or 21.

Appeal dismissed.

FULL BENCH.

Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Jackson, Mr. Justice Macpherson, Mr. Justice Markby, and Mr. Justice Ainslie.

1877
 July 20.

MOHESH MAHTO AND ANOTHER (DEFENDANTS) v. SHEIK PIRU—
 (PLAINTIFF).*

*Special Appeal—Jurisdiction—Small Cause Court—Claim under Rs. 500—
 Question of Title—Act XXIII of 1861, s. 27—Act XI of 1861, s. 6.*

No special appeal lies to the High Court in a suit cognizable by the Small Cause Court, although a question of title to immoveable property has been raised and tried in the Court below.

THIS was a suit for the recovery of Rs. 476, the price of certain sakhwa trees. A question of title had been raised and determined in the Court below in favour of the respondent. Upon a special appeal from this decision, Markby and Prinsep, JJ., referred the following point to a Full Bench: “Whether, having regard to the provisions of s. 27 of Act XXIII of 1861, a special appeal lies to the High Court in a suit of the nature cognizable by a Court of Small Causes, when a question of title to immoveable property has been raised and tried in the Courts below.”

Baboo *Anandanauth Chatterjee*, for the respondent, took a preliminary objection to the hearing of the appeal, and con-

* Special Appeal, No. 1385 of 1875, against a decree of H. M. Boddam, Esq., Deputy Commissioner of Zilla Hazaribaugh, dated the 18th March, 1876.