

payment of their debts under a fraudulent misrepresentation that he had an authority to collect them, the plaintiff was held entitled to recover the amount under this count. We think, therefore, that art. 60 of the 2nd schedule of the Limitation Act contains the law which ought to govern this case, and that the limitation ought to run not from the time when the money was demanded but from the time when the money was received. The money in the present case was received so long ago as January, 1869, and this suit was not brought until 1874. Therefore the claim is clearly barred. The decision of the lower Appellate Court is reversed, and the suit dismissed with costs in all the Courts.

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ADHIKARI
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SINGH DEO.

Appeal allowed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Birch.

HENDRY (ONE OF THE DEFENDANTS,) v. MUTTY LALL DHUR AND
OTHERS (PLAINTIFFS).*

1876
March 31.

*Sale in execution of decree against representative of deceased Mahomedan—
Mahomedan Law—Debts—Purchaser of share of estate, Right of.*

B R, a Mahomedan, had incurred debts for repairs to a house of which he owned an 8-anna share, and after his death his daughter *S*, who was entitled to a 5-anna share of his estate, and who had taken charge of his property and obtained a certificate under Act XXVII of 1860, directed further repairs to be done to the estate. The debts then incurred by *B R* and *S* not having been paid, the creditor brought a suit against *S*, as representing her father's estate, to recover them, and having obtained a decree, the house was sold in execution thereof, and purchased by *H* in May 1874. *B R* at his death left also a sister, who was entitled to a 3-anna share of his estate, but who had been for some years absent on a pilgrimage to Mecca. On her return she in January, 1874, sold her interest in the house to *M*. In a suit by *M* against *S* and *H* for possession of the share so purchased by him—*Held*, that *S* did not represent the whole estate of *B R*, and the share purchased by the plaintiff did not pass under the execution sale to *H*; the plaintiff, therefore, was entitled to recover.

THIS was a suit to recover possession after partition of a share in a certain dwelling-house and land in Sealdah, which

* Special Appeal, No. 1200 of 1875, against a decree of Alex. J. Maclean, Esq., Judge of Zilla 24-Pergannas, dated the 4th of June, 1875, reversing a decree of Baboo Mohendro Nath Bose, First Subordinate Judge of that district, dated the 5th of April, 1875.

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the plaintiff had purchased under a kobala, dated 2nd January, 1874.

One Buzloor Rohim died on 13th January, 1871, leaving a daughter Surfurunnissa Begum, a widow Fatima Khanum, and a sister Sadurunnissa. Buzloor Rohim, at the time of his death, was owner of an 8-anna share in the house and land in Sealdah; the other 8-anna share belonged at the time of this suit to one Khodejannissa, who acquired it by purchase. Of the 8-anna share owned by Buzloor Rohim, Surfurunnissa was entitled to a 5-anna share (to a 4-anna share by right of inheritance from Buzloor Rohim and to a 1-anna share under a kobala executed in her favor by Fatima Khanum), and the remaining 3-anna share belonged to Sadurunnissa Bibi. During his lifetime and at his death Buzloor Rohim was indebted to Messrs. Anderson, Wallace, and Co. for repairs done by them, and after his death they filed a suit against Surfurunnissa Begum, who had obtained a certificate and taken charge of Buzloor Rohim's property, styling her the daughter and representative of Buzloor Rohim, to recover that debt, and a further sum for repairs which had been executed at Surfurunnissa's direction since Buzloor Rohim's death. That suit was undefended, and a decree was made against Surfurunnissa, in execution of which Surfurunnissa's interest in the house and land was sold, and purchased by certain persons—Hendry and Hubbard—in May, 1874. For some time before Buzloor Rohim's death, Sadurunnissa was absent on a pilgrimage to Mecca, and did not return till 1873. In January, 1874, she sold her interest in the dwelling-house and land to the plaintiff, who, possession being refused him, accordingly brought this suit for possession of his vendor's 3-anna share, making Khodejannissa, Hendry, Hubbard, and Surfurunnissa, defendants.

The defendant Hendry defended the suit and submitted in his written statement that the decree in execution of which he and Hubbard purchased was passed against Surfurunnissa as representative of Buzloor Rohim; that the interest of the latter passed by the sale, and that, consequently, nothing was left for the plaintiff's vendor to transfer, and the plaintiff had no title on which to found his suit. The Subordinate Judge, referring to

the case of *Ishan Chunder Mitter v. Buksh Ali Soudagur* (1), was of opinion that the right and interest of Buzloor Rohim passed by the sale in execution of the decree in the suit against Surfurunnissa, who had been sued as his daughter and representative. He, therefore, dismissed the suit.

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The Judge on appeal was of opinion that the present case was distinguishable from that referred to by the Subordinate Judge, inasmuch as the debt was principally incurred after Buzloor Rohim's death; and as Sadurunnissa was not a party to the suit against Surfurunnissa, the estate of the deceased was not fully represented. He, consequently, held that the sale in execution against Surfurunnissa could not bind the share of the estate to which Sadurunnissa was entitled, and gave the plaintiff a decree for the share sued for.

The defendant Hendry preferred a special appeal to the High Court, on the ground (among others) that by the sale in execution all the rights of Buzloor Rohim became vested in him, and Sadurunnissa, as the sister and one of the heirs of Buzloor Rohim, could not have any rights in the property in dispute as heir till the debts of the estate were paid.

The *Advocate-General*, offg. (Mr. *Paul*) for the appellant.

Baboo *Mohini Mohun Roy* for the respondents.

The judgment of the Court was delivered by—

GARTH, C. J.—In this case the plaintiff claims a three-sixteenth share in a dwelling-house at Sealdah, one half of which is admitted to have belonged to the late Buzloor Rohim, who died in 1871.

Buzloor Rohim, in his lifetime, had employed Anderson, Wallace, and Co., in Calcutta, to do some repairs to the house; after his death his daughter Surfurunnissa Begum, who was entitled to five-sixteenths of the whole property, employed them to do further repairs. The price of these repairs not having been paid, Anderson, Wallace, and Co. brought an action

(1) Marshall, 614.

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against Surfurunnissa Begum, as representing her father's estate, to recover the sum due to them; and having obtained a decree, the house was sold in execution under the decree, and was purchased by the defendants Hendry and Hubbard. Meanwhile, a sister of Buzloor Rohim, Sadurunnissa Bibi, who had been for some time past on a pilgrimage to Mecca, and who was entitled to a three-sixteenth share of the property, returned, and she sold her interest to the plaintiff, who brings this suit to establish his right, insisting that the three-sixteenths which he purchased could not legally be sold, and were not in fact sold to Hendry and Hubbard under the decree.

The defendants contend that Surfurunnissa Begum represented the whole estate of Buzloor Rohim, and that, therefore, his sister's share was liable for the repairs and was properly sold under the execution. The learned Judge in the Court below has found that Surfurunnissa Begum was not legally authorized to represent the whole estate of her father, and that, consequently, the decree and the execution sale which took place under it only affected her five-sixteenths of the property.

Under these circumstances the three-sixteenth share which belonged to Sadurunnissa Bibi being duly conveyed to the plaintiff, became his property, and the learned Judge in the Court below was, in our opinion, perfectly right in making a decree in his favor.

The appeal will, therefore, be dismissed with costs.

Appeal dismissed.
