

We think that the decision of the District Judge must be set aside, and the money deposited by the judgment-debtors must be paid out to the decree-holders. The decree-holders will be entitled to their costs in this Court and the Courts below.

1877

GOLUKE-  
MONEY DABIA  
v.  
MOHESHI  
CHUNDER  
MOHA.  
1878

*Before Mr. Justice Ainslie and Mr. Justice McDonell.*

SHEIKH KHOORSHED HOSSEIN AND OTHERS (DECREE-HOLDERS) v.  
NUBBEE FATIMA AND OTHERS (JUDGMENT-DEBTORS).\*

Feby. 27.

*Suit for Partition†—Execution—Limitation—Right of Co-sharer in Partition.  
Suit to enforce Decree.*

A decree for partition is not like a decree for money or the delivery of specific property, which is only in favor of the plaintiff in the suit. It is a joint declaration of the rights of persons interested in the property of which partition is sought, and such a decree, when properly drawn up, is in favour of each shareholder or set of shareholders having a distinct share.

A, on the 29th June 1871, obtained a decree for partition against B, his co-shareholder, and, on the 28th November 1876, applied to have the execution proceedings struck off the file. The application was refused, and the partition was ordered to be completed at B's expense. *Held*, that as the execution proceedings taken either by one shareholder or the other were taken on behalf of both, limitation did not apply.

IN this suit the plaintiff obtained a decree on the 29th June 1871 against the defendant, his co-sharer, for partition of a 3-anna 6-ganda share out of 8 annas of Mouza Dilawapore. Plaintiff took out execution, and a greater part of the land had been partitioned under the execution; the plaintiff, however, dissatisfied with the way in which the lands had been divided, applied, on 28th November 1876, to have the execution proceedings struck off the file, whereupon the defendant expressed his willingness to carry on the execution proceedings. The Court of first instance rejected the plaintiff's application, and directed the partition to continue at the defendant's expense. The lower

\* Miscellaneous Special Appeal, No. 308 of 1877, against the order of R. J. Richardson, Esq., Judge of Zilla Tirhoot, dated the 6th of June 1877, affirming the order of Baboo Greesh Chunder Ghose, First Subordinate Judge of that district, dated the 28th of November 1876.

† The partition under a decree of an estate paying rent to Government is now to be made by the Collector, see s. 265 of the Civil Procedure Code.

1878

SHEIKH  
KHOORSHED  
HOSSAIN  
v.  
NUBBEE  
FATIMA.

Appellate Court having confirmed this order, the plaintiff preferred a special appeal to the High Court.

Moonshee *Mahomed Yusoof* for the appellants.

Mr. *M. L. Sandel* for the respondents.

The judgment of the Court was delivered by

AINSLIE, J. (who, after stating the facts of the case, continued).—In special appeal it is contended that the defendant is not entitled to execute the decree at all; and if entitled, that she is barred by limitation.

With regard to the first point, we are of opinion that a decree for partition is not like a decree for money or for the delivery of specific property, which is only in favour of the plaintiff in the suit. It is a joint declaration of the rights of persons interested in the property of which partition is sought, and having been so made, it is unnecessary for those persons who are defendants in the suit to come forward and institute a new suit to have the same rights declared under a second order made. It must be taken that a decree in such suits is a decree, when properly drawn up, in favor of each shareholder or set of shareholders having a distinct share. In the present instance there being fortunately only two parties, there was no room for ambiguity in the drawing up of the decree.

On the question of limitation, we think that it is impossible, in a case like this, to hold that the execution proceedings taken by either one shareholder or the other are anything but proceedings on account of both the shareholders. The necessary result of those proceedings was to divide off the share of the defendant, and while this was going on at the instance of the plaintiff, it would have been merely superfluous for the defendant to have put in an application to have the same thing done at her instance. Therefore, we think that it must be taken that the proceedings in execution earlier than 1876 have the same effect as if they had been originated in the name of the defendant, consequently limitation does not apply.

The appeal is dismissed with costs.

*Appeal dismissed.*