

amongst themselves as to which of them shall be allowed to take the same as part of his or their share or shares, then let this property be divided between the three co-parceners in proportion to their respective shares in the same. This will give to the two co-parceners who wish to keep it undivided an opportunity of doing so by paying a six-anna share of the value to the appellant, Rajcoomaree.

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Each party will bear his own costs in this Court.

MITTER, J.—I concur in this order. But I desire to add that I would put it, not upon the ground that the lower Courts are precluded by the decree from dealing with this property in the mode in which they have done, but upon the ground that the order which we have passed is more equitable.

Decree varied.

Before Mr. Justice Kemp and Mr. Justice Morris.

BHYRUB CHUNDER (JUDGMENT-DEBTOR) v. GOLAP COOMARY
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*Right of Appeal—Decree—Execution-Proceedings—Registration Act
 (XX of 1866), ss. 52, 53.*

There is no appeal from a decree, nor from orders passed in execution of a decree, made under s. 53 of Act XX of 1866 (Registration Act).

Hurnath Chatterjee v. Futtick Chunder Summaddar (1), Radha Kristo Dutt v. Gunga Narain Chatterjee (2), Huro Soonduree Debia v. Punchoo Ram Mundul (3) followed:—

IN this suit the judgment-creditor applied for execution of a decree obtained under s. 53 of Act XX of 1866 (Registration Act) upon an agreement specially registered under s. 52 of that Act. The judgment-debtor raised the point

* Miscellaneous Special Appeal, No. 173 of 1877, against the order of Baboo Digamber Biswas, Subordinate Judge of Zilla East Burdwan, dated the 22nd of March 1877.

(1) 18 W. R., 512.

(2) 23 W. R., 328.

(3) 24 W. R., 225.

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of limitation, which was overruled by the Court of first instance. The judgment-debtor appealed to the High Court.

Baboo *Rash Behari Ghose* (with him Baboo *Nullit Chunder Sen*) for the respondent, raised the objection that no appeal lay on the authority of the above cases.

Baboo *Hem Chunder Banerjee* for the appellant in reply.

The judgment of the Court was delivered by

KEMP, J., who was of opinion that the cases quoted conclusively showed that an appeal could not be maintained.

Appeal refused.

Before Mr. Justice Kemp and Mr. Justice Morris.

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UNNODA PERSAD ROY (DECREE-HOLDER) v. SHEIKH KOORPAN
ALLY (JUDGMENT-DEBTOR).*

Limitation—Application for Execution of Decree—Limitation Act (IX of 1871), sched. ii, art. 167—Act VIII of 1859, s. 214.

On the presentation of the last of a series of applications made for the execution of a decree, the Court is competent to consider the question whether, on the date of making a prior application for execution, the decree sought to be enforced was barred by limitation, and that notwithstanding the fact that notice of such prior application had been served on the judgment-debtor under s. 216 of Act VIII of 1859.

The time prescribed by the Limitation Act (IX of 1871) within which applications for execution may be made, govern all such applications made during the time that Act was in force.

Bemul Doss v. Ikbal Nurain (1) followed.

IN this case an application was made for the execution of a decree on the 18th of June 1869. Again, on the 5th of August 1872, after the Limitation Act (IX of 1871) was in force, a

* Miscellaneous Special Appeal, No. 188 of 1877, against the order of F. C. Fowle, Esq., Judge of Zilla Tipperah, dated the 18th of April 1877, reversing the decree of Baboo Mutty Loll Mookerjee, First Munsif of Brahmanbaria, dated the 10th of January 1876.

(1) 25 W. R., 249.