

Before Mr. Justice Kemp and Mr. Justice Morris.

1878
 Jan'y. 10.

SHIB NARAIN SHAHA AND ANOTHER (DECREE-HOLDERS) v.
 BIPIN BEHARY BISWAS AND ANOTHER (JUDGMENT-DEBTORS).*

*Execution—Transfer of Decree—Jurisdiction—Striking case off the File—
 Act VIII of 1859, ss. 285, 286.*

The jurisdiction of a Court to which a decree has been transferred for execution is strictly limited to carrying out such execution. Such Court has no power to issue a certificate under ss. 285, 286 of Act VIII of 1859 transferring the decree, already transferred to it, to another Court for execution. The Court to which a decree has been properly transferred for execution having struck the case off the file, a subsequent application for a further transfer of the case to another Court for execution should be made to the Court which originally passed the decree sought to be executed.

Bagram v. Wise (1) considered.

A DECREE was obtained in this case on the 31st of December 1862 in the Court of the Munsif of Rungpore. On the 22nd of February 1872 the decree was, under ss. 285, 286 of Act VIII of 1859, transferred to the Court of the Munsif of Julpigori for execution. On the 21st March 1874 the case was struck off the file of the Court of the Munsif of Julpigori. On the 26th March 1876 an application, accompanied with the usual certificate, was filed in the Court of the last mentioned Munsif, under s. 284 of Act VIII of 1859, for an order transferring the decree to the Court of the Munsif of Azimgunge for execution. The Julpigori Munsif refused the application, on the ground that, under cl. 167 of sched. ii of Act IX of 1871, the application ought to have been filed within three years from the date of the last application for execution, or from the date of the issue of notice under s. 216 of Act VIII of 1859. The application not having been made within that time was barred by limitation. On appeal the District Judge, relying upon *Brojendro Narain Roy v. Benode Ram Sen* (2),

* Miscellaneous Special Appeal, No. 92 of 1877, against the decree of R. F. Rampini, Esq., Judge of Zilla Julpigori, dated the 16th of January 1877, affirming the order of Baboo Khetter Prosad Mookerjee, Sudder Munsif of that district, dated the 8th of July 1876.

(1) 1 B. L. R., F. B., 91.

(2) 11 W. R., 269.

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held, that the case having once been struck off the file of the Munsif's Court, it had no jurisdiction to entertain the application, and that the application should have been made to the Munsif of Rungpore, and not to the Munsif of Julpigori. The judgment-creditor appealed to the High Court.

Baboo *Nogendro Nath Roy* for the appellants.—The Court of first instance had jurisdiction to entertain the application made; see *Bagram v. Wise* (1).

The respondent was unrepresented.

The judgment of the Court was delivered by

KEMP, J. (who, after stating the facts of the case, continued):—The pleader for the special appellant refers to *Bagram v. Wise* (1), and contends that the finding of the Judge is wrong. In that case the late learned Chief Justice, Sir Barnes Peacock, who delivered the judgment of the Full Bench, remarked, that “as soon as a copy of the decree, which is sent for execution to another Court, is filed in the Court to which it is transmitted, it has the same effect as a decree of that Court,” and “that Court,” that is to say, the Court to which the decree is transmitted, “is to proceed to execute it according to its own rules in the like cases.”

No doubt the Munsif of Julpigori had authority and was competent to execute a decree of the Munsif of Rungpore that was transmitted to him, provided he had jurisdiction; but this is a case which, in our opinion, is not covered by the decision of the Full Bench quoted above. This was an application to the Munsif of Julpigori not to execute the original decree passed by the Munsif of Rungpore, but to take proceedings in execution upon his copy-decree and order, as provided in ss. 285 and 286 of the Civil Procedure Code, within the jurisdiction of another Munsif, *viz.*, that of Azingunge. Clearly it was beyond the scope of the instructions conveyed to the Munsif of Julpigori, and outside his jurisdiction, to

(1) 1 B. L. R., F. B., 91.

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grant a certificate for this purpose. Moreover, as the execution case had been already struck off his file by him, the appellant before us ought, under s. 290, to have applied to the Sudder Munsif of Rungpore, who passed the original decree of the 31st December 1862, for the issue of a fresh certificate.

We, therefore, dismiss this appeal, but without costs, as no one appears for the respondent.

Appeal dismissed.

Before Mr. Justice White and Mr. Justice Mitter.

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Feb'y 18.

RAJCOOMAREE DASSEE (PLAINTIFF) v. GOPAL CHUNDER BOSE
AND OTHERS (DEFENDANTS).*

Decree for Partition, Execution of—Partition of a Poojah Dalan—Consent of Co-parceners—Modification of Execution Order by Court.

A decree directed partition of a family dwelling-house (1) with its appurtenances, including a poojah dalan and courtyard adjoining it. In execution of that decree, the Civil Court Ameen, at the request and with the consent of two out of three co-parceners, did not partition the poojah dalan and courtyard. To this the third co-parcener objected, but her objection was overruled by the lower Courts, and it was directed that the property in question should remain undivided. *Held*, that the Court would be disinclined to order the property to be divided without giving the co-parcener or co-parceners who might wish to keep it entire an opportunity of doing so.

Held per WHITE, J., that, having regard to the form of the decree, it was not open to the Court executing it to order that any part of the property should remain joint, except with the consent of all the co-parceners who were parties to the suit.

Semble per MITTER, J., that the lower Courts were not precluded by the decree from dealing with the property in the mode in which they had done.

IN this case the respondent before the Court obtained a decree on 9th February 1875 against the appellant and one Ambica Churn Biswas for partition of a six-anna share of a

* Miscellaneous Special Appeal, No. 301 of 1877, against the order of H. B. Lawford, Esq., Officiating Judge of Zilla 24-Pergunnahs, dated the 29th June 1877, affirming the order of Baboo Kristo Mohun Mookerjee, Additional Subordinate Judge of that District, dated the 28th April 1877.

(1) Partition of a family dwelling-house may be claimed as of right by a Hindu.—*Ramnanth Mookerjee and others, Marsh., 35.*
Hullodhur Mookerjee v.