

*kha Prasad Roy v. S. M. Jagadamba Dasi* (1). I think, therefore, that the lower Appellate Court was quite right, and that this appeal should be dismissed with costs.

*Appeal dismissed.*

1880

CHOTTOO  
MISSER  
v.  
JEMAH  
MISSER.

*Before Mr. Justice White and Mr. Justice Field.*

HURRO PERSHAD ROY CHOWDHRY (JUDGMENT-DEBTOR) v. BHUPENDRO NARAIN DUTT AND OTHERS (DECREE-HOLDERS).\*

1880  
June 23.

*High Court, Appellate Side—Jurisdiction to execute Decrees—Civil Procedure Code (Act X of 1877), s. 649—Limitation Act (IX of 1871), sched. ii, art. 167.*

Although the High Court in its Appellate Side does not, as a general rule, execute its own decrees or orders, yet this circumstance in no way affects the vitality of its jurisdiction in this respect, and it cannot therefore be included among Courts which have ceased to have jurisdiction to execute decrees as specified under s. 649 of the Code of Civil Procedure.

The period of limitation within which application must be made for execution of an order for costs passed by the High Court when rejecting a petition for leave to appeal to the Privy Council, is that specified in sched. ii, art. 167 of Act IX of 1871 (2).

*Baboo Bhubany Churn Dutt* for the appellant.

*Baboo Gooroo Dass Banerjee* for the respondents.

THE facts of this case sufficiently appear in the judgment of the Court (WHITE and FIELD, JJ.), which was delivered by

WHITE, J.—This is an appeal against an order of the Subordinate Judge of the 24-Pargannas, dated the 13th of October 1879.

It appears that the High Court, on the 4th of August 1876, upon the application of Hurro Pershad Roy Chowdhry for leave to lodge an appeal in the Privy Council, dismissed the application, and directed him to pay to the respondents before

\* Appeal from Order, No. 16 of 1880, against the order of Baboo Krishna Mohun Mookerjee, Second Subordinate Judge of the 24-Pargannas, dated the 13th October 1879.

(1) 5 B. L. R., 508.

(2) Cf. Sched. ii, art. 179, Act XV of 1877.

1880

HURRO  
PERSHAD  
ROY CHOW-  
DHRY  
v.  
BHUPENDRO  
NARAIN  
DUTT.

us Rs. 50 as costs. But the order was silent as to the Court which should compel the payment of the costs, in case Hurro Pershad would not pay them.

The respondents, when the costs were not paid, applied for the execution of the order to the Court of the Subordinate Judge of the 24-Pargannas. The suit had been originally instituted in that Court, but had been called up by the District Judge for trial in his own Court; and his was therefore the Court which passed the decree.

Two objections were taken before the Subordinate Judge, which have been renewed before us on this appeal. The first is, that the execution of the order was barred.

We are of opinion that the lower Court has dealt properly with this objection. The period of limitation applicable to the execution of the order is three years from its date. It clearly falls under art. 167 of the Limitation Act, which prescribes the period for the execution of "an order of any Civil Court not provided for by art. 169." Article 169 relates to the execution of orders on the Original Side of the High Court, and is therefore out of the question.

The second objection is, that the Subordinate Judge had no jurisdiction to execute the order.

The Subordinate Judge considers that he has jurisdiction under s. 649 of the Code, which provides, amongst other things, that "where the Court which passed the decree has ceased to exist or to have jurisdiction to execute it," the decree may be executed by "a Court which would have jurisdiction to try the suit in which the decree was passed." The Subordinate Judge considers that that section applies to orders as well as decrees, and treats the High Court as a Court which had either ceased to exist or to have jurisdiction to execute the order.

Whether the section applies to an order like the one before us, it is not necessary to decide now, for it is clear that the High Court does not fall within the description of a Court which has either ceased to exist, or ceased to have jurisdiction to execute its own order. It is true that the High Court, on its Appellate Side, does not, as a general rule, execute its own decrees or orders, but directs them to be executed by one or other of the Mofussil

Courts subordinate to its jurisdiction. But this circumstance does not affect the vitality of its jurisdiction any more than it affects the fact of its actual existence.

The decision, therefore, of the Subordinate Judge, which proceeds on the applicability of s. 649 to the case before him, is, in our opinion, erroneous.

That being so, and there being no other section in the Code under which the order of the Subordinate Judge can be upheld, we must allow this appeal, and set aside the order with costs.

*Appeal allowed.*

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*Before Mr. Justice White and Mr. Justice Field.*

HURROSOONDARY DASSEE AND ANOTHER (JUDGMENT-DEBTORS) v.  
JUGOBUNDHOO DUTT AND OTHERS (DECREE-HOLDERS).\*

1880  
June 28.

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*Application for Execution of Decree—Res judicata.*

An order refusing an application to execute a decree is not an adjudication within the rule of *res judicata*.

*Delhi and London Bank v. Orchard* (1) followed.

Baboo *Akhil Chunder Sein* and Baboo *Kashee Kant Sein* for the appellants.

Baboo *Bungshi Dhur Sein* for the respondents.

THE facts of this case sufficiently appear in the judgment of the Court (WHITE and FIELD, JJ.), which was delivered by

WHITE, J.—This was an appeal against an order of the District Judge of Dacca, dismissing an appeal which the appellants before us had preferred against an order passed by the Munsif of Moonsheegunge on the 23rd of May 1879.

On the 8th of July 1878, the appellants had procured the reversal of an order by which the Munsif had directed execution to issue for the possession of certain land under a decree

\* Appeal from Appellate Order, No. 58 of 1880, against the order of R. F. Rampini, Esq., Officiating Judge of Dacca, dated the 27th November 1879, affirming the order of Baboo Jodoo Nauth Dass, Munsif of Moonsheegunge, dated the 23rd May 1879.

(1) I. L. R., 3 Calc., 47; S. C., L. R., 4 I. A., 127.