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it. Therefore, it appears to us that the plaintiff is entitled to no relief in this case. That is the rule of law laid down in the case of *Sundura Gopalan* v. *Venkatavarada Ayyangar* (1); and, so far as we can see, there is no ruling to the contrary effect.

For these reasons we must decree this appeal, and setting aside the decree of the lower Appellate Court we must restore that of the Munsif, which we accordingly do with costs in all the Courts.

S. C. B.

Before Mr. Justice Prinsep and Mr. Justice Hill.

1900 *Dec.* 5.

JAHAR (JUDGMENT-DEBTOR) v. KAMINI DEBI (WIFE OF NANDA KUMAR JHA) (DECREE-HOLDER).*

Decree—Execution of—Transfer of decree for execution—Court which passes the decree—Transfer of local jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 223 and s. 649—Limitation Act (XV of 1877), s. 14—Bona-fide proceeding.

The provisions of s. 649 of the Civil Procedure Code are permissive, if, after a Court has passed a decree, the local jurisdiction in respect of the subject matter of the suit is transferred by an order of the Local Government to some other Court, the application for execution of the decree may be made either to the Court which passed the decree or to the Court to which the local jurisdiction has been transferred.

Lutchman Pandeh v. *Madan Mohun Shye* (2) followed. *Kalipa[illegible] Mukerjee* v. *Dino Nath Mukerjee* (3) distinguished.

A proceeding to enforce a decree taken in a Court which was erroneously believed by the decree-holder to have jurisdiction is a *bona-fide* p[illegible] within the terms of s. 14 of the Limitation Act (XV of 1877).

Hiralal v. *Budri Dass* (4) followed.

A MORTGAGE DECREE was passed on the 10th of Ju[illegible] respect of certain immoveable property which at the [illegible] decree was situated in Thana Kuliachuk within the [illegible]nits of

* Appeal from Order No. 119 of 1900, against the order of Alfred F. Steinberg, Esquire, District Judge of Malda, dated the 15th of December 1899, affirming the order of Babu Judub Chunder Bhuttacharjee, Munsif of that District, dated the 3rd of July 1899.

(1) (1893) I. L. R., 17 Mad., 228.
(2) (1880) I. L. R., 6 Cal., 513.
(3) (1897) I. L. R., 25 Calc., 315.
(4) (1880) I. L. R., 2 All., 792; L. R., 7 I. A., 167.

the jurisdiction of the Munsif's Court at Nawabganj; subsequently by order of the Local Government the local jurisdiction in respect of the thana was transferred to the Court of the Munsif at Malda. After the transfer was notified the decree-holder on the 15th of April 1898, within the time fixed by the law of limitation, applied in the Malda Court for the execution of his decree. In the course of the execution proceedings the property was advertised for sale, but the judgment-debtor applied for two months' time with the consent of the decree-holder and paid in Rs. 23 in part satisfaction of the decree. The prayer was granted, but the judgment-debtor failed to satisfy the decree within the time allowed, so the property was put up for sale and purchased by the decree-holder. After the sale the judgment-debtor applied for setting aside the sale under s. 311 of the Civil Procedure Code. It was then pointed out that the decree holder had obtained no certificate from the Nawabganj Court transferring the decree for execution by the Malda Court. And that, therefore, it had no jurisdiction to execute the decree. The Court thereupon cancelled all the previous orders made in the execution proceedings and asked the decree-holder to make his application to the Nawabganj Court. The decree-holder thereupon obtained a certificate transferring the decree for execution by the Malda Court, and, on his making the application on that certificate on the 4th March 1899, the judgment-debtor pleaded limitation.

Babu *Kali Kristo Sen* for the appellant.

Babu *Karuna Sindhu Mukerjee* for the respondent.

1900, DECEMBER 5. The judgment of the High Court (PRINSEP and HILL, JJ.) was as follows:—

The decree sought to be executed in this case was made by the Court of the Munsif of Nawabganj, but the local jurisdiction in respect of the subject matter of this suit appears to have been subsequently transferred, by order of the Local Government, to the Court of the Munsif of Malda. Nevertheless the decree-holder took out execution of his decree, within the time fixed by the law of limitation, in the Malda Court, and in the course of the execution, a sum of money was paid towards liquidation of that decree.

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A second application for execution was made in February 1899 in the same Court, but the decree-holder was referred to the Nawabganj Court, as being the Court which had passed the decree, and which was alone competent to execute it in order that an application might be made for the transfer of the decree for execution by the Munsif of Malda. When an application for execution was made to the Munsif of Malda, on a certificate transferring the decree to him, the judgment-debtor pleaded limitation. The Munsif overruled that plea and gave the decree-holder the benefit of clause 3 of s. 14 of the Limitation Act, holding that he was entitled to a deduction of the time during which the application, erroneously made to the Munsif of Malda, had been pending, as he held that such proceedings had been taken in good faith. The District Judge, on appeal, expressed a contrary opinion holding that ignorance of the law on the part of the decree-holder would not constitute good faith. The District Judge, however, on other grounds, affirmed the order of the Munsif holding that the proceedings, erroneously taken in the Malda Court, were not absolutely void but voidable, and that the judgment-debtor having condoned the error committed by the decree-holder and having accepted the jurisdiction by making part payment of the decree, the proceedings were saved under s. 14 of the Limitation Act.

The first question raised before us in this appeal is, what Court was competent to execute this decree, and it is contended that the Court of the Munsiff of Nawabganj was alone competent to execute it, being the Court which passed it within the terms of s. 223 of the Code of Civil Procedure, and it was also contended that, although the Munsiff of Malda might now alone have jurisdiction to try the suit by reason of the transfer to his jurisdiction of the locality in which the subject matter of the suit is situated, he would not be the Court to have jurisdiction to execute the decree passed by the Munsif of Nawabganj. As authority for this we have been referred to the case of *Kalipodo Mukerjee* v. *Deno Nath Mukerjee* (1). That case, however, is distinguishable from the present, for it was held—that the District Judge's order under clause 3

(1) (1897) I. L. R., 25 Calc., 315.

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of s. 13 of the Bengal Civil Courts Act did not amount to a transfer of jurisdiction, but was merely an order for the distribution of business amongst two Courts, each having jurisdiction. In the present case, however, the order of transfer was of a different character. It was an order by the Local Government which readjusted the boundaries of two adjoining mouzahs, so as to place the lands, the subject matter of the suit, within the jurisdiction of the Munsif of Malda. There was, therefore, no mere re-distribution of business as in the case in I. L. R., 25 Calc., but a removal of jurisdiction over this locality. The case of *Lutchman Pandeh* v. *Madan Mohun Shye* (1) seems to us more appropriate in dealing with the terms of s. 649 of the Code of Civil Procedure. It was there held that the terms of that law were permissive and, applying that judgment to the facts of the present case, the Munsif of Nawabganj did not cease to have jurisdiction in the matter of the execution of the decree, but that the decree might also be executed by the Munsif of Malda. This interpretation seems to us to be in accordance with s. 17 of the Bengal Civil Courts Act. We think, therefore, that the proceedings in the Court of the Munsif of Malda were not without jurisdiction, so as to have the effect of barring the present application as not made within the period of limitation.

We are also of opinion that the grounds upon which the District Judge has held that the time occupied in the proceedings taken by the decree-holder in the Malda Court should not be excluded are unsound. He has held that ignorance of law, that is to say, ignorance on the part of the decreeholder that his application for execution could only be made in the Court of Nawabganj in which the decree was passed, and that the Malda Court had no jurisdiction to execute that decree, prevented his pleading good faith within the terms of s. 14 of the Limitation Act. The case of *Heralal* v. *Badri Dass* (2) is an authority to the contrary. It was there held that proceedings taken erroneously in a Court which had no jurisdiction, but which was believed by the decree-holder

(1) (1880) I. L. R., 6 Calc., 513.
(2) (1880) I. L. R., 2 All., 792 ; L.R., 7 I. A., 167.

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to have jurisdiction, were *bonâ fide*. Their Lordships of the Privy Council pointed out in that case that the Judge himself believed he had jurisdiction and acted accordingly, so also in the present case.

The appeal is, therefore, dismissed with costs.

S. C. B.

Before Mr. Justice Rampini and Mr. Justice Pratt.

1900
Sept. 6.

RAM KISHORE GHOSE AND ANOTHER (JUDGMENT-DEBTORS) *v.* GOPI KANT SHAHA AND OTHERS (DECREE-HOLDERS).*

Mesne Profits—Application for determination of mesne profits—Effect of dismissal of such an application—Execution of decree—Practice.

Applications to determine mesne profits are to be treated as applications for execution of the decree in which the mesne profits have been allowed, and their striking off does not finally decide them or prevent the decree-holders from making a further application of the same nature.

Muhesh Narain Sing v. *Kiskanund Misr* (1) relied upon.

Puran Chand v. *Roy Radha Kishen* (2) and *Kewal Kishan Singh* v. *Sookhari* (3) discussed and distinguished.

ON December 31, 1889, the decree-holders obtained a decree for possession of certain lands with mesne profits. On January 23, 1894, this decree was confirmed, on appeal, by the High Court. In execution of that decree the decree-holders first applied for possession; and on April 22, 1895, possession was delivered to them and the execution proceedings were then dismissed.

In the next application for execution, the decree-holders prayed for realization of costs and determination of mesne profits. On November 21, 1896, the costs were realized, and the execution proceedings struck off. On January 28, 1898, the decree-holders put in a fresh application for assessment of mesne profits by

* Appeal from Order No. 116 of 1900, against the order of A. C. Seo, Esq., District Judge of Mymensingh, dated the 20th of December 1899, affirming the order of Babu Dwarkanath Bhuttacharjee, Subordinate Judge of that District, dated the 10th of October 1898.

(1) (1862) 9 Moo. I. A., 324.
(2) (1891) I. L. R., 19 Calc., 132.
(3) (1896) I. L. R., 24 Calc., 173.