

## APPELLATE CIVIL.

*Before Mr. Justice Ghose and Mr. Justice Geidt.*

UMESH CHANDRA DASS

v.

SHIB NARAIN MANDAL.\*

1904  
July 6.

*Decree, execution of—Execution, steps in aid of—Sale, Confirmation of—Civil Procedure Code (Act XIV of 1882) ss. 311, 312—Limitation.*

An application by a decree-holder, who has purchased a property in execution of his own decree, for confirmation of the sale, is not an application to take some steps in aid of execution of the decree.

SECOND APPEAL by Umesh Chandra Das, the decree-holder.

This appeal arose out of an application made on the 19th December 1902, for execution of a decree of the Munsif of Midnapore dated September 20, 1895, by the purchaser of the decree from the original decree-holder. The judgment-debtor, upon notice under s. 232 of the Code of Civil Procedure, appeared and opposed the application mainly on the ground that it was barred by limitation under Art. 179, cl. (4), Sch. II to the Limitation Act (XV of 1877). There was a previous application for execution, by this purchaser, of the decree on 15th August 1902, but it was dismissed for want of prosecution on the 1st December following. Before this, the decree was sent for execution, at the instance of the original decree-holder, to the Court of the Munsif of Tamluk; and the last application for execution to that Court was made on the 3rd May 1899. In this execution case of the Tamluk Court, the immoveable property of the judgment-debtor was sold on the 16th August 1899, and the decree-holder himself becoming the purchaser, deposited on that very day the sale-fee (poundage fee), and put in an application praying for a set-off of the purchase

\* Appeal from Order No. 456 of 1903, against the order of E. G. Drake Brockman, District Judge of Midnapore, dated Aug. 31, 1903, affirming the order of Radha Nath Sen, Munsif of that District, dated March 28, 1903.

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money against the decretal amount, and also for confirmation of the sale in his favour. There was also a petition by the decree-holder on the 15th August 1899, for permission to bid at the sale.

The learned Munsif relying upon *Toree Mahomed v. Mahomed Mabood Bux*(1) and *Ananda Mohan Roy v. Hara Sundari* (2) held, that the application for execution by the purchaser-decreeholder of the 15th August 1902 was then barred by limitation, that the execution of the decree thus becoming barred could not be revived by the subsequent application of the 19th of December 1902; and that the petition of the 16th August 1899, asking for a set off and for confirmation of sale could not be said to be a step in aid of execution.

On appeal, the learned District Judge affirmed the decision of the first Court.

The decree-holder appealed to the High Court.

*Babu Upendra Narain Mookerjee*, for the appellant. An application by a decree-holder for confirmation of the sale held in execution of his own decree is, I submit, an application to take some step in aid of execution; in *Motendro Chandra Ghose v. Mohendro Nath Ghose*(3) and *Rajkumar Banerji v. Rajlaxhi Dabi*(4), their Lordships are inclined to take this view. As the Court is bound to confirm a sale, under s. 312 of the Code of Civil Procedure, so is it bound under s. 287 of the Code to issue a proclamation without any action being taken on the part of the decree-holder. An application to issue a proclamation under s. 287 has been held to be an application to take some step in aid of execution of the decree: see *Ambica Pershad Singh v. Surdhari Lal* (5) which was followed by the Bombay High Court in *Maneklal Jaggivan v. Nasia Raddha*(6). It is submitted that, by parity of reasoning, it ought to be held that an application under s. 312 of the Code for confirmation of sale, is also an application in aid of execution.

*Babu Bipin Chandra Mallick*, for the respondent, was not called upon.

(1) (1883) I. L. R. 9 Calc. 730.

(4) (1885) I. L. R. 12 Calc. 441.

(2) (1895) I. L. R. 23 Calc. 196.

(5) (1884) I. L. R. 10 Calc. 851.

(3) (1881) 10 C. L. R. 330.

(6) (1830) I L. R. 15. Bom. 1905.

GHOSE AND GEIDT JJ. The question raised in this appeal is whether an application by a decree-holder, who has purchased a property in execution of his own decree, asking the Court to confirm the sale, is an application to take some steps in aid of execution of the decree. Referring to the application itself in this case, we find that it was really made by the decree-holder in his capacity as purchaser of the property in question. It was indeed made, not by the decree-holder, as such, but by the auction purchaser; and, viewing it in this light it could hardly be said that it was an application in aid of execution of the decree. But apart from this consideration, we are of opinion that, inasmuch as no application was required for the purpose of having the sale confirmed, the application in question could not rightly be regarded as an application in aid of execution. Section 312, Code of Civil Procedure, says:—"If no such application" (that is to say, an application by the judgment-debtor or by the decree-holder to set aside the sale on the ground of irregularity) "as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser." So the Court is bound, in the event of no application as contemplated by section 311 being made, to confirm the sale after the period of thirty days, as provided by the Indian Limitation Act. And we fail to see how an application to the Court to confirm the sale could be regarded as an application in aid of execution of the decree. For these reasons we are of opinion that the Court below has taken a right view of the matter, and that this appeal should be dismissed with costs. We order accordingly.

B. D. B.

*Appeal dismissed.*

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