

(1933) 06 CAL CK 0016
In the Calcutta High Court

Anilkumar Ghosh and Others

APPELLANT

Vs

Hemantakumar Ghosh and Others

RESPONDENT

Date of Decision : 13-06-1933

Acts Referred:

Citation : AIR 1934 Cal 234

Hon'ble Judges : Mitter, J;Henderson, J

Bench : Full Bench

Judgement

Mitter, J.—This is an appeal by the decree holders and arises out of an order dismissing their application for execution of a decree which they have attached. It appears that the decree, now under execution, was obtained by Munshi Moborak Ali Sardar and others against Hemantakumar Ghosh and others in the High Court in Appeal from Original Decree No. 25 of 1925. This decree, was obtained on 12th December 1927, and, the total amount of the decree including costs and interest came, to Rs.1,500 odd. This decree was attached at the instance of the present appellants Anilkumar Ghosh and others in execution of their own decree against the decree-holder of the High Court's decree on 10th December 1930. The order of attachment was passed by the Munsif's Court at Khulna on that date and was, communicated to the Court where the decree now sought to be executed, i.e., High Court's decree was pending for execution and the attachment was duly noted in the register of that Court. On 11th April 1931, the present appellants, applied for the execution of the decree which was obtained by Mobarak Ali Sardar and others against Hemantakumar Ghosh and, others, in respect of which the order of attachment was made. Obviously, application for execution by the appellants was made more than three years from the date of the decree, which was 12th December 1927, and it is admitted that limitation could only have saved provided it could be successfully contended that the order of attachment or the application for attachment, which was made on 10th December 1930, in the Munsif's Court at Khulna, was a step-in-aid of the execution of the original decree of the High Court. The judgment-debtors contended that it was not a step-in-aid of the execution of the original decree.

This contention prevailed with the Subordinate Judge, who has dismissed the application of the present appellants on the ground of limitation.

2. Against this order the present appeal has been brought and it has been contended before us that it should be held that the step taken by the appellants for attachment of the decree now sought to be executed was a step-in-aid of execution of the said decree which is now sought to be executed, i.e., the High Court's decree. Under Art. 182 of the schedule to the Limitation Act, an application must be made within three years from the several starting points one of which is the date of the original decree or order and the other is the date of some steps which are taken in, aid of the execution of the decree. It can hardly be said that the order for attachment of the decree now sought to be executed by the appellants was a step-in-aid of the original decree; and, if one looks to the provisions of Order 21, Rule 53, Civil P. C., it will appear that if the decree sought to be attached was passed by another Court, then the attachment of such decree is to be made by the issue to such other Court of a notice by the it Court which passed the decree sought to be executed, i.e., in this case, the Khulna Court, requesting such other Court to stay the execution of its decree unless and until the two conditions mentioned in Sub-clause. (1) and (2) of Clause (b) are fulfilled. So the order of attachment of the original decree, instead of being a step-in-aid of the execution of such original decree, was really a request to stay the execution of the original decree of the High Court. Instead of being a step-in-aid of execution of the original decree it rather arrests the execution of the decree of the High Court. Of course the effect of the stay was only this: that it was a limited stay and it would not prevent either the holder of the decree sought to be executed or his judgment-debtor from seeking to execute the original decree. The appellants in the present case are themselves to blame if they did not apply to execute the attached decree within the period of limitation. The appellants cannot have any higher rights than the Original decree-holder, i.e., the person against whom he obtains the decree, i, e., their judgment-debtor. Accordingly, we are of opinion that the Subordinate Judge has taken the right view of the matter and this appeal must be dismissed with costs. The hearing fee is assessed at one gold mohur.

Henderson, J.

3. I agree.