
(1884) 09 CAL CK 0003
In the Calcutta High Court

Becharam Dutta

APPELLANT

Vs

Abdul Wahed and Others

RESPONDENT

Date of Decision : 12-09-1884

Acts Referred:

Limitation Act, 1877 — Article 179(4)

Citation : (1885) ILR (Cal) 55

Hon'ble Judges : Prinsep, J; Macpherson, J

Bench : Division Bench

Judgement

Prinsep and Macpherson, JJ.—This is an appeal from an order directing the execution of a decree passed on the 10th of January 1872. The question is whether the execution is barred by the law of limitation.

2. The lower Court assumed that the whole proceedings, up to and inclusive of the last application for execution, are governed by Act XIV of 1859, but this seems to us to be an incorrect assumption. The Judicial Committee of the Privy Council has held in *Mungul Proshad Dichit v. Grija Kant Lahiri* that the provisions of the Act IX of 1871 do not apply to any suit, or to any application in a suit, instituted before the 1st of April 1873, and that an application for the execution of a decree is an application in the suit in which the decree was obtained. The effect of this decision is, that so long as Act IX of 1871 was in force, Act XIV of 1859 governs all applications for the execution of a decree passed in any suit instituted before the 1st of April 1873. Act IX of 1871, which repealed Act XIV of 1859, was, however, wholly repealed by Act XV of 1877, which came into force on the 1st of October 1877. The latter Act contains no saving clause similar to that in Section 1 of Act IX of 1871, and which made the Act of 1871 inapplicable to any suit instituted before the 1st of April 1873.

3. Consequently, in our opinion, Act XV of 1877 operates from the date on which it came into force as regards all applications made under it. In the case of *Behary Lall v. Goberdhun Lall*; *Mitter and Norris*, JJ. no doubt held that the provisions of Act XV of 1877 did not apply to an application for the execution of a decree

obtained before that Act came into force.

4. In a subsequent case reported in ILR 9 Cal. MJ seems to have doubted the correctness of his decision in *Behary Lall v. Goberdhun Lall* and we learn that the same learned Judges have since reconsidered the matter and have come to a different conclusion. There is, therefore, no authority opposed to the view which we entertain.

5. In the present case applications to execute the decree were made on the following dates:

2nd March 1872. 14th June 1875. 11th June 1878. 8th June 1881. 10th March 1883.

6. The last three being governed by the present Limitation Act (XV of 1877) are within time under Clause 4, Article 179 of schedule II. It is contended, however, that as the application of the 14th June 1875 was, when made, barred by limitation, the decree is dead and cannot be revived by any subsequent proceedings. It is unnecessary to consider whether the circumstances in this case and in the case of *Mungul Proshad Dichit v. Grija Kant Lahiri* are similar as regards the action of the Court in connection with the subsequent applications, because we think that both Courts have rightly held that the application of the 14th June 1875 was not barred under the provisions of Section 20 of Act XIV of 1859. In the execution proceedings of 1872 property was attached and a sale proclamation was issued; a claim to a portion of the properties was then preferred by third parties, and allowed on the 17th June 1872. The decree-holder failed to take necessary measures to bring the remainder of the property to sale, and the case was struck off on the 4th of July 1872. The application of the 14th June 1875 was, therefore, within time, if the period of three years is calculated from the date when the claim-case was disposed of. We think it can be so calculated.

7. Both Courts have found that the plaintiff was, up to the 17th of June, earnestly resisting the claim which, till disposed of, was a bar to further proceedings.

8. Bona fide proceedings in resistance of a claim to attach properties are, we think, proceedings within the meaning of Section 20, Act XIV of 1859, taken to enforce the decree. We therefore dismiss the appeal with costs.