

(1910) 04 CAL CK 0050
In the Calcutta High Court

Bindeswari Koer

APPELLANT

Vs

Awadh Behary Lal

RESPONDENT

Date of Decision : 29-04-1910

Acts Referred:

Citation : 6 Ind. Cas. 366

Hon'ble Judges : Vincent, J; Chatterjee, J

Bench : Division Bench

Judgement

1. In this case a decree was passed on the 12th May 1897 for the partition of certain trees and for the construction of a pucca water-channel by the defendant.
2. The first application for execution was made on the 12th May 1900. In the course of that application, there was on the 24th November 1900 an application by the decree-holder and the judgment-debtors in which both parties agreed that they would have the matters directed under the decree done in private. Besides there was a prayer by the decree-holder to have his name substituted in place of certain others whose interests had ceased. Upon that application the execution was struck off on the 1st December 1900.
3. The next application for execution was made on the 23rd November 1903, that is, just within three years of the application of the 24th November 1900. During the pendency of the second application the parties again entered into a compromise.
4. A petition was filed on the 9th April 1904 stating that the trees had been divided but that with regard to the construction of the water-channel, the parties agreed that it would be done hereafter. Upon that the execution was struck off.
5. The third application for execution was made on the 8th April 1907, which was just within three years of the application of the 9th April 1904.
6. It is contended in this case that the third application is barred by limitation.

7. The lower appellate Court has held that the application dated the 9th April 1904 was a step-in-aid of execution and has overruled the objection of the judgment debtors.

8. It is contended before us that the lower appellate Court is wrong in holding that the application of the 9th April 1904 was a step-in-aid of execution.

9. It is true that the application, with regard to one part of the decree, says that it has already been executed and with regard to the other says that it will be hereafter done without reference to any further proceedings in execution. In that way it might be contended that it was not a step-in-aid of execution.

10. There is authority, however, in the Allahabad Court for a different view, for instance, the case of Ghansham v. Mukha 3 A. 320, in which a compromise to have the rest of the decree executed at a future time without fixing any period for the same was held to be an application for taking a step-in-aid of execution. There is, however, another aspect of this case, and that is, that the compromise petition of the 5th April 1904, does contain an admission by the judgment-debtors of their liability under the decree. It was, therefore, an admission which would attract the provisions of Section 19 of the Limitation Act and entitle the decree-holder to a fresh period of limitation from that date.

11. It is contended that Section 19 cannot apply to an application for execution. We do not think, however, that the contention is valid for the wording of the section is wide enough to include an application for execution and in fact it has been applied to the execution of a decree in the cases of Rakhal Chandra Tewari v. Hemangini Debi 3 C.L.J. 317, Ram Coomar Kur v. Jakur Ali 8 C. 716 : 10 C.L.R. 613 and Toree Mahomed v. Mahbood 9 C. 730 : 13 C.L.R. 91.

12. We, therefore, think that the present application for execution is not barred by limitation.

13. The appeal, therefore, is dismissed with costs two gold mohurs.

14. The execution will proceed. Let the record be sent down.