

(1939) 04 CAL CK 0014
In the Calcutta High Court

Gobinda Nath Saha Choudhury	Vs	APPELLANT
Durga Narain Saha and Others		RESPONDENT

Date of Decision : 05-04-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 48, 50
Limitation Act, 1963 — Article 183

Citation : AIR 1940 Cal 171

Hon'ble Judges : Sen, J

Bench : Division Bench

Judgement

Sen, J.—This is an application by a decree-holder for recording the deaths of certain judgment-debtors and for leave to execute the decree against their legal representatives. Notice of this application has been served on all these legal representatives. One of them has appeared and opposed the application. His name is Samarendra Narain Saha. In his affidavit in opposition he takes up the position that the decree is over 12 years old and that its execution is barred by limitation inasmuch as there has been no revivor of the decree within the meaning of Article 183, Lim. Act, within 12 years of this application. At the hearing, counsel on behalf of Samarendra Narain Saha took up a different position. He admitted that there had been revivors of the decree within the meaning of Article 183, Lim. Act, the last one being on 29th September 1926, when the decree-holder received a part payment of the decretal amount pursuant to an order dated 11th August 1926 passed by this Court, directing that the part payment should be made. He took up the position, however, that the present application was not an application to enforce a judgment and that, therefore, the limitation of 12 years provided by Article 183, Lim. Act, would not govern this application. He contended that this application is one to which the residuary Article 181, Lim. Act, which prescribes a period of three years limitation applies inasmuch as no period of limitation has been fixed for such an application by any other Article of the Limitation Act or by Section 48, Civil P.C. He next points out that this application has been brought more than three years

after the death of the persons whose heirs are sought to be substituted and argues that it is barred by limitation. It will be convenient for a proper understanding of the contentions of both parties to set out certain facts.

2. The decree was passed on 19th May 1913 against Durga Narain Saha, Ram Narain Saha, Hriday Narain Saha and Kristodhone Saha. The plaintiff was Gobinda Nath Saha Chowdhury. Gobinda Nath Saha Chowdhury died leaving certain heirs. These heirs by two deeds of assignment transferred their interest in the decree to the petitioner Jnanada Sundari Dassi. On 11th September 1919 the petitioner obtained an order from this Court in execution of this decree whereby the sum of Rs. 20,000 lying to the credit of suit No. 766 of 1913 was attached. In 1921 another attachment was levied with respect to a sum of money lying to the credit of an execution case in the Court of the Subordinate Judge, Fourth Court, of Mymensingh, and a sum of Rupees 2200 was received in part satisfaction of the decree. On 29th September 1926, Jnanada Sundari received a sum of Rs. 3783-11-11 out of the sum lying to the credit of suit No. 766 of 1913, pursuant to an order of this Court. It is admitted that the decree has been kept alive and that the period of limitation of twelve years prescribed for the execution of the decree will commence to run from 29th September 1926. On 3rd March 1938, that is to say within twelve years of the date when the decree was last revived, the petitioner applied to this Court for transmission of the decree to the Court of the District Judge of Dacca for execution. On 7th March 1938, the decree was transferred to Dacca. On 11th March 1938 the petitioner applied before the Subordinate Judge of Dacca for execution of the decree and the case was marked "Money Execution Case No. 27 of 1938." She also applied there for substitution of the names of the heirs of the deceased judgment-debtors Hriday Narain Saha, Ram Narain Saha and Kali Narain Saha. I might mention here that the original judgment-debtor Durga Narain Saha died leaving him surviving Kali Narain Saha, Surendra Narain Saha and Brojendra Narain Saha as his heirs, and that Kali Narain died on 10th November 1930 leaving him surviving Amarendra Narain Saha and Samarendra Narain Saha as his heirs and legal representatives. Hriday died in 1930 and Ram in 1926.

3. When this application was made before the Subordinate Judge of Dacca, the heirs-sought to be substituted objected on the ground that the executing Court had no-jurisdiction to make the substitution and contended that the application should have been made to this Court which had passed" the decree. Upon this objection being raised, the learned Subordinate Judge on 10th September 1938 directed the petitioner to obtain orders from this Court and kept the execution case pending. Thereafter the petitioner on 7th November 1938 made the present application. The 7th November was the date on which this Court re-opened after the Puja vacation.

4. It is conceded that if this application is governed by Article 183, Limitation Act, then this application has been brought within the period of limitation inasmuch as the petitioner would be allowed the period during which the Court was closed.

The" contention, however, is that this application for leave to execute the decree against the legal representatives of the judgment-debtors is not an application to enforce a judgment and that it is governed by Article 181, Limitation Act. It is argued that as it has not been made within three years of the death of the judgment-debtors whose heirs are sought to be brought on the record it is barred by limitation. In my opinion this contention cannot be given effect to. In support of this argument learned Counsel cited certain cases which dealt with the question of what amounted to a revivor of a decree within the meaning of Article 183, Limitation Act. His argument was that if this application did not amount to a revivor it could not amount to an application to enforce a judgment. In my opinion it is not necessary to consider on this application, whether the present application would or would not revive the decree or whether every application for enforcing a judgment must necessarily revive the decree. That is not the question which has to be determined now. What has to be determined is whether the present application is one which is barred, by limitation.

5. It is admitted that the application for execution made before the Subordinate Judge of Dacca being within twelve years of the last revivor of the decree is within time, but it is said that the present application is not an application for execution and; that, therefore, it is barred. If this argument is given effect to, it will lead to rather strange results. The death of a judgment-debtor does not enlarge or decrease the period of limitation prescribed for the execution of a decree. To enforce a judgment passed by this Court the decree-holder must apply for execution at any time within 12 years of the passing of the decree or of the revivor of the decree. If the judgment-debtor be dead the decree-holder must still apply within this period. He need not take any steps to bring the judgment-debtor's heirs on the record at any anterior period; if he does it within this period of 12 years prescribed for the execution of the decree he will be in (time. Order 22, Civil P.C. has no application to execution proceedings and the right to execute a decree does not abate or get extinguished by reason of the fact that the legal representatives of the judgment-debtor have not been brought on the record within any specified period. If effect is given to the contention of learned Counsel for the respondent that an application to bring the legal representatives of a judgment-debtor on the record must be made within three years of the death of the judgment-debtor, the effect will be in this case to cut down the period of limitation for execution of decrees which is prescribed by Article 183, Limitation Act. Again if this contention be pushed to its logical conclusion the death of a judgment-debtor may in certain cases operate to enlarge the period of limitation by three years.

6. There is another difficulty in the way of the respondent. What would be the starting point for the period of limitation if this application be governed by Article 181? The right to bring the legal representatives on the record does not arise on the death of the judgment-debtor; it arises only when an application for execution is made. In this view the application is within time. I am of opinion further that the contention of the respondent cannot be given effect to as it is in

conflict with the provisions of law prescribing the period of limitation for the execution of decrees and also for the reasons which I state below.

7. What has happened in this case is this. The decree-holder applied to this Court to transmit the decree to the Dacca Court for execution there. The decree-holder did not then make any application in this Court for bringing the legal representatives of the deceased judgment debtors on the record. I do not think that she was bound to do so as the application here was for transmission of the decree and not for execution of the decree. The application for execution was made before the Subordinate Judge at Dacca and at that time the decree-holder applied to bring the legal representatives on the record in the execution case. The learned Subordinate Judge, having regard to the provisions of Section 50, Civil P.C. very rightly directed the decree-holder to apply to this Court for the determination of the question as to who were the legal representatives. Section 50 says that the Court which passed the decree is the Court to which application should be made to execute a decree against the legal representative of the judgment-debtor. The executing Court, if it is not the Court which passed the decree, is not the proper Court to decide whether execution should proceed against the legal representatives. The decree-holder has therefore come to this Court and has asked this Court to substitute the legal representatives of the judgment-debtors in the execution proceedings which are still pending before the Subordinate Judge. When a decree has been transmitted for execution to another Court, the transmitting Court does not lose entire seisin of the decree. So far as the Court of transfer is concerned, it continues to have jurisdiction over the execution proceedings until such execution is withdrawn or stayed or until it certifies to the Court which passed the decree either that the decree has been executed or if it fails to execute the decree the circumstances attending such failure (Section 41, Civil P. C.)

8. In this connexion I would refer to the case in *Jang Bahadur v. Bank of Upper India Ltd.* 15 AIR (1925) P.C. 162. In the present case the execution case is still pending in the Dacca Court and the present application is for an order from this Court that the execution may proceed against the legal representatives of the judgment-debtors. The application is in the circumstances of the present case an application to enforce a judgment or decree within the meaning of Article 183, Limitation Act and as it has been made within 12 years it is within time. No other objection is raised by the respondent. I therefore allow the prayer of the petitioner with costs. Certified for counsel.