

(1940) 09 PAT CK 0018
In the Patna High Court

Lachmi Narayan and Another

APPELLANT

Vs

Nawab Zada Saiyid Muhammad Mehdi and Others

RESPONDENT

Date of Decision : 05-09-1940

Acts Referred:

Court of Wards Act — Section 51, 6(e)

Citation : AIR 1941 Patna 70

Hon'ble Judges : Harries, C.J.;Manohar Lall, J

Bench : Full Bench

Judgement

Harries, C.J.—This is a plaintiffs" appeal from a decree of the learned subordinate Judge of Patna dismissing their suit for administration of the estate of one Saiyid Ibrahim Hussain alias Manjhle Nawab deceased. To appreciate the points raised in this appeal, it is necessary to set out the facts in some detail.

2. On 9th September 1902, the Court of "Wards took charge of the estate of Saiyad Ibrahim Hussain alias Manjhle Nawab (hereinafter referred to as Manjhle Nawab) on his own application as a disqualified proprietor u/s 6(e), Court of Wards Act, and by the express terms of the section the Court of "Wards took charge only of his property and not of his person.

3. On 4th July 1919, Manjhle Nawab, whilst still a ward of the Court of Wards, borrowed Rs. 10,000 from the plaintiffs on a hundi at a very high rate of interest. It is common ground that the Court of Wards were not consulted as to this loan and were in no way parties to it. In the year 1922, the plaintiffs brought suit No. 163 of 1922 against Manjhle Nawab upon this hundi, and it is to be noted that he was not sued as a ward of the Court as required by Section 51, Court of Wards Act.

4. On 19th September 1922, the plaintiffs obtained a decree against Manjhle Nawab for the sum of Rs. 21,437. It will be seen that within a period of a little over two years the actual amount of the loan had been doubled. Manjhle Nawab had two brothers, Badshah Nawab and Chhotey Nawab.

5. On 25th May 1917, and 19th February 1919, Badshah Nawab executed two wakfs deeds and appointed one Ali Zamin mutwalli of the wakfs.
6. On 19th March 1919, Badshah Nawab died and Manjhle Nawab inherited one-third of his brother's estate not covered by the wakf deeds. It was shortly after Manjhle Nawab had inherited this property that the plaintiffs lent him the sum of Rs. 10,000.
7. On 12th November 1919, the Court of Wards took formal possession of the third share of Badshah Nawab's estate which had been inherited by the ward Manjhle Nawab. On 21st December 1922, the present plaintiffs filed execution case No. 276 of 1922 for the sale in satisfaction of their decree of the properties inherited by Manjhle Nawab from Badshah Nawab. The subordinate Judge who heard the application dismissed it as leave of the Court of Wards to execute the decree had not been obtained, and on 7th August 1924, the High Court affirmed the decision of the subordinate Judge, and this case is reported in *Lachmi Narain v. Mahomed Abraham Hussain Khan* AIR 1925 Pat. 179. On 24th October 1925, the plaintiffs filed another execution case No. 186 of 1925.
8. In this case they prayed for attachment of a sum of Rs. 50,000 in the hands of the Court of Wards which the latter had set apart for payment to their ward Manjhle Nawab. The subordinate Judge allowed the application, but on appeal the High Court on 24th June 1926, reversed the order of the learned subordinate Judge and dismissed the execution case on the ground, inter alia, that leave of the Court of Wards had not been obtained. This case is reported in *Ibrahim Husain Khan v. Lachmi Narayan* (26) 12 P.L.T. 227.
9. In the year 1920, shortly after Badshah Nawab's death, Chhotey Nawab brought a suit to set aside the two wakf deeds executed by Badshah Nawab in the years 1917 and 1919. On 31st July 1922, the suit of Chhotey Nawab was decreed by the learned subordinate Judge, and on 16th January 1928, the decree of the lower Court was affirmed by this Court. There was an appeal to His Majesty in Council, which, we are told, has recently been allowed, but this makes no difference to the present case.
10. On 19th April 1929, the plaintiffs without leave of the Court of Wards filed a third execution case No. 110 of 1928 in which they claimed to attach and sell Manjhle Nawab's share in this property which had been declared to be not wakf property but the private property of his brother Badshah Nawab deceased. The subordinate Judge allowed the plaintiffs' application holding that the Court of Wards had not taken charge of this property and, therefore, that it was available to his creditors.
11. On 4th February 1931, the High Court reversed the decision of the subordinate Judge and dismissed the application, and the order of this Court was affirmed by their Lordships of the Privy Council on 10th July 1934. This case is reported in AIR 1934 202 (Privy Council). It will thus be seen that three attempts to execute the decree, which the plaintiffs obtained against Manjhle

Nawab on 19th September 1922 have failed.

12. On 10th June 1934, Manjhle Nawab died but the Court of Wards continued in charge of the property u/s 13A of the Act. On 15th September 1934, the plaintiffs filed the present suit claiming administration of the estate of Manjhle Nawab deceased and payment to them of their decretal dues which amounted to the sum of Rs. 39,250-5-0. The learned subordinate Judge who heard the suit held that the plaintiffs' claim was barred by res judicata and dismissed the suit in its entirety. Against that decree the present appeal has been preferred. Section 51, Court of Wards Act, provides that

in every suit brought by or against any ward he shall be therein described as a ward of Court; and the manager of such ward's property, or if there is no manager, the Collector of the district in which the greater part of such property is situated, or any other Collector whom the Court of Wards may appoint in that behalf, shall be named as next friend or guardian for the suit, and shall in such suit represent such ward, and no other person shall be ordered to sue or be sued as next friend or be named as guardian for the suit by any civil Court in which such suit may be pending.

13. When Manjhle Nawab was sued by the plaintiffs in September 1922, he was a ward of the Court, and the Court of Wards should have been named as his guardian for the suit. As I have stated previously, this was not done and Manjhle Nawab was sued as if he was a person in full charge of his property. Section 60A, Court of Wards Act, provides that

no property which is or has been under the charge of the Court shall be liable at any time, except with the leave of the Court, to be taken in execution of a decree made in respect of any contract entered into by the ward without the leave of the Court while his property was under such charge.

14. The loan was contracted without the leave of the Court whilst the ward's property was under the charge of the Court. Consequently the provisions of Section 60A, Court of Wards Act, apply to this case. Throughout, the Court of Wards has refused to give permission to the plaintiffs to execute the decree, and in this proceeding also they contested the plaintiffs' right to obtain satisfaction of the decree. All the previous applications for execution were dismissed because leave of the Court of Wards has not been obtained for execution, and in the last execution proceeding, which terminated in AIR 1934 202 (Privy Council) before their Lordships of the Privy Council, Lord Blanesburgh, who delivered the opinion of the Board, observed, at p. 607:

Their Lordships would add that they think that insufficient attention has, so far, been paid to Section 51 of the Act and to the fact that in the appellants' suit no attempt was made to comply with its provisions. That omission must have a most important bearing on the question whether leave should ever be granted to execute against property of the disqualified proprietor any decree obtained in a suit so defective.

15. The learned subordinate Judge regarded the present suit as nothing more than an attempt to execute the decree. In his opinion, framing the suit as one for administration, was a mere device to overcome the difficulties created by Section 60A, Court of Wards Act. Holding that the suit was in substance and in fact an application for execution, he came to the conclusion that the right to execute this decree had been determined) once and for all in the earlier litigation and in particular by the decision of their Lordships of the Privy Council to which I have made reference.

16. He, therefore, held that this suit was barred by *res judicata*. It was not argued before us that the original decree obtained against Manjhle Nawab was not a valid decree. The plaintiffs had flouted the provisions of Section 51, Court of Wards Act; but. No where in the previous litigation was it held that the decree which they had obtained was not a valid decree. It was in fact decided by this Court in the earlier proceeding that the decree was valid, and it is unnecessary in this case further to consider the." point. It may be suggested that the observation of Lord Blanesburgh, to which I have referred, seems to cast some doubt-upon the validity of such a decree; but it is to be observed that nowhere in that judgment is the validity of the decree challenged.

17. Mr. P.R. Das who has appeared on behalf of the plaintiff-appellants has strenuously argued that the decision of the lower Court is erroneous. He has urged that the present suit is one for administration of the estate of Manjhle Nawab deceased and can in no way be regarded as an application to execute the decree. Consequently he has contended that decisions in previous execution cases cannot possibly operate to bar the present suit.

18. It is true that this suit is in form a suit for administration; but Mr. Das has to admit, that the only purpose of the suit is to obtain satisfaction of the decree held by the-plaintiffs against the estate of Manjhle Nawab deceased.

19. The suit purports to be brought on behalf of the creditors of Manjhle Nawab deceased; but it would appear from the plaint that the only creditors who desired administration were the plaintiffs who held their decree for the sum of Rs. 39,250. The suit was brought against Chhotey Nawab through the manager, Court of Wards, Patna, as defendant 1 and against a son and three daughters of his as defendants 2 to 5.

20. On the unopposed application of Mt. Tayabunnissa, she was added as a co-defendant on the ground that Manjhle Nawab had bequeathed a portion of the estate to her.

21. On 17th February 1935, Chhotey Nawab died, and defendants 2 to 5 were substituted in his place on the record appearing through the manager, Court of Wards, Patna. In the plaint the history of the debt is set out, and in para. 6 it is said that in spite of many attempts the decree remains unsatisfied and that the last decision between the plaintiffs and the Court of Wards was that given by their Lordships of the Privy Council on 10th July 1934. In para. 9 of the plaint it

is alleged that in spite of representation made to the Court of Wards they have not taken any practical or tangible steps to discharge the obligation of their present ward and therefore the plaintiffs were compelled, to bring their administration suit.

22. In para. 12 the plaintiffs submit that after the death of Manjhle Nawab, Section 60A, Court of Wards Act, no longer had any application and that after such death the Court of Wards was legally bound to discharge the debt which was a first charge created by operation of law on the estate left by Manjhle Nawab and inherited by Chhotey Nawab.

Paragraph 13 of the plaint is significant and is in these terms:

That the plaintiffs feel and are advised to submit that unless an administration suit is filed and an administrator appointed to take charge of the estate, and take an account of the assests and liabilities, the plaintiffs may be without a remedy, hence this suit for administration on behalf of themselves and other creditors.

Paragraph 14 gives the reason for the suit in somewhat different words and that paragraph is in these terms:

That the Court of Wards acting on behalf of Manjhle Nawab's heirs and legal representative of Chhotey Nawab has not so far taken steps to pay up the plaintiffs' debts and to discharge the legal, moral and religious duty of the heir and legal representative who is their ward u/s 60B, Court of Wards Act, which in law amounts to mal-administration of the estate and the legal representative of the deceased debtor is most improperly and unjustly trying to avoid his legal, moral and religious liability to pay up the debt of the deceased.

23. It is to be observed that no other debts are specifically mentioned, and the sole ground for bringing the administration suit is the failure of the Court of Wards acting or the heirs of Manjhle Nawab to pay the plaintiffs' debt which the plaintiffs contend is mal-administration of the estate. In para. 19 the plaintiffs pray for a preliminary decree for the administration of the estate and that any one of the defendants or the manager, Court of Wards, or failing them the plaintiffs or some other suitable person be appointed administrators with all necessary powers to receive and get in all properties and pay up out of the income or sale proceeds all the creditors of the estate of the deceased.

24. Further, it is prayed that the administrator be directed to take accounts of the assets and liabilities of the deceased, and to pay the plaintiffs and such other creditors who may prove their debts. There: is an alternative relief in these terms, that if the Court considers that if there is any difficulty in granting the reliefs in the form they had prayed for, the plaint may be treated as an execution and the decree may be executed by the appointment of a receiver with similar powers and duties.

25. Mr. P.R. Das has stated that he does not want this suit treated as an application for execution unless a limited construction be placed on Section 60A,

Court of Wards Act, and. that for a very obvious reason. The Court of Wards have not granted leave to execute against the property and any application in execution must be dismissed by reason of Section 60A, Court of Wards Act, and the previous decisions in earlier execution proceedings. The suggested construction of Section 60A will be referred to later. It will be seen from the plaint that what the plaintiffs allege is the failure of the Court of Wards to pay to the plaintiffs the amount of their decree. This failure is the only ground of mal-administration alleged, and it is obvious that the only purpose of the suit is to obtain satisfaction of the decree.

26. In short, the suit is an attempt to obtain what the plaintiffs cannot obtain by executing the decree. Mr. P.R. Das admits this, but he contends that Section 60A, Court of Wards Act, must be construed, strictly, and that that section only protects the property of the ward in execution proceedings properly so-called. He urges that, even if the present suit is an attempt to evade this section, it should nevertheless be decreed as Section 60A does not in terms apply to, a suit such as the present one.

27. It is urged that a suit does lie on a decree, and it is pointed out that Article 122, Limitation Act, expressly provides that the period of limitation for such a suit is 12 years from the date of the decree. That article, it is said, clearly contemplates a suit on a decree, and this is said to be such a suit. It must be conceded that suits can be brought on certain decrees, but the question which has to be decided is whether a suit can be based on the present decree. If this suit is a mere device to avoid some bar in execution, then in my view the suit is not maintainable. Clearly it is a suit to obtain satisfaction of a decree, and it is brought for precisely the same relief as can be obtained by execution. By reason of Section 51, Civil P.C., and Order 21, Rule 11(j) of that Code, a receiver can be appointed in execution and the properties of the judgment-debtor sold if necessary. Such is the relief claimed in the present suit. In short, this suit for administration asks for nothing more than execution or satisfaction of the decree. In such a case can suit lie?

28. Mr. P.R. Das has relied upon two Calcutta cases, the first of which is *Annoda Prasad v. Nobo Kishore* (05) 33 Cal. 560 in which it was held that an order of the High Court in the exercise of its insolvency jurisdiction is a judgment of the High Court and a suit based upon such order is maintainable.

29. In that case the plaintiff sued to recover the amount of costs under an allocatur issued by the Registrar of the Court on 7th September 1902, in respect of certain costs ordered by the Court in its insolvency jurisdiction. A suit on such an order was held by Sale J. to be maintainable. At p. 955, the learned Judge observed:

The objection taken is that the suit is not maintainable and in the next place that if maintainable the suit is barred by the law of limitation. Now in support of the argument that the suit is not maintainable, Section 244, Civil P.C., has been

relied upon. I think that Section 244 is clearly inapplicable. That section deals only with matters relating to the execution of decrees. The suit is instituted on an unsatisfied order of the Insolvent Court and is not concerned with or related to the execution of that order.

The suit is based on the judgment or order as affording a new cause of action, and if there is no other bar to the suit, statutory or otherwise, there is nothing in Section 244 to take away any such right of suit.

30. In that case the learned Judge clearly held that the suit, though instituted on an unsatisfied order or decree, was not concerned or related to the execution of any order or decree. Even if this case be rightly decided, it is clearly distinguishable from the present case, because in the present case the suit, though undoubtedly instituted on an unsatisfied decree, is solely concerned with or related to the execution of such a decree. In my view this single Judge decision of the Calcutta High Court affords little assistance to the plaintiff in this case.

31. The second case relied upon by Mr. P.R. Das is a Bench decision, *Kali Charan v. Sukhoda Sundari Debi* AIR 1916 Cal. 661. Reliance is placed on certain observations of Mookerjee J. at pp. 61 and 62:

An examination of the cases... shows that there is considerable divergence of judicial opinion upon the subject and that the Courts are by no means agreed as to the circumstances under which a suit may be instituted in this country on what may be called a domestic as distinguished from a foreign judgment. It is well-known that in England there has been divergence of judicial opinion on the subject... and it is only in recent years that the principle has been adopted that although an action lies on a judgment which finally establishes a debt, whether the judgment... be English or foreign, it is an abuse of the process of the Court to bring an action upon an English judgment if it can be enforced in some other way. The principle on which an action is allowed to be maintained on a judgment was concisely explained by Baron Parke in *Williams v. Jines* (1844) 13 M & W 628.

The principle is that where a Court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained.

No mischief can result from the acceptance of this principle, if it is adopted subject to the qualification recognised in Modern English Law, viz., that an action is permissible only where the judgment cannot be enforced in some other way; and beyond this, it is not necessary for our purpose to proceed.

32. In my view these observations of Mookerjee J. do not assist the plaintiffs in this case, because, according to the learned Judge, an action on a judgment is only permissible where the judgment cannot be enforced in some other way. A simple money decree can be enforced by execution, and that being so, a suit

based upon such a decree cannot lie. Mr. Das, however, has urged that the present decree cannot be executed by reason of Section 60A, Court of Wards Act. It is true that leave of the Court of Wards is necessary to execute the decree; but there is nothing inherent to the decree itself which renders it incapable of execution. Section 60A, Court of Wards Act, does import a bar to execution without leave but nothing more than that, If the leave of the Court had been obtained, execution could have proceeded as a matter of course. In my view a suit on a judgment can only lie where the decree from its very nature is incapable of execution. Section 47(1), Civil P.C., expressly provides that:

All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

33. As I have stated earlier, it is clear that the questions in issue in this administration suit relate not to mal-administration but only to the execution or discharge or satisfaction of the decree, and that being so, Section 47(1), Civil P.C., in terms directs that such Questions must be determined by the executing Court and not by a separate suit.

34. The precise point which arises in this case was considered by a Full Bench of the Calcutta High Court in *Jogemaya Dassi v. Thackomoni Dassi* (97) 24 Cal. 473. The facts of that case were as follows. On 29th September 1882, a decree was obtained against the defendant's husband in a suit on a mortgage by the latter, dated 6th April 1880. On 27th July 1883, an order was made for transfer of the decree to the High Court for execution. On 8th April 1886, the mortgagee applied to the High Court for execution by attachment of the mortgaged properties, and in the same year an order for attachment was made. The mortgagee died in April 1892; and on 20th August 1894, the plaintiff (his widow and administratrix) applied to the High Court for an order absolute for sale of the mortgaged properties u/s 89, T.P. Act. On 5th January 1895, the application was refused, on the ground that the mortgaged properties were outside the territorial jurisdiction of the High Court. The plaintiff then instituted the present suit in which she sought (inter alia) administration of the estate of the mortgagor (who had died before the mortgage suit was filed), and asked for the sale of such properties as might be found subject to such mortgage.

35. It was held that whether the plaintiff sued on the original debt or on the decree of 29th September 1882, the suit was barred by limitation. It was further held that, even apart from any question of limitation, the suit was not maintainable by reason of the provisions of Sections 230 and 244, Civil P.C., the questions arising in the suit being such as could and should have been determined in execution of the decree, and not by a separate suit.

36. Mr. Das has attempted to show that this case is at variance with a later decision of the Calcutta High Court in *Saratmani Debee v. Batta Krishna* (08) 35

Cal. 1100 where it was held that where the real question involved in a suit is in substance whether or not the defendant, in administering the debtor's estate, has been guilty of mal-administration, and whether the plaintiffs, as creditors of that estate, are entitled to have the estate administered on that footing, that is a much wider question than one merely relating to the execution of a decree, and a regular suit must lie.

37. In that case, very definite allegations of maladministration were made and the suit was one for something far more than mere satisfaction of a decree. It is pointed out by Maclean C.J. who was also a party to the earlier Full Bench decision, that this case is not at variance with the earlier case, because a decision on the point involved was unnecessary in the Full Bench case.

38. I have already pointed out that the only allegation of mal-administration made in the pleadings of the present suit is the failure to pay the plaintiffs decretal dues. The present administration suit is not based on mal-administration of the estate by the heirs of Chhotey Nawab through the Court of Wards but merely on their failure to satisfy the decree. The object of the present suit is clearly satisfaction of the decree and not to obtain relief for mal-administration of the estate. That being so, the case in *Saratmani Debee v. Batta Krishna* (08)35 Cal 1100 affords the plaintiffs no assistance whatsoever.

39. In my judgment the view expressed by the Full Bench of the Calcutta High Court in *Jogemaya Dassi v. Thackomoni Dassi* (97) 24 Cal. 473 is the correct view and should be followed. As early as 1876 their Lordships of the Privy Council in *Mirza Mahimed Age Ali Khan Bahadur v. Widow of Balmakud* (76) 3 I.A. 241 laid down that a judgment-debtor has, by virtue of the judgment, without execution, no right to the property of the judgment-debtor, and is not entitled to recover it from the persons in whose hands it is. The procedure prescribed is to proceed to execute the judgment by attachment and sale if necessary, and not to proceed by action. At p. 85 their Lordships, approving of the judgment of the learned Judicial Commissioner, observed:

In another part of his judgment he says, and their Lordships quite agree with him in that remark, that, "if every decree-holder could proceed by regular suit to enforce his decree, all the provisions in the CPC in regard to executions of decree would be of no avail. But it is evident to the Court that, where the Legislature has prescribed a particular mode of enforcing a right created by a decree, the possessor of that right is bound to follow the procedure prescribed, and no other. In this case the procedure prescribed is to proceed to execute the judgment by attachment and sale if necessary, and not to proceed by action.

40. Their Lordships of the Privy Council expressed a similar view in *Sasi Sekhareawar Roy v. Lalit Mohan Mitra*. In that case upon a dispute between the appellant and the respondent with regard to the ownership of certain land, arbitrators had awarded specified portions to each. In 1907 a decree was made in terms of the award, which was annexed there to. In 1917 the appellant sued

the respondent for possession of land which he alleged was part of that awarded to him. Their Lordships held that the suit could not be maintained; the appellant's only proper remedy was by proceedings in execution of the decree and that remedy was barred by the Limitation Act, 1908, Schedule 1, Article 182.

41. In *Ramanada v. Jai Ram* AIR 1921 All. 369, a Bench held that a suit on a decree could not be maintained in the following circumstances. On 28th April 1905, the plaintiffs obtained a decree in a suit for preemption conditional on their paying Rs. 1000 within three months from the date of the decree. The money was paid, but, for one reason or another, the plaintiffs did not get possession of the property either by process in execution, or by private arrangement. On 25th April 1917, the plaintiffs sued for possession of the property awarded to them by the decree of 1905. It was held that the suit was barred by Section 47, Civil P.C., and that possession should have been obtained by executing the preemption decree.

42. The same question is dealt with fully by a Bench of the Madras High Court in *Ramasami Nathan v. Muthiah Chetty* AIR 1925 Mad. 279. In that case it was held that it was settled law that no action lay on an executable judgment, the only remedy being execution, and that this principle was embodied in Section 47, Civil P.C. Where, however, a judgment created a new obligation without providing for its execution but indicating a suit as the only method of enforcing it, a suit on such judgment to enforce the obligation was maintainable.

43. In my judgment these cases of their Lordships of the Privy Council and of the various High Courts in India lay down that no suit will lie on an executable decree and such a suit can only lie if the decree by its very nature cannot be executed. As I have stated, the present decree is a money decree, and there is nothing on the face of the decree to prevent it being executed. The only difficulty in the case is that Section 60A, Court of Wards Act, requires leave of the Court of Wards before execution can proceed. It is not an unexecutable decree, but is a decree which can be executed in certain circumstances. The execution of all decrees is subject to certain limitations, as for example time. The Limitation Act prescribes period for executing decrees, and if time, has run against the decree-holder execution will be barred. Even where execution is barred by time, Courts have not permitted a suit on a decree to be maintained, though in one sense it could be said that the decree was unexecutable. Execution of a decree may well be barred in three or six years, and if the plaintiffs' argument in the present case be sound, then a suit could always be brought on the decree after execution was barred by time because the period of limitation for a suit on a decree is twelve years, whereas execution of the decree" might well have been barred before that, time. It appears to me that Section 60A, Court of Wards Act, is a bar similar to that of time. All that the section does is to bar execution in certain circumstances just as the Limitation Act bars execution after a certain lapse of time. The decree, though not executable without leave of the Court of Wards, is not an unexecutable decree which can only be enforced by a separate suit. That

being so, the present suit is barred by Section 47, Civil P.C., and was, therefore, rightly dismissed.

44. Assuming that an administration suit would lie merely to obtain satisfaction of a decree yet the plaintiffs' suit would, in my view, fail. To maintain an administration suit; a decree-holder must have a decree which can be enforced, and there is a good deal, of authority for the proposition that a decree, the execution of which is barred by time, cannot give the decree-holder a right to maintain a suit on such a decree: *Fakirapa v. Pandurangapa* (81) 6 Bom. 7 (since dissented from on the question whether a suit on the decree lay at all), *Ram jus Rai v. Ram Narain* (70) 2 N.W.P.W.C.R. 382 and 8. *Saratmani Debee v. Batta Krishna* (08) 35 Cal 1100. To hold otherwise would be to extend the period of limitation in many cases where execution was barred by time and to give a decree-holder greater rights against the estate of a deceased judgment-debtor than he would have against the judgment-debtor's property whilst the latter was alive.

45. The present decree is also one which cannot be executed except by leave of the Court of Wards which has not been obtained. It is a decree which cannot be enforced and therefore cannot give the plaintiff a right to maintain, an administration suit solely for its satisfaction.

46. It was faintly argued that Section 60A, Court of Wards Act, could have no application to the present case because Manjhle Nawab had died. Mr. Das had to admit that the section is in the widest terms, but he urged that some limitation should be placed upon it. The section prohibits execution "at any time," and it was suggested that the phrase must mean at any time during the lifetime of the ward, otherwise there would be a prohibition for all time. It is to be observed however that the prohibition cannot extend over a very lengthy period, because the period during which execution can be levied is strictly limited by the Limitation Act. If no application for execution is made at all, execution on an unregistered decree is barred in three years and on a registered decree in six years. If applications are made within time and within three years of each other, the period of limitation is extended, but in no case can a fresh application for execution be filed after the expiry of twelve years from the date of the decree. That being so, the prohibition in Section 60A is a prohibition limited to a comparatively short space of time. There is no reason whatsoever for construing the words "at any time" in Section 60A as meaning at any time within the ward's lifetime.

47. It was further argued that Section 60A could have no application to the present case because the Court of Wards had released the estate of Manjhle Nawab deceased. Counsel for the Court of Wards did not seem to be clear as to whether the Court of Wards now exercised any jurisdiction over the estate of Manjhle Nawab deceased or whether they were now only interested in the estate of defendant 3. Even assuming the Court of Wards have released the estate of Manjhle Nawab deceased as alleged by the plaintiffs in this Court, Section 60A,

Court of Wards Act, still prohibits any attempt to execute the decree without leave of the Court of Wards. That section in terms provides that no property which is or has been under the charge of Court of Wards shall be liable to be taken in execution without leave of the Court. That means that leave of the Court is necessary even after the estate has been released. For the reasons which I have given, I am satisfied that, even if this suit is not barred by *res judicata* because it is not in terms a proceeding in execution, yet it is barred by reason of the provisions of Section 47, Civil P.C. It might well be argued that this suit is in substance and in fact an application to execute the decree, and it is to be observed that such was asked by way of an alternative relief. If it be regarded as an application to execute the decree, then it must fail by reason of Section 60A, Court of Wards Act, as the leave of the Court of Wards has not been obtained. In the result, therefore, I hold that there is no substance in this appeal, and I would dismiss it with costs.

Manohar Lall J.

48. This is an appeal by the plaintiffs against the decision of the subordinate Judge, First Court, Patna, dated 7th February 1936 by which he dismissed the suit instituted by the appellants for obtaining a preliminary decree for administration of the estate of the deceased Nawab in the following circumstances. On 4th July 1919 the plaintiffs advanced a sum of Rs. 10,000 to Nawab Syed Ibrahim Hussain Khan (hereafter to be referred to as the Nawab) on the basis of a hundi. At that time the Nawab was a ward of the Patna Court of Wards who were in possession of his estate, he having been declared on 9th September 1902 a disqualified proprietor on his own application as provided by Section 6(e) Court of Wards Act (hereafter to be referred to as the Act). But the loan was advanced to the Nawab without the sanction of the Court of Wards.

49. On 19th March 1919 one Badsha Nawab, the elder brother of the Nawab, died and the Nawab inherited one-third share of Badsha Nawab in certain properties. The Court of Wards took formal possession in November 1919 of the properties so inherited by the Nawab. In the year 1922 the plaintiffs instituted a suit being suit No. 163 of that year to recover their dues on their hundi from the Nawab. In this litigation, the Nawab was not described as a ward of the Court of Wards in direct violation of the provision laid down in Section 51 of the Act. The plaintiffs obtained an *ex parte* decree on 19th September 1922 for a sum of Rs.21,437-5-0 and proceeded to execute it against the property inherited by the Nawab as stated above when an objection was taken by the judgment-debtor through the general manager of the Court of Wards to the effect that the properties which have been attached were not liable to be attached and sold in execution of any decree by reason of the provisions of Section 60A of the Act. Objection was also taken that the decree which was passed was in a suit not framed according to law in that it contravened the provisions of Section 51 of the Act.

50. The learned subordinate Judge accepting the objections raised dismissed the

execution. The decree-holder preferred an appeal to this Court. This Court held in a judgment which is reported in *Lachmi Narain v. Mahomed Abraham Hussain Khan* AIR 1925 Pat. 179 that the fact that the manager of the Court of Wards was not made a party to the suit was no ground for the executing Court to refuse to execute the decree but gave effect to the objection based upon Section 60A of the Act and held that the decree-holder was prevented from proceeding against the inherited property because it had come into the possession of the Court of Wards in November 1919.

51. In the result the appeal of the decree-holder was dismissed. On 24th October 1925, the decree-holder started another execution by seeking to attach a sum of money which was in the hands of the Court of Wards as belonging to the Nawab having been set apart for him under the provision of Sections 48 and 49 of the Act. Although the executing Court allowed this relief to the decree-holder, this Court in appeal reversed that order and dismissed the execution on 24th June 1926; the judgment of this Court is reported in *Lachmi Narain v. Mahomed Abraham Hussain Khan* AIR 1925 Pat. 179 and is printed as Ex. A(1) at p. 12 of the paper book. A perusal of that judgment which was delivered by Dawson-Miller, C.J., Foster J. agreeing, shows that this Court relied upon the clear provisions of Section 60A of the Act. On 19th April 1928, the decree-holder presented another application for execution in Execution Case No. 110 of 1928 to realise their dues by attachment of the share of the Nawab in certain properties which were released from a wakf as the result of a suit instituted by his third brother to set aside certain wakfs executed by Badsha Nawab aforesaid.

52. The subordinate Judge allowed the prayer of the decree-holder but this Court reversed that decision on 4th February 1931 by a judgment reported in *Ibrahim Husain Khan v. Ram Newaz Gayasat Ram* AIR 1931 Pat. 188.

53. The circumstances under which this new property came to be possessed by the Court of Wards on behalf of the Nawab are set out in that judgment and it is unnecessary to state those facts here. It is enough to state that the Court held that the provisions of Section 60A and Section 35 of the Act were fatal to the maintainability of that execution. Against; this decision the decree-holder appealed to His Majesty in Council but the decision of this Court was upheld. Lord Blanesburgh who delivered the judgment of their Lordships which is reported in AIR 1934 202 (Privy Council) made this important observation in the concluding portion of the judgment:

Their Lordships would add that they think that insufficient attention has, so far, been paid to Section 51 of the Act and to the fact that in the appellant's suit no attempt was made to comply with its provisions. That omission must have a most important bearing on the question whether leave should ever be granted to execute against property of the disqualified proprietor any decree obtained in a suit so defective.

54. Having failed to obtain the fruits of his decree in the execution department

the plaintiff instituted a suit on 15th September 1934, giving rise to the present appeal, after the death of the Nawab who died on 10th June 1934. The defendants in this suit are the heirs of the Nawab, the first two defendants being the sons of Chote Nawab (the brother of the Nawab). Defendant 1 has been sued through the manager of the Court of Wards, Patna. The allegations in the plaint are that the Nawab was at the time of his death, and his estate still is indebted to the plaintiffs for a sum of Rs. 39,250-5-0 on the basis of the decree passed on 19th September 1922 referred to above, that the defendant 1 on whom the estate of the Nawab has devolved by intestate succession is bound in law and in equity to pay up all the debts of the Nawab and that the Court of Wards who under the provision of Section 13A have chosen to retain charge of the estate on behalf of defendant 1 are bound to pay off debts and liabilities incurred by or due from the Nawab. It was then stated in para. 14 that the Court of Wards acting on behalf of the heirs of the Nawab and the legal representative of Chhotey Nawab has not so far taken any steps to pay up the debts of the plaintiff and to discharge the legal, moral and religious duty of their ward u/s 60B which facts "in law amount to mal-administration of the estate." Upon these allegations the plaintiff prayed for a preliminary decree for the administration of the estate of the deceased Nawab which was and is now in the hands of the Court of Wards. It should be stated here that in para. 10 of their plaint the plaintiffs also suggested that if there was any legal bar to the maintainability of a fresh suit the plaintiffs desired that the suit should be treated as a proceeding in execution in the alternative. The defence to the action in the main was that the suit as framed was not maintainable.

55. The learned subordinate Judge accepted this contention of the defendants and held that the plaintiffs cannot maintain the present suit, the object of which is to discharge the Court of Wards who are entitled to remain in charge of the estate u/s 13A of the Act, and further that the provisions of Section 60A of the Act are an obstacle in the way of the plaintiffs obtaining any relief. Hence this appeal by the plaintiffs.

56. Mr. P.R. Das who appeared on behalf of the appellants argued strenuously that the plaintiffs having failed to execute their decree, they are now entitled to bring a suit to enforce that decree and that the institution of an administration suit in the form in which the present suit has been instituted is the only way in which the plaintiff -decree, holders can obtain a proper relief in the circumstances. Sir Sultan Ahmad appearing on behalf of the respondents on the other hand argued that such a suit is not maintainable in law in India and that the present suit in the garb of an administration suit is nothing but an attempt to obtain execution of the decree, that the subject-matter of the present suit is a question relating to "execution, discharge and satisfaction of the decree" and, therefore, such a suit, he argued, is barred by the provisions of Section 47, Civil P.C. In my view the argument of the respondents is well founded.

57. In *Ram jus Rai v. Ram Narain* (70) 2 N.W.P.W.C.R. 382 a mortgagee had

obtained a decree against the defendant's husband who died after he had obtained an order for attachment of the mortgaged properties from the Calcutta High Court. Two years after the plaintiff, his widow and administratrix, applied to the High Court for an order absolute for sale of the mortgaged properties u/s 89, T.P. Act, which was then in force. But the application was refused on the ground that the mortgaged properties were outside the territorial jurisdiction of the High Court. The plaintiff then instituted a suit in which she sought inter alia administration of the estate of the mortgagor and asked for the sale of such properties as might be found subject to such mortgage. Sale J. who heard the suit on the original side came to the conclusion that as the plaintiff's suit on the original debt was on the decree which had been obtained in September 1882, the suit was barred by limitation and that the judgment debt having become barred by limitation was barred for all purposes and could not be made the foundation of an administration suit.

58. In appeal Maclean, C.J., while dismissing the appeal made these important observations at page 487:

The plaintiff appears to me to be upon the horns of this dilemma. If she be suing as a creditor for administration on the original debt, she is, apart from the effect of the order of 1886, clearly barred by the statute; and if she relies on the attachment order of 1886 as keeping the original debt alive, she is at once confronted with Section 230 of the Code, which makes it obligatory upon her, if she desires to enforce her decree, to apply to the Court which made the decree, and, in face of that provision, she is not entitled, in my opinion, to institute a separate suit. Apart from this, I think all questions arising between the parties to the original suit ought, u/s 244 of the Code, to have been decided, and could have been decided, by the Court executing the decree. A separate suit ought not to be instituted unless all questions between the parties or their representatives cannot be decided in the original suit. The plaintiff's right is, if she be now not too late, to enforce the decree of 1882 and any questions arising as to that ought to be determined, and can only be determined, by the Court executing that decree. I am prepared to hold that, quite apart from any question as to the statute of limitation, the plaintiff is not entitled to maintain this suit, having regard to Sections 230 and 244 of the Code.

59. Section 230 of the earlier Code corresponds to Section 48 of the present Code and Section 244 of the earlier Code corresponds to Section 47 of the present Code. Macpherson J., also came to the conclusion that the suit was not maintainable and observed:

The debt has passed into a judgment-debt; and under Article 122, Limitation Act, no suit could now be brought on the judgment. It is said that this is not a suit on the judgment within the meaning of that article, as it is a suit for the administration of the estate, but if no suit could be brought on the judgment, I do not see how the judgment can be made a ground for relief in this case.

60. The learned Judge negated the argument advanced by Mr. Pugh that as the decree of 1882 was still alive and capable of being executed there was a debt, the remedy for the recovery of which was not barred and that the plaintiff could, on that ground, maintain the suit and observed at p. 489:

Whether there is a pending proceeding, and whether the plaintiff can get anything out of it, are matters to be determined by the Court in which the proceeding is said to be pending, viz., the Court executing the decree. Assuming for argument's sake that there is a pending proceeding, it is only in that proceeding, and by reason of its being a pending proceeding, that the plaintiff could get any relief in the way of execution, as any fresh application for the execution of the decree would be barred by Section 230 of the Code. This is not a suit in aid of execution; it has nothing to do with the execution of the decree; and if there is an execution proceeding pending in which, and in which alone, the plaintiff could, putting her case at the highest, get some relief, this does not, I conceive, help her in bringing this suit.

61. Trevelyan J., who also agreed stated thus at page 491:

Moreover, I am inclined to think that the terms of Section 244(c), Civil P.C., would have prevented this suit being brought against the judgment-debtor, and therefore would bar the present suit; although having regard to the view I entertain as to the suit being barred by limitation, it is not actually necessary to decide this point. The only questions which are raised in this suit are "questions arising between the parties to the suit in which the decree was passed or their representatives" and they relate to the execution of the decree. The object of this suit is apparently to obtain execution of the decree against some property other than that which was actually mortgaged. I cannot see why this question cannot, as between the parties, be determined by the Court executing the decree, and in the execution proceeding. The case in *Prosunno Coomar Sanyal v. Kali Das Sanyal* (92) 19 Cal. 683 shows that a narrow construction ought not to be placed upon Section 244, but that all questions which can possibly be determined in the execution proceedings should be so determined.

62. In *Ramanand v. Jai Ram* AIR 1921 All. 369 a plaintiff who had obtained a decree in a suit for pre-emption conditional on his paying Rs.1000 within three months from the date of the decree paid the money but, for one reason or another, could not get possession of the property either by process in execution, or by private arrangement. He then instituted a suit for possession of the property awarded to him by that decree. *Sulaiman and Gokul Prasad JJ.* came to the conclusion that both on authority and on a correct interpretation of Section 47, Civil P.C., the present suit was not maintainable and observed at p. 176:

Stripped of all unnecessary details, the relief claimed by the plaintiffs, in substance, amounts to asking for the fruits of a decree which they are unable to execute owing to lapse of time. The suit, in effect, does raise a question "relating to the execution, discharge, or satisfaction" of the former decree and cannot be

determined by a separate suit. The plaintiffs' claim in reality is that they obtained a decree for possession of this property, the defendants have not given them possession in spite of the said decree, and therefore the Court should compel the defendants to carry out their obligation under that decree. In our opinion such a suit falls clearly within the purview of Section 47 and if it did not, we fail to see what other form of suit would.

63. If instead of the words "lapse of time" the words "Section 60A" are substituted in this quotation these remarks would apply with equal force to the present suit. In *Ramasami Nathan v. Muthiah Chetty* AIR 1925 Mad. 279 *Ramesam and Jackson JJ.* after examining a number of English and Indian decisions came to the conclusion that in India it is settled law that no action lies on an executable judgment, the only remedy being execution, and that this principle is embodied in Section 47, Civil P.C., but where a judgment creates a new obligation without providing for its execution but indicating a suit as the only method of enforcing it, a suit on the judgment to enforce the obligation is maintainable within the period of 12 years provided by Article 122, Limitation Act.

64. In my opinion these decisions give an accurate statement of the law. The plaintiffs cannot maintain the suit simply, by saying that they are unable to obtain execution of the decree by reason of some obstacles which are placed in their way not by the judgment or decree sought to be executed unsuccessfully but by reason of some other provisions of the Act or any other law or by reason of some other hindrance placed in his way by the defendant judgment-debtor. In other words the decree itself should be of such a form that its execution is impossible from its very nature e. g., where it is a mere declaratory decree or where it itself suggests that a suit should be instituted to enforce it. Again a decree can be made the foundation of an administration suit if the decree is kept alive and if it is alleged that the properties of the judgment-debtor are being mal-administered.

65. In such a case the suit will not be a suit to enforce the judgment or a suit on the judgment but it will be a suit by a creditor for a proper administration of the estate and if he is able to prove his allegations he will be entitled to obtain a relief, provided in the mean time his decree has not become time barred. In *Mirza Mahimed Age Ali Khan Bahadur v. Widow of Balmarkud* (76) 3 I.A. 241 the question which arose for decision was, as pointed out by Sir Barnes Peacock, who delivered the judgment of their Lordships whether.

the decree gave the plaintiff a right to institute the present suit; in other words, whether a judgment creditor has by virtue of the judgment-debtor, whether it consists in lands, in moveable property, or in debts.

66. The plaintiff had contended in that case that by virtue of this judgment he became entitled to the property of his judgment-debtor and was entitled to recover it from the persons in whose hands it was: see p. 247. But at p. 248 it was held that

a judgment does not vest in a judgment-creditor; any portion of the property of his judgment-debtor, It gives him a right to have the judgment executed, but until execution the property of the judgment-debtor does not vest in the judgment creditor simply by virtue of the judgment. That is so according to the law of this country, and it is also the case under the Code of Civil Procedure, Act 8 of 1859, which is the law in force in India.

67. A little later, attention was drawn to the fact that if a judgment-debtor passes money to the judgment-creditor unless the Court makes an order to that effect "no adjustment of a decree in part or in whole shall be recognized by the Court unless such adjustment be made through the Court or be certified to the Court by the person in whose favour the decree has been made or to whom it has been transferred"--a provision which corresponds to Order 21, Rule 2 of the present Code. Again, at p.249, it was pointed out that "the decree is to be satisfied, not by bringing an action against the debtors of the judgment-debtor, or those who hold his property, but, it is to be enforced by the attachment and sale of the property of the judgment-debtor," and it was indicated that the CPC points out the mode in which the property is to be attached and the different classes of property which are liable to attachment. His Lordship approved of the argument of Mr. Leith that if an action such as the present could be supported all the provisions of the Code would be frustrated. The concluding observation of his Lordship at p. 252 is important which is in these words:

It appears to their Lordships that the proper mode of enforcing a decree is that pointed out by the Code of Civil Procedure, namely, by execution and attachment and sale, or by execution and attachment, and the appointment of a receiver u/s 243 to collect the property.

68. This case, though decided under the still earlier Code of Civil Procedure, supports me in the view which I have expressed above. In a much later case decided by the Privy Council reported in *Mirza Mahimed Age Ali Khan Bahadur v. Widow of Balmarkud* (76) 3 I.A. 241 the facts were that upon a dispute between the appellant and the respondent with regard to the ownership of some land the parties agreed to have the matter decided by arbitrators who awarded specified portions of the land to each of the parties. This award was followed by a decree made on the terms thereof. Ten years afterwards, the appellant sued the respondent for possession of land which he alleged was part of that awarded to him. Lord Dunedin in delivering the judgment of the Board after pointing out at p. 317 that the Court had pronounced a decree in terms of the award made this important observation:

If it is the fact, as the plaintiff says in his plaint, that the defendant did not give up possession the way in which the plaintiff was kept out of the lands which he ought to have had can only have been one of two ways: Either, it was that a cultivating tenant was on these lands and paid rent to the defendant instead of to the plaintiff as he ought to have done, or else, if there was no tenant then it must have been that the plaintiff was kept out of the lands in a physical sense,

that is to say, he was not allowed to go on to them. It seems to their Lordships plain that in either of this case an appropriate warrant could have been got from the Court upon a decree framed in the terms mentioned. That seems to end the case.

69. His Lordship then proceeded to point out an instance where the plaintiff could have come and asked the assistance of the Court founding upon the award itself and not upon the decree following upon it. This decision again supports me in my view. As already indicated the present suit is based upon the allegation that the estate is being mal-administered. Now what is the allegation of mal-administration? The allegation merely is that the Court of Wards has not taken any steps to pay off dues to the plaintiff and "this in law amounts to mal-administration." No evidence whatsoever was given in the course of the trial to support any other kind of mal-administration. In these circumstances also I think that the suit has been rightly dismissed.

70. Sir Sultan Ahmad suggested that the suit for administration of the estate is barred by limitation. I do not agree with this submission. The present suit, it will be noticed, has been instituted within three months of the date of the death of the Nawab and within two months of the date when final order was passed in the execution case started by the plaintiffs, namely, from the date of the decision of their Lordships of the Judicial Committee, and is also within twelve years of the date of the decree (see Section 48, Civil P.C.). Mr. Das then argued that the present suit should be treated as an application for execution as specifically asked for in para. 10 of the plaint and as provided by Section 47(2), Civil P.C., This may be done but can the plaintiff even then get over the bar of Section 60A of the Act?

71. Mr. Das argued that that section has no application after the death of the Nawab. I do not find any such limitation in the words of that section. The words are very clear that no property which is or has been in the charge of the Court of Wards shall be liable at any time to be taken in execution. The words "at any time" mean at any time, otherwise the very object of the Act which is to protect the ward will be frustrated. In *Debi Baksh Singh v. Shadi Lal* AIR 1916 P.C. 1 their Lordships of the Judicial Committee had to consider Section 174, Oudh Land Revenue Act of 1876. Section 173 of that Act is similar to Section 60 of the Act and Section 174 of the Oudh Act is similar to Section 60A of the Act. Lord Shaw in delivering the judgment of their Lordships observed at page 71:

Their Lordships think that it should be observed that the object of these sections was the protection of the property against either transactions entered into by the person under tutelage by way of direct transactions of sale or of mortgage, and also the protection of the property against the consequences of any execution in respect of contracts entered into by a person under such tutelage. Section 174 deals with the latter situation.

72. In that case the Courts in India had permitted execution against the property

to be granted in respect of the debt incurred by a person under tutelage relying upon certain decisions of the Oudh Court which held that

a creditor could obtain a decree upon a bond given by a ward while his property was under superintendence, and execute that decree against the property of the ward after the property was released from superintendence.

73. Their Lordships at p. 78 disapproved of this decision as being unsound in law and observed:

They think that, the object of the Act being the protection of the property, a person subject to the Court of Wards would in no sense be protected if this dictum were to be affirmed. What has been done in the present case seems to their Lordships to be a total violation not only of the spirit of the statute, but of the express provision of Section 174. The phrase in that section "while his property is under such superintendence," is, in their Lordships' opinion, a phrase annexed to and elucidative of the verbal expression "contract entered into by any such person." Section 174 is meant to protect property against the execution of a decree made in respect of "any contract entered into" during a certain period of time, namely, while the property is under such superintendence. If such a contract, incurring of debt, or transaction occurred during that time, the law of Oudh is plain u/s 174, to the effect that the property is protected against execution in respect of any decree following upon that transaction, that debt, or that contract.

74. In my opinion, this authoritative elucidation of the cognate law is a decisive answer to the argument raised by the appellant. It is but right that I should notice two decisions of the Calcutta High Court which were strongly relied upon by Mr. Das in support of his argument.

75. The first case relied upon by him is the case in *Kali Charan v. Sukhoda Sundari Debi* AIR 1916 Cal. 661 but that case merely decides that where a decree as it stands cannot be executed against the estate in the hands of the executrices the remedy of the decree-holder is either to have the suit restored, the executrices brought on the record and a new decree made against them, or to institute a suit on the judgment and to obtain a decree thereon against the executrices. The facts of that case show that the decree-holder had instituted a suit against the original debtor for recovery of a large sum of money but during the pendency of the suit the defendant died and the plaintiff instead of bringing on the record the executrices who had been appointed by the deceased defendant in a testamentary disposition proceeded with the suit and obtained a decree-against the three sons of the deceased specifying them to be the heirs and representatives of the original judgment-debtor. Reliance was placed upon the result of an examination by Mookerji, J. in that decision of a large number of English cases that an action was allowed to be maintained in England, on a judgment. But, in my opinion, as their Lordships of the Judicial Committee have observed repeatedly, it is not permissible for the Courts in India to embark upon

an examination of the English law based upon English statutes and English practice when the matter is expressly governed by the, Indian statutes. In the present case, we are, bound to observe the procedure laid down for execution of decrees in the CPC when a decree is sought to be executed the decree being of an executable; character.

76. The second case relied upon was the case in *Annoda Prasad v. Nobo Kissore* (05) 33 Cal. 560 a decision by a Single Judge of the Calcutta High Court. But that case, merely decides that an order of the insolvency Court is a judgment of the High-Court on the original side and a suit based upon such a judgment is maintainable. In, that case, the plaintiffs sued to recover the amount of costs ordered by the Calcutta-High Court in its insolvency jurisdiction under an allocatur by the Registrar of that Court. The learned Judge considered the objection that the suit was not maintainable by reason of Section 244, Civil P.C., which, was then in force and observed:

I think that Section 244 is clearly inapplicable. That, section deals only with matters relating to the execution of decrees. The suit is instituted on an unsatisfied order of the insolvency Court and is now concerned with or relates to the execution of that order. The suit is based on the judgment or order as affording a new cause of action, and if there is no other bar to the suit, statutory or otherwise, there is nothing in Section 244 to take away any such right of suit.

77. He then pointed out that the practice of the Calcutta High Court in its insolvency jurisdiction was that when costs were awarded under the Insolvency Act and u/s 30, Bengal Insolvency Rules, the execution of those orders was obtained by a proceeding in contempt initiated on a petition against the parties in default. In these circumstances, the learned Judge saw no reason why the party entitled to costs should not be permitted to sue upon the order and thus be enabled to avail him self of the execution procedure provided by the CPC provided the suit was instituted within the period prescribed by Article 122, Limitation Act. This case, therefore, has no application to the facts of the present case.

78. Attention was also drawn by Mr. Das to the case in *Saratmani Debee v. Batta Krishna* (08) 35 Cal 1100. But in that case it was pointed out that the real question involved in the suit was in substance whether or not the defendant, in administering the debtor's estate, has been guilty of maladministration and whether the plaintiffs as creditors of that estate were entitled to have the estate administered on that footing, that the question was a wider question than one merely relating to the execution of the decree and a regular suit must lie. Maclean, C.J., who delivered the judgment of the Bench pointed out at p. 1103 that.

there is no machinery under the execution chapter (Chap. 19) of the Code which enables the Court in executing the decree, to go into the question of whether or not the executor has been guilty of maladministration of the estate

and that if as was alleged in that case there has been mal-administration on the part of the defendant, the defendant could not be held liable in execution proceedings u/s 234 but a regular suit should be brought. This case again has no application here. I have already shown that there is no allegation, far less any proof, of maladministration in the present suit. Mere nonpayment of the debts of the deceased is not maladministration.

79. The truth of the matter is that the plaintiff is seeking to go round the provisions of the Act in order to reach the estate which he is forbidden to do by reason of the clear and express terms of the statute (Section 60A). If the plaintiff cannot reach that estate in the hands of the Court of Wards it is immaterial for his purposes whether that estate is being ill-administered or well-administered. The only remedy which the plaintiff has is to execute the decree against the property of his judgment-debtor which is not and has never been in the hands of the Court of Wards, if he can find some such property, and he has a further remedy to proceed against the ward's property of the other description with the leave of the Court of Wards?it being always open to the Court of Wards to pay the whole of the decretal amount or any portion thereof if they think it just and proper to do so, a matter which is entirely within their discretion.

80. For these reasons, I am of opinion that the appeal fails and must be dismissed with costs.