

(1916) 01 AHC CK 0006
In the Allahabad High Court

Mustafa Begam and Others

APPELLANT

Vs

Musammat Siraj-Ul-Nissa and Others

RESPONDENT

Date of Decision : 17-01-1916

Acts Referred:

Citation : 32 Ind. Cas. 693

Hon'ble Judges : P.C. Banerji, J

Bench : Single Bench

Judgement

P.C. Banerji, J.—This appeal is wholly without merit. In a suit brought for partition the parties entered into a compromise and a decree was made in accordance with the compromise. One of the terms of the compromise, which according to the decretal order formed part of the decree, was that Rs. 1,500 should be paid in four years in instalments of Rs. 200 every half year, namely, at the time of the rabi harvest and at the time of the Kharif harvest. Instalments not having been paid the present application for execution was made. The judgment-debtors contend that the remedy of the decree-holders was to bring a separate suit and not to execute the decree. As I have already said, the decree embodies the terms of the compromise and the compromise provides that the judgment-debtors should pay Rs. 1,500 by instalments as stated above. Therefore, under the terms of the decree the decree-holders are entitled to recover the amount decreed by executing the decree. It is next urged that as the decree and the compromise do not say what would happen in the event of any default being made in the payment of any instalment, therefore, the decree could only be executed when all the instalments became due. This is a wholly untenable contention. As there is no specific provision in the decree in respect of the result of non-payment of instalments, each instalment is recoverable by execution as soon as it falls due. The decree-holders have applied for realization of the amounts of the instalments which are overdue. The last contention is that the instalment of rabi 1322 had not fallen due on the date on which the application for execution was made. As, however, it had become due when the Court made its order for execution, this objection is without force. The decision

of the Court below is in my opinion, right. I dismiss the appeal with costs including fees on the higher scale.