

(1981) 02 AHC CK 0059
In the Allahabad High Court
Case No : Second Appeal No. 429 of 1977

Nanwa

APPELLANT

Vs

Maulana Abdul Mughni

RESPONDENT

Date of Decision : 11-02-1981

Acts Referred:

Limitation Act, 1963 — Article 135, 136

Citation : AIR 1981 All 143 : (1981) AWC 160

Hon'ble Judges : Deoki Nandan, J

Bench : Single Bench

Advocate : R.H. Zaidi, for the Appellant; M.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan, J.—Two questions were formulated by this Court while issuing notice of this Execution Second Appeal " after hearing under Order 41 Rule 11 of the Code of Civil Procedure, namely:

1. Whether the execution was barred by time ?
2. Whether the opposite party was competent to execute the decree ?

On the first question it appears that the decree was passed by the trial Court on 28th April, 1961 and the application for execution was made on 12th May, 1973, However, the decree was a decree for mandatory injunction and possession inasmuch as it permitted the defendants to remove the debris from the disputed land and in case of their failure to do so within 2 months, the decree-holder was declared entitled to have the debris removed by the process of Court and to obtain possession of the land. The time allowed for compliance was two months from the date of the decree. The limitation was thus required to be computed from 28th June, 1961, under Article 135 of the Limitation Act for the decree for mandatory injunction, and for possession when the decree became executable, under Article 136.

2. As to the second question, it does not appear from the facts stated in the judgment of the lower appellate Court or from anything on the record that the decree under execution was in any manner modified in favour of the present judgment-debtor appellant as against the decree-holder respondent by the compromise entered into by the other parties to the suit in Second Appeal No. 10 of 1962. It cannot, therefore, be said that the decree for demolition and possession was not executable against the defendant-appellant. There is no force in this appeal. It is dismissed with costs.