

(1876) 05 AHC CK 0001
In the Allahabad High Court

Ram Autar and Others

APPELLANT

Vs

Ajudhia Singh and Others

RESPONDENT

Date of Decision : 29-05-1876

Acts Referred:

Citation : (1875) ILR (All) 231

Hon'ble Judges : Robert Stuart, C.J;Pearson, J

Bench : Division Bench

Judgement

Robert Stuart, C.J.—The application of the 7th September 1871, prayed only for the partial execution of the decree and had not therefore the effect of keeping the decree alive for the other defendants. The same may be said of the application of the 13th August 1874. The application of 1871 itself is before me, and it is difficult to understand how any contention to the contrary could have been expected to succeed. It recites previous applications by Ajudhia Singh in conjunction with other defendants, and also the judgment of the Privy Council, and it then proceeds: "As the other persons do not join me in executing the decree, and in the decree the first Court's costs are separately entered in my name, while the costs of the Sudder Court, amounting to Rs. 969-12-0, are entered in my name and in those of the other persons collectively, who do not join in executing the decree, I apply for execution in respect of a 1-11th share, leaving out 10-11ths, the share of the said persons, and pray that it may be realized from the judgment-debtors." The application of 1874 appears to have been in similar form; and terms more carefully and precisely restricted to the applicant's own share could scarcely have been used, and how, in the face of them, the Subordinate Judge could have issued his orders of the 8th and 28th September 1871, is, to say the least of it, not very intelligible.

2. This decree is a joint decree, and no application for its partial execution could keep it alive for the defendants as a body; and Ajudhia Singh's applications of 1871 and of 1874, having been confined to his own individual interest in it, in the very clear and unmistakeable terms to which I have adverted, could not be

availed of so as to firing the present application within the three years. The order therefore recognizing and proceeding upon it cannot stand. The appeal must be allowed, and with costs.

Pearson, J.

3. It appears that the execution of the decree was stayed in pursuance of this Court's order, dated 23rd March 1867, in consequence of an appeal lying having been lodged in the Privy Council against the decree of the late Sudder Court, dated 31st March 1864. The appeal was disposed of by the Privy Council's decree, dated 11th February 1870.

4. If it be assumed that the application made by Ajudhia Singh alone on the 7th September 1871, for the execution of a small part of the decree was within time, under Article 167,* Schedule ii, Act IX of 1871, as having been presented within three years from the date of the Privy Council's decree, it must, nevertheless, be held that, inasmuch as it prayed for the partial execution of a joint decree, it was not an application according to law and had not the effect of keeping the decree in force. The same remark applies to Ajudhia Singh's last application of 13th August 1874

5. The present application by Ajudhia Singh and others of the 20th May 1875, is therefore beyond time. I would accordingly decree the appeal with costs, and reversing the lower Court's order disallow the application.

-----Foot Note-----

----- *[Article 7: -----

Time when period begins to Description of application. Period of limitation. run. --

----- For the execution of a decree Three years.... The date of the decree or or order of any Civil Court not order, or (where there has been provided for by No. 169. an appeal) the date of the final decree or order of the Appellate Court, or (where there has been a review of judgment) the date of the decision passed on the review, or (where the appli- cation next hereinafter men- tioned has been made) the date of applying to the Court to enforce, or keep in force, the decree or order, or (where the notice next hereinafter made has been issued) the date of issuing ii notice under the Code of Civil Procedure, section two hundred and sixteen, or (whore the applica- tion is to enforce payment of an instalment which the decree directs to be paid at a specified date (the date so specified.)) -----
