Privy Council Appeal No. 115 *of* 1919.
Patna Appeal No. 48 *of* 1917.

Maharaja Sir Rameshvar Singh Bahadur - - - *Appellant*

v.

Homeshvar Singh - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH NOVEMBER, 1920.

Present at the Hearing:

VISCOUNT CAVE.
LORD MOULTON.
LORD PHILLIMORE.

[*Delivered by* LORD PHILLIMORE.]

This is an appeal from the High Court at Patna, which has reversed a decree of the Subordinate Judge of Bhagalpore. The question is whether the appellant is entitled to execute a decree dated the 27th July, 1906, or whether his right to do so is barred by the Limitation Act of 1908. The only provision of that Act which can apply is Article 182 of the schedule, which prescribes three years from the date of a decree or order of a Civil Court as the time within which it must be enforced, subject to exceptions which do not affect the present case.

It appears that a former Maharaja of Darbhanga, who was the grandfather and predecessor in title of the appellant, made a *Babuana* grant of land to his younger son on condition that the Government revenue and cesses to which it was subject should be regularly provided for payment over to the Government. This younger son died leaving two sons of his own, Ekradeshvar and Janeshvar, who lived jointly for some time and then divided the property. Default in the payment to be provided having been made, the then Maharaja, who was the elder brother of the appellant, brought a suit in 1898 to recover the arrears due. During the pendency of this suit the appellant succeeded as Maharaja, and an arrangement was come to under which the shares and liabilities of the two younger brothers in the *Babuana* were defined. According to this arrangement the share in the *Babuana* of the defaulter was to be in the first place liable for sale to realise the amount due. In 1905 the appellant brought another suit against Janeshvar for Rs. 18,738 : 15 : 6 due for arrears. Ekradeshvar was made a party. During the pendency of this

suit Janeshvar died, in April 1906, and a dispute arose between his widow and Ekradeshvar as to the succession to Janeshvar's share. In May 1906 the appellant applied to have Ekradeshvar's name substituted as defendant for that of Janeshvar, on the footing that, according to the Kulachar or custom, the former had succeeded to him in the property in question. In May 1906 an order was made to that effect, but the widow, who was in possession and claimed to be entitled, was declared not to be bound by any decree passed in the suit, nor was her interest to suffer thereby. Ekradeshvar having admitted the principal claim of the appellant, on the 27th July, 1906, a decree was made against him for the sum above mentioned and costs. The decree did not provide that he was to be personally liable, but declared that the decretal amount was to be realised by the sale of the property belonging to Janeshvar and left in Ekradeshvar's possession, but the appellant was not enabled to make any portion of the property of Janeshvar which was in the possession of any one else liable for the decree.

On the death of Janeshvar, in April 1906, his widow had obtained possession of his share of the *Babuana* property. A suit was brought in the Civil Court by Ekradeshvar against the widow, claiming that, in accordance with the custom, the property was his. On the 15th August, 1908, the Subordinate Judge decided in his favour. But on the 2nd August, 1909, the High Court at Calcutta (execution having been stayed meantime) reversed this judgment. Ekradeshvar then appealed to the King in Council, and this Board, on the 22nd July, 1914, reversed the judgment of the High Court and decided in his favour. The property in question had remained throughout in the possession of the widow, and it was not until after the judgment of the Privy Council that Ekradeshvar obtained possession.

On the 13th April, 1908, the appellant had presented a petition for the execution of the decree of the 27th July, 1906, against Ekradeshvar, but the latter had objected, on the ground that no part of Janeshvar's estate had come into his hands, and that no property in his possession, except what had belonged to Janeshvar, could be attached. The Subordinate Judge allowed this objection on the 23rd January, 1909. After the High Court had delivered judgment in favour of the widow, in August 1909, the appellant further endeavoured to enforce the decree of 1906 against her, but on the 21st November, 1910, the application was dismissed, on the ground that the decree was not binding on the widow, and the High Court affirmed this dismissal.

In December 1914, after the decision of the Privy Council in favour of Ekradeshvar, the appellant applied to the Subordinate Judge for the enforcement of the decree of 1906 against him, but was met by a plea that the claim was barred by limitation. This plea raised the question that is now before their Lordships. The Subordinate Judge decided the point in favour of the appellant, on the ground that the decree had then become capable of execution for the first time. Ekradeshvar appealed to the High Court at Patna, which held that there was no inherent defect in the decree which prevented the appellant from applying to enforce

his claim so soon as, in August 1908, the Subordinate Judge had decided in Ekradeshvar's favour, and that he might then have proceeded against Ekradeshvar alone or the widow with him.

Since the hearing in the High Court Ekradeshvar has died and is now represented by his sons, the respondents in the present appeal by the Maharaja to the Privy Council.

Their Lordships are unable to concur in the view taken by the High Court at Patna when it thus reversed the decision of the Subordinate Judge. They are of opinion that, in order to make the provision of the Limitation Act apply, the decree sought to be enforced must have been in such a form as to render it capable in the circumstances of being enforced. A decree so limited in its scope as that of the 27th July, 1906, under consideration cannot, in their opinion, be regarded as being thus capable of execution. Under that decree Ekradeshvar was not made personally liable, nor did it extend to any portion of the estate of Janeshvar which was not in his hands. None of the estate came to his hands until after the decision of the Board in 1914. As to the ability of the appellant to have applied to enforce his claim when in August 1908 the Subordinate Judge decided that Ekradeshvar was entitled to recover possession against the widow, it is enough to point out that the High Court at Calcutta promptly stayed execution of this decision, and later on reversed it. Neither can their Lordships accede to an argument put forward by Counsel for the respondents that the decree against Ekradeshvar could be treated as a decree against the estate of Janeshvar, still less as one against that estate though not in the hands of Ekradeshvar. Their Lordships think that the appellant has not been shown to have been responsible for the delay which has taken place in giving effect to his title, which did not become complete until after the decision of this Board in 1914. They are of opinion that when the Limitation Act of 1908 prescribes three years from the date of a decree or order as the period within which it must be enforced, the language, read with its context, refers only, as they have already indicated, to an order or decree made in such a form as to render it capable in the circumstances of being enforced. This interpretation appears to them not only a reasonable one in itself, but to be in accordance with the previously expressed opinion of this Board in *Shaik Kamar-ud-din Ahmad* v. *Jawahur Lal* (L.R. 32 I.A. 102). The case may also be put in this way. The decree against Ekradeshvar could not have been executed without a further application. This application could not have been made till Ekradeshvar had come into possession of the property of Janeshvar, and by Article 181 in the Schedule to the Limitation Act, the period of limitation for making an application is three years from the time when the right to apply accrues.

For these reasons their Lordships will humbly advise His Majesty that the judgment of the High Court at Patna should be reversed and that the decree of the Subordinate Judge of Bhagalpore of the 19th January, 1916, should be restored. The appellant will have his costs of this appeal and of the appeal to the High Court of Patna.

In the Privy Council.

MAHARAJA SIR RAMESHVAR SINGH
BAHADUR

v.

HOMESHVAR SINGH.

DELIVERED BY LORD PHILLIMORE

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2.

1920.