

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Mina Komwari v. Juggut Setani, from the
High Court of Judicature, at Fort William,
in Bengal, delivered 30th June 1883.*

Present :

LORD WATSON.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

The question in this Appeal is whether the execution of a decree obtained in the Court of the Principal Sudder Amin of Moorshedabad, by Dhunput Singh against Gopal Chand, is barred by the law of limitation. The Appellant is the holder of the decree by assignment from Dhunput Singh. The Respondent is the mother of Gopal Chand, and on the death of his minor son Gopi Chand succeeded as the heir of her grandson to the possession of the property which has been attached in execution. The decree was obtained on a mortgage bond, dated the 25th Cheyt 1273 (6th April 1867), for Rs. 9,995, which sum was to be repaid with interest, at the rate of 2 per cent. per mensem, in the month of Jeyt 1274. The bond contained an agreement that it should be specially registered under the provisions of Section 53 of Act XX. of 1866. It was presented for registration on the 7th of June 1867, and was registered and the agreement recorded on the 19th, the time fixed for payment having expired on the 13th of the same month.

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Act XX. of 1866 provides (Sec. 52) that,—

“ Whenever the obligor and obligee of an obligation shall agree that, in the event of the obligation not being duly satisfied, the amount secured thereby may be recorded in a summary way, and shall at the time of registering the said obligation apply to the registering officer to record the said agreement, the registering officer after making such inquiries as he may think proper shall record such agreement at the foot of the endorsement and certificate required by Sections 66 and 68 of the Act, and such record shall be signed by him and by the obligor, and shall be copied into the register book, and shall be *prima facie* evidence of the agreement.

Within one year (Sec. 53) from the date on which the amount becomes payable, or where the amount is payable by instalments within one year from the date on which any instalment becomes payable, the obligee of any such obligation registered with such agreement as aforesaid, whether under the said Act, No. XVI. of 1864, or under this Act, may present a petition to any Court which would have had jurisdiction to try a regular suit on such obligation for the amount secured thereby, or for the instalment sought to be recovered.

On production in Court of the obligation and of the said record signed as aforesaid, the petitioner shall be entitled to a decree for any sum not exceeding the sum mentioned in the petition, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by the Court.

Such decree may be enforced forthwith under the provisions for the enforcement of decrees contained in the Code of Civil Procedure.”

On the 9th of July 1867, Dhunput Singh obtained a decree under this Act, in the following terms:—“ That the suit be decreed, and the
“ Plaintiff do recover the amount of the claim
“ with interest during the pendency of the suit,
“ and costs of the Court, together with interest
“ up to the date of realization at the rate of one
“ rupee per mensem from the property pledged
“ and the Defendant.” The latter part of this decree is not authorized by the Act, but it will not be material to consider this.

Gopal Chand died some time before May 1870, but at what precise time does not appear in the proceedings. He left a minor son, Gopi Chand, and on the 10th of May 1870, the first application was made for execution of the decree. This was

made by Dhunput Singh to the Court of Moorshedabad against himself, described as guardian and surburakar on behalf of Set Gopi Chand, minor, son and heir of Set Gopal Chand. It does not appear how he came to be guardian, except that in a petition of the Respondent to the Court of Nuddea, which will be afterwards referred to, it is said that he was, according to the arrangement made by Gopal Chand, appointed guardian of Gopi Chand. On the 11th of May it was ordered that the petition be registered, and the decree holder do deposit the cost of service of notice on the judgment debtor within seven days. This was merely a formal order, as Dhunput Singh was himself the person on whom the notice would be served.

It will be convenient now to consider what was the effect at this time of the law of limitation.

By Act XIV. of 1859, Sect. 20, it is enacted—

“ That no process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court unless some proceedings shall have been taken to enforce such judgment, decree, or order, or to keep the same in force within three years next preceding the application for execution.”

And by Section 22,—

“ No process of execution shall issue to enforce any summary decision or award of any of the Civil Courts not established by Royal Charter, or of any revenue authority, unless some proceeding shall have been taken to enforce such decision or award, or to keep the same in force within one year next preceding application for such execution.”

The Court of Moorshedabad was not established by Royal Charter. Their Lordships are of opinion that Section 20 was intended to apply to decisions, whether they might be called judgments, decrees, or orders, made in a regular suit, and Section 22 to all other decisions. Act XX. of 1866 does, indeed, say that the petitioner shall be entitled to a *decree*, and that such *decree* may be enforced under the provisions for the enforce-

ment of decrees contained in the Code of Civil Procedure; but Section 52 says that the amount secured by the obligation may be recovered in a *summary* way. Summary decision means a decision arrived at by a summary proceeding, which this certainly is, and the decision being called a decree does not make any difference in this respect. It was held by the High Court at Calcutta, in *Ram Dhun Mundul v. Ramessur Bhattacharjee*, 11 W.R. 117, 2 Bengal L.R. 235, that the words "summary decision or award" meant a decision of the Civil Courts not being a decree made in a regular suit or appeal. This construction appears to have been adopted by the Indian Legislature in the Limitation Act, No. IX. of 1871, in Art. 166 of the second Schedule, where one year is stated as the period of limitation for the execution of a decision (other than a decree or order passed in a regular suit or an appeal) of a Civil Court or an appeal. Here the exception shows that the word "decision" is used as including a decree. Therefore the first application for the execution of this decree was barred by the law of limitation.

It remains to be seen whether in the subsequent proceedings the Respondent has become estopped from relying upon this. They may be briefly stated. On the 20th of July 1870 Dhunput Singh applied to the Moorshedabad Court that the decree might be executed in the Court of the District of Nuddea. The Court, advertng to the fact that the decree holder was himself the guardian of the minor judgment debtor, on the 3rd of August 1870 made an order that he "do recover the money due to him" from the estate of the minor, with the permission of the Judge, or else by appointing "another guardian on behalf of the minor, do take proper steps to carry on this execution" proceeding in his presence within ten days."

On the 29th of August 1870, by an order reciting this order, and that no steps had been taken, it was ordered that the case be struck off for default. On the 23rd July 1873, Dhunput Singh and the Appellant presented petitions to the Moorshedabad Court stating that the decree, along with other decrees, had been sold by Dhunput Singh to the Appellant for Rs. 1,000, and praying that she might be substituted for him, and the amount of the decree ordered to be paid to her. The Appellant is the wife of Dhunput Singh, but this was not stated in the petitions. The object seems to have been to avoid complying with the order of the 3rd of August 1870. On the 28th of August the substitution was ordered. On the 12th of December 1873 it was ordered "that for want of prosecution " on the part of the decree holder this case be " struck off for the present." The next step was an application on the 22nd of September 1874 on the part of the Appellant for execution of the decree in the district of Nuddea, which was ordered on the 7th of December 1874. On the 9th of April 1875 this application was registered in the Nuddea Court, and, on the 4th of August 1876, it was struck off in default. On the 25th of January 1878 another application for execution was made to the Nuddea Court. Gopi Chand, the minor, died in November 1878. The application to the Court, which became necessary on his death, either under Sect. 210 of Act VIII. of 1859, or Sect. 234 of Act X. of 1877, the new Civil Procedure Code, whichever might, according to Sect. 3 of Act XII. of 1879, be applicable, was not made. Notwithstanding this omission the execution proceedings appear to have been continued, for there is in the proceedings a petition, dated the 8th of December 1879, of the Respondent by Umanath Ghosal,

described as pleader for the Petitioner, stating that the decree holder had executed the decree against her, got her property attached, and that day had been fixed for the sale, and praying that two months' time might be sanctioned, and, the attachment subsisting, the 8th of February next might be fixed for the sale. This was assented to by the pleader for the Appellant, and an order was made accordingly. On the 9th of February 1880 another petition of the Respondent was presented by Nobin Chunder Sircar, another pleader, stating that the decree holder had consented to allow time up to the 1st of March, and praying that that day might be fixed for the sale, which was ordered with the consent of the pleader for the decree holder. On the 8th of March part of the attached property was sold, and the petition of the Respondent to the Nuddea Court to set aside the execution having been rejected on the 6th of March, and an order made for a further sale on the 8th of May, the Respondent, on the 3rd of May 1880, petitioned the Moorshedabad Court to stay the sale, and adjudicate upon the objections (among others which need not be mentioned) that the execution of the decree was barred by limitation, and the proceedings in execution had been without jurisdiction. And she denied that she knew of the proceedings. The Appellant, in his petition in answer, relied upon the petitions of the 8th of December and 9th of February. The Subordinate Judge of Moorshedabad rejected this petition, and there was an appeal to the High Court. That Court applied to the case the Limitation Act, IX. of 1871, Art. 167 of which gives, in the case of a decree or order of a Civil Court not established by Royal Charter, three years from the date of applying to enforce or keep it in force as the period of limitation, and held that the question

was whether, within three years before the 23rd of July 1873, anything had been done to enforce or keep in force the decree. They allowed the appeal, on the ground that no application for execution had been made within three years; but, it having since been decided by this Committee, in *Mungal Pershad Ditchit* and another *v. Grija Kant Lahiri Chowdhry*, Law R., 8 I. A., 123, that, as regards suits instituted before the 1st of April 1873, all applications in them are excluded from the operation of Act IX. of 1871, it is admitted that the decision cannot be sustained on that ground. It does not seem to have been considered whether Art. 166 was not applicable. It has been held to be applicable to such a case by the High Court of Bombay, Indian L. R., 5 Bombay, S. 673.

Their Lordships observe that, although the Respondent denied any knowledge of the petitions presented in her name, and the Appellant relied upon them, no evidence was given that they were authorized by her, and further, that the proper steps consequent upon the death of Gopi Chand not having been taken in the Moorshedabad Court, the Nuddea Court had no authority to execute the decree against the Respondent. The petitions are of a very suspicious character, and their object appears to have been to have a sale without proclamation. The proceeding in the Nuddea Court against the Respondent was altogether irregular, if it was not without jurisdiction, and the petitions to postpone the sale cannot be treated as an estoppel. They contain no admission that the decree could be legally executed against the Respondent, and are not within the description of an estoppel given in the Indian Evidence Act, 1872, Sect. 115 and following sections.

Their Lordships will therefore humbly advise Her Majesty that the decree of the High Court,

by which the order of the Lower Court was set aside and the application for execution dismissed, should be affirmed, and this appeal be dismissed, and the costs will be paid by the Appellant.
