

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Shaikh Kamar-ud-din Ahmad v. Jawahir Lal
and another, legal representatives of Thakur
Prasad, from the High Court of Judicature
for the North-Western Provinces, Allahabad ;
delivered the 24th March 1905.*

Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON. — — — — —

[*Delivered by Sir Arthur Wilson.*]

The question raised by this Appeal is whether certain proceedings in execution were barred by limitation as falling under Article 179 of the second Schedule to the Indian Limitation Act, 1877.

The material facts are few. On the 11th April 1883 Thakur Prasad, now represented by the Respondents, obtained a decree upon a mortgage bond against the Appellant. On the 29th August 1885 the decree-holder applied for execution, and on the 5th January 1886 that application was struck off the list by consent.

On the 24th August 1888 a second application for execution was made, and notwithstanding objections by the judgment debtor, an Order was made on the 18th December 1888 that the execution should proceed ; and other steps followed which appear on the Order sheet. On the 29th November 1889 an Order was made to the effect that, the property to be sold being ancestral, the case should be struck off the

file, and the papers transferred to the Court of the Collector for the completion of the sale proceedings.

On the 23rd December 1889 there appears another Order:—"In this case the decree-holder "has not up to this date deposited R. 1 on "account of the order for sale by auction, and "the copy of the decree to be sent to the "Collector's Court. Therefore it is ordered "that in default of prosecution on the part "of the decree-holder the record be not sent "to the Collector's Court for taking the sale "proceedings."

While these execution proceedings were pending, and at an early stage of their progress, on the 15th February 1889 an Appeal was brought in the High Court against the original Order of the 18th December 1888, under which the execution proceeded. The High Court on the 7th January 1890 allowed that Appeal on grounds which it is not now necessary to notice. On a further Appeal to Her late Majesty in Council that decision of the High Court was reversed, the Judgment of this Board being delivered on 24th November 1894, and embodied in an Order in Council of the 12th December 1894.

The application now in question was made on the 23rd November 1897. It asked by its terms that the sums due by virtue of the Decree be "realised by sale of the mortgaged property," that "the execution case instituted on the 24th "August 1888, which was sent to the Collector's "Court on the 23rd December 1887" (this ought apparently to be 29th November 1889) "may be revived, and it may be sent to the "Collector's Court, and by issue of a warrant "of arrest."

It was objected that this application was barred by limitation; and the Subordinate

Judge gave effect to the objection. The High Court, on Appeal, dissented from this view, holding that the present application is "not a fresh application but one praying the Court to revive the suspended Order and permit it to be pushed through to completion." The Appeal now before their Lordships is against that decision of the High Court.

The learned Counsel for the Appellant contended that the former execution proceedings were finally disposed of and came to an end by the Orders of the 29th November and 23rd December 1889, or one of them, and that the present application could only be regarded as one for a fresh execution, and therefore was barred under Article 179. But the first of those Orders was in aid of the execution. As to the second Order there is nothing to show on whose application or in whose presence or under what circumstances it was made, and the learned Judges of the High Court have shown reasons for doubting its regularity. But assuming it to have been perfectly regular, it was in no sense a final order. If the appeal to the High Court against those proceedings and the Judgment of that Court and the Appeal to Her Majesty in Council rendered necessary by that Judgment had not intervened to interrupt the course of the execution, there was nothing in the terms of the Order to preclude the decree-holder from coming again to the Court, satisfying the conditions indicated in the Order, and obtaining the transmission of the case to the Collector's Court.

Their Lordships are of opinion that the execution proceedings commenced by the petition of the 24th August 1888 were never finally disposed of, and that the application now under consideration was in substance, as well as in

form, an application to revive and carry through a pending execution, suspended by no act or default of the decree-holder, and not an application to initiate a new one.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed. The Appellant will pay the costs.
