

1880  
AUG. 30.  
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APPEL-  
LATE  
CIVIL.  
—  
3 B. 238.

It is admitted by the plaintiff's pleader that the Subordinate Judge was in error in holding that the plaintiff, as heir of Gulam Rasul, would be entitled to claim one-half of his property. As Gulam Rasul left a widow and three sons, the plaintiff, who now claims as heir of Gulam Rasul only, would be entitled to one-third of seven-eighths, or to seven twenty-fourths of any property liable to division.

We, accordingly, amend the Subordinate Judge's decree, and award to the plaintiff seven twenty-fourths of the second house mentioned in the plaint; and the sum of Rs. 140, as his share of Gulam Rasul's moveable property. We also award to him Rs. 301 out of the costs in suit No. 141 of 1868, which are now in deposit in the Subordinate Judge's Court.

The parties will bear their own costs of these appeals; but the plaintiff must pay the Court fees which would have been paid by him if he had not been permitted to appeal as a pauper.

It would be well if the parties were to agree to the payment by the defendant's sons to the plaintiff of such sum of money as is equivalent to the share in the house awarded to the latter. Should they fail to do so, and should it be found impracticable to partition the said house, without destroying its convenience as a dwelling-house, the house should be sold, and seven twenty-fourths of the purchase-money, after deducting the costs of the sale, should be paid to the plaintiff.

*Decree amended.*

5 B. 245.

[245] APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice F. D. Melvill.*

ANANDRAV CHIMUJI AVATI, (*Plaintiff*) v. THAKARCHAND,  
(*Defendant*). \* [7th September, 1880.]

*The Civil Procedure Code (Act X of 1877), s. 230—Decree—Application for execution—Limitation.*

On the 1st June 1880, several decree-holders applied to the Subordinate Civil Court of Parner for execution of their decrees. They had taken out execution several times previously, the date of their last preceding applications being 1st June 1877. The Subordinate Judge was of opinion that the applications were barred under the last clause of s. 230 of the Civil Procedure Code, Act X of 1877. On his referring the cases to the High Court.

*Held* that the applications were not barred, inasmuch as the previous applications for execution had not been made under s. 230 of Act X of 1877, that Act not being then in force.

[F., 9 C. L. R. 297 (299).]

ON the 1st June, 1880, the decree-holders in this and nine other cases applied to the Court of the Second Class Subordinate Judge of Parner, in the district of Ahmednagar, for execution of their decrees. They had taken out execution several times previously, the date of their last preceding applications being the 1st June, 1877. The Subordinate Judge (Rao Sahab N. G. Phadke) was of opinion that the present applications were barred under the last clause of s. 230 of the Civil Procedure Code, Act X of 1877. He, however, referred the cases to the High Court under s. 617 of that Act.

\* Civil Reference, No. 7 of 1880.

There was no appearance of parties in the High Court.  
The following is the judgment of the Court:—

JUDGMENT.

WESTROPP, C. J.—The Subordinate Judge states that the most recent application for execution, in the suits which he enumerates, was made on the 1st of June 1877.

It follows thence that no application, with the exception of the application, the subject of this reference, has as yet been made for execution under Act X of 1877, as that Act did not come into force until the 1st of October 1877.

The third passage in s. 230 of the same Act runs thus:—

“Where an application to execute a decree for the payment of [246] money, or delivery of other property, has been made *under this section*, and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely), &c., &c.” Section 230 is not by any means easy of construction, but we are of opinion that the above-quoted passage governs the whole of what follows in that section, and therefore that, inasmuch as no previous application for execution has been made, under that section, in the suits mentioned by the Subordinate Judge, neither the twelve-years’ bar, nor the three-years’ bar, as laid down in that section, is applicable to the present application for execution in those suits, and hence that application is not barred by s. 230.

5 B. 246=5 Ind. Jur. 534.

APPELLATE CIVIL.

*Before Sir Michael, Roberts Westropp, Kt., Chief Justice and  
Mr. Justice Nanabhai Haridas.*

GOVIND SHANBHOG, DECEASED, BY HIS SON AND HEIR,  
VANKATESH (Original plaintiff), Appellant v. APPAYA  
(Original defendant), Respondent.\* [29th November, 1880.]

*Limitation Act (IX of 1871), sch. II, art. 167—Decree—Application to enforce decree.*

G obtained a decree against the defendant on the 29th November 1867, and applied for execution of it on the 23rd July 1870. After G’s death, his son made an application on the 10th March 1871 praying for substitution of his name in the place of his deceased father, and that the money due under the decree should be recovered and paid to him as heir of the original plaintiff. On the 3rd January 1874, and several times subsequently, the son applied for execution of the decree, his last application being in 1878. Both the lower Courts held that the application of the 10th March 1871 was not an application “to enforce or keep in force the decree”; that the application of the 3rd January 1874 was therefore barred by limitation, having been made more than three years after the first application of the 23rd July, 1870, and that, consequently the subsequent applications were barred. On appeal to the High Court.

*Held* that the application of the 10th March 1871 was an application “to enforce the decree”, and fell within art. 167 of sch. II of Act IX of 1871.

The High Court accordingly reversed the orders of the Courts below and directed that the decree should be executed, as prayed by the application of the 3rd January 1874.

[R., 19 B. 261 (268).]

[247] THIS was a second appeal from the decision of A. W. Walker, Acting Judge of the District Court of Kanara, in miscellaneous appeal

\* Second Appeal No. 356 of 1880.