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IN RE
RĀMDĀS
BRIJ
GOVANDĀS.

The petitioner made the present application to the High Court under its extraordinary jurisdiction, and obtained a *rule nisi*.

The rule now came on for argument.

No one appeared to show cause.

Goverdanrām Mādharām supported the rule.—There was no necessity to produce a certificate of heirship under Act XXVII of 1860, in order to entitle Devkábái, who was the undisputed sole legal representative of her deceased husband, to sue. See *Lachmin v. Gangá Prasád*⁽¹⁾; *Shivrām Bhairáv v. Sheik Abdulla*⁽²⁾.

NĀNĀBHĀI HARIDĀS, J.—The production of a certificate under Act XXVII of 1860 is not a condition precedent to the institution of a suit by a person claiming to be the legal representative of a deceased creditor. If the Subordinate Judge is of opinion that the payment of the debt is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled, he is at liberty to make a decree in favour of the plaintiff, if the claim is proved, without insisting upon the production of a certificate by Devkábái under Act XXVII of 1860. If, on the other hand, he is of opinion that there is a reasonable doubt as to the person entitled to the payment, he may then, before making his decree, require the plaintiff to obtain a certificate under that Act. The attention of the Subordinate Judge is directed to *Shivrām Bháiráv v. Sheik Abdulla*⁽²⁾. The order of the Subordinate Judge is reversed, and the case is sent down for trial.

Rule made absolute.

(1) I. L. R., 4 All., 485.

(2) Printed Judgments for 1884, p. 218.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

VENKATRAV BĀPU AND OTHERS, (ORIGINAL PLAINTIFFS), APPELLANTS,
v. BIJESING VITHALSING AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Decree—Execution—Limitation—Revival—Act XV of 1877, Sec. 19

On 20th July, 1871, the plaintiffs obtained a decree against the defendants for the sum of Rs. 4,083 and for the sale of their mortgaged property. On the 16th

* Second Appeal, No. 81 of 1884.

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July, 1877, the plaintiffs applied for execution. The application was granted, the property was attached, and the sale was fixed for the 30th November, 1878. On the 18th November, 1878, one of the defendants applied for a postponement of the sale until harvest time, when he said he would pay the amount of the decree. The sale was accordingly, with the plaintiffs' consent, postponed to the 31st May, 1879. On the 13th June, 1879, the plaintiffs informed the Court that negotiations were proceeding between themselves and the defendants for the settlement of the decree, and prayed that their application of the 16th July, 1877, might be struck off; adding that, if the negotiations failed, they would present a fresh application. The negotiations for settlement proved abortive, and the case being one to which the Dekkhan Agriculturists' Relief Act (XVII of 1879) applied, the plaintiffs took steps to obtain a conciliator's certificate. These proceedings occupied the period from 3rd July, 1880, to the 19th January, 1881. The certificate was granted on the 1st December, 1881. On the 13th December, 1881, more than three years after the date of the previous application, *viz.*, 16th July, 1877, the plaintiffs made the present application for execution. The defendants contended that it was barred by limitation.

Held, that the application was not barred. As it was understood between the parties when the application of the 16th July, 1877, was struck off on the 13th June, 1879, that, if negotiations failed, a fresh application should be presented; the application of the 13th December, 1881, was to be regarded as an application for the revival of the old execution proceedings. But, in any case, the application by the defendant, of the 18th November, 1877, for a postponement of the sale of his property when he promised to pay the amount of the decree, was an admission of the plaintiff's right to execute the decree within the contemplation of section 19 of the Limitation Act (XV of 1877), and created a new period of limitation, which would ordinarily have expired on the 18th November, 1881. As, however, by the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879) the period during which the conciliator was endeavouring to effect an amicable settlement, *viz.*, from 8th July, 1880, to 1st December 1881, would have to be deducted, the present application was within time.

THIS was a second appeal from the decision of M. H. Scott, Judge of Ahmednagar, confirming an order of the Subordinate Judge of Nevása.

On the 20th July, 1871, the plaintiffs obtained a decree against the defendants for payment of Rs. 4,083 by sale of their mortgaged property.

On the 17th of July, 1874, execution was first applied for.

On the 16th of July, 1877, execution was applied for again; and the property having been attached, the sale was fixed for the 30th of November, 1878.

On the 18th of November, 1878, one of the defendants applied for a postponement of the sale until harvest time, when he said

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he would pay the amount of the decree. With the consent of the plaintiffs the sale was accordingly postponed to the 31st of May, 1879.

On the 13th of June, 1879, the plaintiffs informed the Court that negotiations were proceeding between themselves and the defendants for the settlement of the decree, and prayed that their application of the 16th of July, 1877, might be struck off,—adding that, if the negotiations failed, they would present a fresh application.

The negotiations for settlement between the parties having come to nothing, and the case being one to which the Dekkhan Agriculturists' Relief Act (XVII of 1879) applied, the plaintiffs took steps to obtain a conciliator's certificate. These proceedings occupied the period between 3rd of July, 1880, and the 19th of January, 1881, and the conciliator's certificate was granted on the 1st of December, 1881.

On the 13th December, 1881,—that is, more than three years from the date of the last application for execution, (16th July, 1877,)—the plaintiffs made their present application for execution.

Both the lower Courts rejected the application as time-barred.

The judgment-creditors thereupon appealed to the High Court.

Ghanashám Nilkanth Nádkarni for the appellants.—Our application is not time-barred. The petition of the debtors to stay the sale constituted an acknowledgment of liability under section 19 of Act XV of 1877, and a new period of limitation began to run from the date of the acknowledgment—*Rám Coomár Kur v. Jakur Ali*⁽¹⁾; *Fateh Muhammad v. Gopál Dás*⁽²⁾. The present application merely revives the old proceedings, which were struck off on the condition that they were to be revived if necessary—*Kalyánbhái Dipchand v. Ghanashamlál Jadunáthji*⁽³⁾ and *Issurree Dasse v. Abdool Khalak*⁽⁴⁾. The appellants are also entitled to a deduction of the time taken up before the conciliator. The application is, therefore, within time.

Dáji Abáji Khare for the respondents.

(1) I. L. R., 8 Calc., 716.

(3) I. L. R., 5 Bom., 29.

(2) I. L. R., 7 All., 424.

(4) I. L. R., 4 Calc., 415.

SARGENT, C. J.—We think that, as it was understood between the parties when the *darkhást* of 16th July, 1877, was struck off on the 13th June, 1879, that, if negotiations failed, they should present a fresh *darkhást*, the *darkhást* of 13th December, 1881, must be regarded as an application for the revival of the old execution proceedings—see *Kalyánbhái Dipchand v. Ghanasham-lal Jadunáthji* ⁽¹⁾ and *Issurrèe Dasse v. Abdool Khalak* ⁽²⁾.

But, in any case, we think that the application, by defendant, of 18th November, 1878, for stay of the sale of his property until harvest time, when he said he would pay the amount of the decree, was an admission of the plaintiffs' right to execute the decree, within the contemplation of section 19 of the Limitation Act (XV of 1877), and created a new period of limitation, which would have ordinarily expired on 18th November, 1881. However, by section 48 of the Dekkhan Relief Act XVII of 1879, as amended by section 10 of Act XXIII of 1881, which came into force on 26th October, 1881, the period during which the conciliator was endeavouring to effect an amicable settlement between the parties under section 39 of Act XVII of 1879—*viz.*, from 8th July, 1880, to 1st December, 1881—would have to be deducted, which would bring the present application of 13th December, 1881, well within time.

We must, therefore, discharge the order of the District Judge, and direct the Subordinate Judge to proceed with the appellant's application for execution. Appellant to have his costs throughout.

(1) I. L. R., 5 Bom., 29.

(2) I. L. R., 4 Calc., 415.

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