

The respondents' pleader admitted the correctness of this view, but urged that as the two *darkhást*s of 1888 and 1890 covered the same ground of relief, the dismissal of the first *darkhást* barred the entertainment of the second *darkhást*, except in the matter of the costs. We cannot accept this contention of the respondents. Apparently the first *darkhást* was not proceeded with, because the respondents in the decree of the District Court had preferred a second appeal from that decree. Both parties must be held equally bound or equally benefited by the result of this second appeal, and if the original respondents would have become entitled to execute the decree of the High Court in case it had reversed the decision of the lower Courts, we do not see any reason which prevents the present appellant from claiming his right to execute the decree of the High Court in his favour. The proceedings of 1888 had no reference to that decree, and the order of dismissal passed thereon had, therefore, no operation as regards the appellant's right to seek execution of the decree in his favour. If the appellant has a right to execute this decree, there is admittedly no room for the objection about limitation.

We accordingly reverse the order of dismissal passed by the lower appellate Court, and direct the Court of the Subordinate Judge at Párner to proceed with the execution of the High Court's decree. All costs on respondents.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

KESHAVLA'L BECHAR (ORIGINAL DEFENDANT), APPELLANT, v. PITA'M-BERDA'S TRIBHUVANDA'S (ORIGINAL PLAINTIFF), RESPONDENT.*

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March 12.

Decree—Execution—Limitation Act (XV of 1877), Art. 179, Cl. 4—Step in aid of execution—Civil Procedure Code (Act XIV of 1882), Sec. 230—Application for execution.

A obtained a decree against B upon an award, which directed that the sum of Rs. 1,840 awarded to A should be recovered with interest by attachment of the mortgaged property and not by sale, except in case of its being held that the property was not liable to attachment.

* Second Appeal, No. 582 of 1893.

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On 12th October, 1874, A applied for execution of the decree, and thereupon the mortgaged property was attached and placed under the management of the Collector, who paid the proceeds from time to time into Court till 1891. The Court paid the proceeds to A on 25th February, 1876, 5th February, 1877, and 7th October, 1877.

In 1878, A being dead, his son C applied to the Court to be made a party to the record and to be allowed to continue the execution proceedings.

In 1880 C applied to the Court under section 248 of the Code of Civil Procedure (Act XIV of 1882) to issue notice to D, as B's heir and legal representative, to show cause why the decree should not be executed against him. D did not appear, and an *ex-parte* order was passed for execution to proceed as against him.

The Collector continued in management till 5th February, 1892, when the application (*darbhást*) of 1874 was withdrawn and a fresh application was made by C on 12th June, 1892.

D resisted on the ground that the application was time-barred under article 179 of the Limitation Act (XV of 1877).

Held, that the application was not barred by limitation, as the execution proceedings under the first *darbhást* of 1874 were continuously going on during the whole period that the Collector's management lasted under the orders of the Court, and as each year's payment received by the decree-holder was but a partial step in aid of execution of the decree.

Held, further, that the applications made by C in 1878 and 1880 were also "steps in aid of execution" within the meaning of article 179, clause 4 of the Limitation Act (XV of 1877).

SECOND appeal from the decision of Gilmour McCorkell, District Judge of Ahmedabad, in Appeal No. 404 of 1892.

The sole question argued at the hearing of the appeal was whether the plaintiff's *darbhást* or application for execution of a decree was barred by limitation.

On the 26th January, 1874, one Tribhuvan Jethá obtained a decree in terms of an award, which directed that the defendant Bechar should pay him the sum of Rs. 1,840; that the said sum was not to carry interest if paid within one year, and that after that period it was to be recovered with interest at 6 per cent. per annum, by attachment of the mortgaged property, which property was, however, not to be sold unless it was held that it was not liable to attachment.

On the 12th October, 1874, Tribhuvan applied for execution of this decree. The mortgaged property was attached and placed under the management of the Collector, who from time to time paid the income into Court up to 1891.

Tribhuvan received payments from the Court in part satisfaction of the decree on 25th February, 1876, 5th February 1877, and 7th October 1877, respectively.

In January, 1878, Tribhuvan having died, his son Pitámberdás applied to the Court to be made a party on the record, and to have the money levied and paid to him.

In 1880, Pitámberdás applied to the Court under section 248 of the Code of Civil Procedure (Act XIV of 1882), to issue notice to the present defendant, as Bechar's heir and legal representative, to show cause why the decree should not be executed against him. On his application an *ex-parte* order was passed that execution should proceed as prayed for.

The Collector's management accordingly continued till 5th February, 1892, when the *darkhást* of 1874 was withdrawn. The present *darkhást* was filed on 12th June, 1892.

The defendant resisted this *darkhást* on the ground that it was barred by limitation both under section 230 of the Code of Civil Procedure (Act XIV of 1882) and under article 179 of the Limitation Act (XV of 1877).

The Court of first instance held that it was barred under article 179 of the Limitation Act (XV of 1877).

On appeal the District Judge was of opinion that the *darkhást* was not barred either under section 230 of the Civil Procedure Code or under article 179 of Act XV of 1877. He, therefore, reversed the first Court's order and directed execution to issue.

Against this decision the present appeal was preferred to the High Court.

Govardhanráam M. Tripáthi for appellant.

Bháishankar Nánábhái for respondent.

The following authorities were referred to in argument:—*Prabhácararow v. Potánnah*⁽¹⁾; *Chunder Coomár Roy v. Bhogobutty*⁽²⁾; *Unnoda Persád Roy v. Sheikh Koorpan Ally*⁽³⁾; *Hem Chunder Chowáhray v. Brojo Soondary Debee*⁽⁴⁾; *Fúzal Imám v. Metta*

(1) I. L. R., 2 Mad., 1.

(2) I. L. R., 3 Calc., 235.

(3) I. L. R., 3 Calc., 518.

(4) I. L. R., 8 Calc., 89.

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Singh⁽¹⁾; *Gunga Pershád Bhoomick v. Debi Sundari Dabia*⁽²⁾; *Toree Mahomed v. Mahomed Mabood Bux*⁽³⁾; *Jibhai Mahipati v. Parbhu Bāpu*⁽⁴⁾; *Jamnádás v. Lalitárám*⁽⁵⁾; *Mungul Pershád Dichit v. Grija Kant*⁽⁶⁾; *Manjunáth Badrábhat v. Venkatesh Govind*⁽⁷⁾; *Sher Singh v. Daya Rám*⁽⁸⁾; *Dálichand Bhudar v. Bái Shirkor*⁽⁹⁾; *Venkataráyálu v. Narasimha*⁽¹⁰⁾; *Parán Singh v. Jawáhir Singh*⁽¹¹⁾; *Jogesh Prokash v. Kálee Coomár Roy*⁽¹²⁾; *Govind Shánbhog v. Appáya*⁽¹³⁾; *Nukanna v. Rámásámi*⁽¹⁴⁾; *Chowdhry Paroosh Rámdás v. Káli Puddo Bánérjee*⁽¹⁵⁾.

JARDINE, J.:—In this case the chief point that was argued before us related to the question of limitation.

The undisputed facts of the case are: Tribhuvan and Bechar, fathers respectively of the parties to the present execution proceedings, agreed to a private award, which was duly filed in Court on 26th January, 1874. Plaintiff's father Tribhuvan gave *darkhást* No. 1791 of 1874 on 12th October, 1874, and the execution work was transferred to the Collector, who attached the defendant's *san*-mortgaged property in the terms of the award, and paid over the proceeds from time to time in Court down to 1891. The Collector's management continued till 5th February, 1892, when the *darkhást* of 1874 was disposed of, and a fresh *darkhást* No. 570 of 1892 was given on 12th June, 1892.

The contention of the appellant-defendant in both the lower Courts was that the *darkhást* of 1892 was time-barred under section 230, Civil Procedure Code, and article 179 of the Limitation Act. The Court of first instance held that the *darkhást* was not barred under section 230, but that it was barred under article 179 of Act XV of 1877. The District Judge held that the *darkhást* was not time-barred either under section 230 or article 179. In the appeal before us, the appellant urges that the *darkhást* of 1892

(1) I. L. R., 10 Calc., 549.

(2) I. L. R., 11 Calc., 227.

(3) I. L. R., 9 Calc., 730.

(4) I. L. R., 1 Bom., 59.

(5) I. L. R., 2 Bom., 294.

(6) L. R., 8 L. A., 123.

(7) I. L. R., 6 Bom., 54.

(8) I. L. R., 13 All., 564.

(9) I. L. R., 15 Bom., 242.

(10) I. L. R., 2 Mad., 174.

(11) I. L. R., 6 All., 366.

(12) 8 Cal. W. R., 274.

(13) I. L. R., 5 Bom., 245.

(14) I. L. R., 2 Mad., 218.

(15) I. L. R., 17 Calc., 53.

was barred by limitation, chiefly under article 179. The objection of the bar under section 230 was not seriously pressed in the argument of the appellant's pleader.

It was urged by Mr. Govardhanrám that as the decree was passed in January, 1874, and the first *darkhást* was given on 12th October, 1874, the second *darkhást* ought to have been given before 12th October, 1877, under article 179 of Act XV of 1877, which came into operation in July, 1877. He urged, further, that the payments received by the plaintiff of the proceeds of the property under the Collector's management from 1874 to 1891 did not prevent the bar of limitation from being operative, and that there were no applications made or steps taken by plaintiff to keep alive his right of execution under the decree. It was finally contended that the plaintiff's right to execute his decree being once lost in 1877 could not be revived by the change in the law in 1879 which introduced section 325 A, on which the lower Court of appeal has relied in support of its view.

On respondent's behalf it was contended by Mr. Bháishankar that verbal applications had been made by the plaintiff to the Court before the moneys received from the Collector were paid over to plaintiff, that these verbal applications were as good as written, and these applications and receipts of money were steps in aid of execution, which enlarged the period of limitation. It was further urged, that in January, 1878, plaintiff, as heir of deceased Tribhuvan, had applied to be made a party to the record, and allowed to continue the execution proceedings, and that in February and September, 1880, written applications were made to the Court by plaintiff to issue notice to the present defendant under section 248, and to adjust the interest accounts. These applications, it was contended, saved the *darkhást* from being time-barred, and that since the Act of 1879, section 325 A entitled plaintiff to exclude from computation the time during which the defendant's property was under the management of the Collector, and, lastly, that defendant was estopped from raising this contention in 1893 when he failed to urge it in 1880.

After a careful consideration of the authorities cited on both sides, and the fuller statement of facts placed before us by the

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respondent's pleader, we feel satisfied that the contentions of the appellant in this case must be disallowed. In considering the true character of the payments of the proceeds received by the decree-holder, it is necessary to bear in mind the particular circumstances of this case. The attachment in this case was not so much an order of Court, as an enforcement of the particular agreement arrived at with the consent of the parties in the arbitrator's award. That award directed that the sum found due and awarded to plaintiff (Rs. 1,840) should be paid by defendant in one year, and that during that period it should carry no interest, and that after that time, plaintiff should receive 6 per cent. interest, and recover the sum due to him by the attachment of the *sah*-mortgaged property, which property was, however, not to be sold except in case of its being held to be not liable to attachment. The decree, therefore, in express terms directed that the sum found due with interest should be recovered by the attachment of the property of the defendant, and not by sale. The parties appear to have expressly contemplated that the debt should be satisfied by a long-continued sequestration of the profits, and the Collector's management under the Court's order only gave effect to this private arrangement. The arrangement was meant to protect the debtor from the risk of losing his property altogether by sale. There are always a few *darkhást*s in all Courts when such permanent or long-period attachments have to be made (see *Mahádáji v. Krishnáji*⁽¹⁾ and *Jamnádás v. Lalitarám*⁽²⁾), and section 325 A has been expressly enacted to remove all doubts as to the legality of such long sequestrations. There is nothing in the law which requires that the execution of a decree may not continue for a period of years till the debt is satisfied.

This peculiar nature of the arrangement between the parties furnishes a satisfactory explanation why both parties remained quiet for the whole period of eighteen years (1874—1892). The cases—*Hem Chunder v. Brojo Soondury*⁽³⁾, *Toree Mahomed v. Mahomed Mahood*⁽⁴⁾, *Fázal Imám v. Metta Singh*⁽⁵⁾, and *Gunga*

(1) P. J., 1875, p. 233.

(3) I. L. R., 8 Calc., 89.

(2) I. L. R., 2 Bom., 294.

(4) I. L. R., 9 Calc., 730.

(5) I. L. R., 10 Calc., 549.

Pershad v. Debi Sundari⁽¹⁾—cited by the appellant's pleader, in which it was ruled that the mere receipt of money by the decreeholder, or payment of *bhatta* by him in Court, does not extend the period of limitation, have, therefore, no application in the present case. They were all cases of mere money decrees, in which the execution by attachment was never intended to be a permanent arrangement. Mere receipt of money under such circumstances is not a step in aid of execution, but the present case is clearly distinguishable from such single acts. Here the payments were made almost every year up to 1886, and it cannot be presumed that plaintiff took no steps to move the Court in this behalf. It was not necessary—*Máneklál v. Nasia*⁽²⁾, *Amarsingh v. Tika*⁽³⁾—that these applications should be in writing. They may be verbal. There have been rulings in *Nukanna v. Rámásámi*⁽⁴⁾, *Pardn Singh v. Jawáhir Singh*⁽⁵⁾, *Jogesh Prokash v. Kálee Coomár*⁽⁶⁾ and *Chowdhry Paroosh Rámdás v. Káli Puddo*⁽⁷⁾ that, under certain circumstances, applications made by the judgment-creditor to receive the proceeds of the attached property in part execution of the decree do extend the period of limitation, as being steps in aid of execution. Of course, ineffective or informal attempts will not be deemed sufficient for such a purpose—*Jibhai Mahipati v. Parbhu Bápu*⁽⁸⁾ and *Prabhdcararow v. Potannah*⁽⁹⁾; but there is no suggestion here that the attachment was ineffectual, or the payments from year to year anything but a *bona fide* execution of the decree—*Shankar Bisto v. Narsingh-ráo*⁽¹⁰⁾.

Under these circumstances we must hold that the execution work of the first *darkhást* of 1874 was continuously going on during the whole period that the Collector's management lasted under the orders of Court, and that each year's payment received by plaintiff was only a partial step in aid of execution of the decree—*Máneklál v. Nasia*⁽²⁾ and *Ambica Pershad v. Surdhari*

(1) I. L. R., 11 Calc., 227.

(2) I. L. R., 15 Bom., 405.

(3) I. L. R., 3 All., 139.

(4) I. L. R., 2 Mad., 218.

(5) I. L. R., 6 All., 366.

(6) 8 Cal. W. R., 274.

(7) I. L. R., 17 Calc., 53.

(8) I. L. R., 1 Bom., 59.

(9) I. L. R., 2 Mad., 1.

(10) I. L. R., 11 Bom., 467.

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Lal ⁽¹⁾. There appear to have been three such payments on 25th February, 1876, 5th February, 1877, and on 7th October, 1877. From 1878 there is admittedly no difficulty. In January, 1878, the original plaintiff being dead, his son, the present respondent, applied to be made a party to the record and to have money levied and paid, and such an application has been held to be a step in aid of execution—*Govind Shánbhog v. Appaya* ⁽²⁾. In 1880 he again applied to the Court to issue notice under section 248 to defendant as heir to his deceased father, and to require him to adjust the interest account. This application was clearly a step in aid of execution, since the date Act XII of 1879, section 325 A, came into operation, and there is admittedly no difficulty either under section 230, Civil Procedure Code, or article 179 of Act XV of 1877.

It may also be observed that the question as to whether the plaintiff's claim was or was not time-barred before, 1878, appears to have been expressly decided in November, 1880, by the Court of first instance after serving defendant with notice to show cause against plaintiff's application. It may fairly be questioned whether it is open to the defendant now after twelve years to raise this objection, which he should have raised in 1880—*Dálichand Bhudar v. Báí Shivkor* ⁽³⁾. If defendant chose to allow the order in 1880 to be passed against him *ex parte*, he cannot claim the right to urge this objection now. On the whole, we feel satisfied, on the authorities, that the decision of the lower appellate Court is correct, and we accordingly reject the appeal, and confirm the order of the District Judge. Costs on the appellant.

Order confirmed.

(1) I. L. R., 10 Calc., 851.

(2) I. L. R., 5 Bom., 246.

(3) I. L. R., 15 Bom., 242.