

APPELLATE CIVIL.

Before Mr. Justice Batty and Mr. Justice Heaton.

1906:
November 19.

RAMCHANDRA SADASHIV (ORIGINAL DECREE-HOLDER), APPELLANT, *v.*
LAXMAN SADASHIV (ORIGINAL JUDGMENT-DEBTOR), RESPONDENT.*

Limitation Act (XV of 1877), Schedule II, Art. 179—Decree—Execution of decree—Application to execute the decree—Application not accompanied by a certified copy of the decree under execution—Application made 'in accordance with law'—Step-in-aid—High Court Civil Circulars Rule 80†.

On the 3rd February 1900, the decree-holder first applied to execute his decree. In 1902, he again applied to execute his decree; but this second application was dismissed as it was not accompanied by a certified copy of the decree (High Court Civil Circulars, Rule 80). On the 18th June 1905, the decree-holder applied for the third time to execute the decree. The lower Courts held that the application of 1902 not having been accompanied by a certified copy of the decree was not one made 'in accordance with law,' and that consequently the third application was barred by time:—

Held, that the application of 1902 though not accompanied by a copy of the decree, as required by Rule 80 of the High Court Circulars, was an application 'in accordance with law' within the meaning of article 179, Schedule II of the Limitation Act (XV of 1877); and that, therefore, the third application was within time.

Sadashiva v. Ramchandra (1), not followed.

Pachiappa Achari v. Poojali Seenan (2) followed.

The proper view to take of Rule 80 of the High Court Civil Circulars is not that it prescribes the essentials which an application for execution must contain and which are necessary to constitute the application itself an application in accordance with law, but that it requires something further besides the applica-

* Second Appeal No. 357 of 1906.

† Bombay High Court Civil Circulars Rule 80:—

Every application for the execution of a decree not being an oral application under section 256, Civil Procedure Code, shall be made in the Form No. XIX at p. 165, and shall be accompanied by a copy of the decree of which execution is sought, unless for special reasons the Court dispenses with the copy.

Provided that if the application is made to a Court to which a copy of the decree has been sent under section 224 of the Civil Procedure Code, it shall not be necessary to present a fresh copy with the application so long as the copy sent under section 224 is available in that Court.

(1) (1903) 5 Bom. L. R. 394.

(2) (1905) 23 Mad. 557.

tion itself, an accompaniment extraneous to the application, as a condition precedent to further action by the Court executing the decree.

The Limitation Act (XV of 1877) as an enactment of a restrictive character, must be strictly construed.

Umia Shankar v. Chhotalal (1) followed.

APPEAL from the decision of A. Lucas, District Judge of Sátára, confirming the order passed by K. V. Desai, Subordinate Judge of Wái.

Proceedings in execution.

The decree-holder (appellant) applied in 1900 to execute a decree which he had obtained against the respondent.

In 1902, he applied a second time to execute his decree, but this application was not accompanied by a certified copy of the decree under execution. It was therefore rejected.

On the 18th June 1905, the decree-holder again applied to execute the decree.

The Subordinate Judge held that the third application was barred by time. In his opinion as the second application was not accompanied by a certified copy of the decree, the application was not made 'in accordance with law' (Art. 179 of the Schedule II to the Limitation Act, XV of 1877), and was not a step-in-aid of execution to the third application.

On appeal this order was confirmed by the District Judge.

The decree-holder appealed to the High Court.

T. R. Desai for the appellant.—Our application of 1902 did not cease to be one 'made in accordance with law' simply because it was not accompanied by a certified copy of the decree under execution. The High Court Civil Circulars Rule 80, no doubt, requires that every application for execution of decree must be accompanied by a certified copy of the decree; but the rule is framed only for the convenience of the Court executing the decree. It is not meant to qualify the provisions of the Limitation Act (XV of 1877); which must always receive a strict construction. See *Umia Shankar v. Chhotalal*.⁽¹⁾

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The case of *Sadashiva v. Ramchandra*⁽¹⁾ is decidedly against me; but I submit that that case should not be followed in view of the remarks to which it was subjected in *Pachiappa Achari v. Poojali Seenan*⁽²⁾.

M. V. Bhat for the respondent:—The case of *Sadashiva v. Ramchandra*⁽¹⁾ governs the present case. The Madras High Court has dissented from its reasoning, but the correctness of the Bombay decision has not been questioned in this Court, and it should, therefore, be followed.

T. R. Desai was heard in reply.

BATTY, J.:—In this case an application for the execution of a decree was held to be time-barred, notwithstanding that within three years of its presentation a prior application for execution had been put in. That prior application was held insufficient for the purpose of saving limitation, on the ground that it was not accompanied by a copy of the decree as required by Rule 80 of the High Court Circulars (Civil) framed under section 562, Civil Procedure Code. The objection taken was, that as the darkhast in question did not comply with the requirements of the High Court Rules, the darkhast was not in accordance with law, within the meaning of Article 179, Limitation Act.

This is a view, which has no doubt been accepted by a Division Bench of this Court, in the case of *Sadashiva v. Ramchandra*⁽¹⁾. That decision, however, has been criticised and disapproved in the case of *Pachiappa Achari v. Poojali Seenan*⁽²⁾. We have had the opportunity of consulting Mr. Justice Chandavarkar and understand that His Lordship would not now adhere to the decision of his colleague, who pronounced the judgment in *Sadashiva v. Ramchandra*⁽¹⁾.

We think that the proper view to take of the Rule that requires a darkhast to be accompanied by a copy of the decree, is not that it prescribes the essentials which an application for execution must contain, and which are necessary to constitute the application itself an application in accordance with law, but that it requires something further besides the application itself, an

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accompaniment extraneous to the application, as a condition precedent to further action by the Court executing the decree.

The Limitation Act as an enactment of a restrictive character, must be strictly construed: *Umishankar v. Chhotalal*⁽¹⁾. We must take the darkhast now in question to be in time, if the previous darkhast was in accordance with law, notwithstanding that certain accompaniments, accessories or extraneous details may have been wanting and that there may have been a failure to comply with the requirements of rules not strictly affecting the application itself.

For these reasons we reverse the decree of the lower appellate Court and return the case to that Court, in order that it may be proceeded with according to law.

Costs to follow event.

Decree reversed.

R. R.

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ORIGINAL CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Beaman.

SUMSUDDIN GOOLAM HUSEIN AND ANOTHER (ORIGINAL PLAINTIFFS) v. ABDUL HUSEIN KALIMUDDIN AND ANOTHER (ORIGINAL DEFENDANTS).*

Mahomedan Law—Spes successionis—Non-transferable and non-releasable—Transfer of Property Act (IV of 1882), sec. 6 (a)—Deeds executed by par-dānashīn lady—Burden of proof.

The chance of an heir-apparent succeeding to an estate is under Mahomedan Law neither transferable nor releasable. It is only by an application of the principle that equity considers that done which ought to be done that such a chance can, if at all, be bound.

It was not intended by section 6 (a) of the Transfer of Property Act to establish and perpetuate the distinction between that which according to the phraseology of English lawyers is assignable in law and that which is assignable in equity.

* Appeal No. 1431, Original Suit No. 830 of 1901.