

PRIVY COUNCIL

Chandri Abdul Majid

Vs.

Jawahir Lal and others
(Lord Moulton, CJ, Sir John Edge and Mr. Ameer Ali. JJ)

7.4.1914

JUDGMENT

Lord Moulton CJ.

1. In this case the relevant facts necessary and sufficient to determine their Lordships' decision on the appeal are very simple and are undisputed.
2. The appellant is in the position of mortgagor and the respondents of mortgagees under a mortgage, dated the 3rd September, 1868. In 1889 a suit was commenced before the Subordinate Judge of Allahabad to enforce that mortgage, and on the 12th May, 1890, a decree was passed by him for the sale of the property unless payment was made on or before the 12th August, 1890. An appeal was brought from that decree to the High Court, and, on the 8th April, 1893, that appeal was dismissed and the decree of the Subordinate Judge confirmed. The mortgagor obtained leave to appeal to this Board, but did not prosecute his appeal, and on the 13th May, 1901, the appeal was dismissed for want of prosecution.
3. The present appeal relates to an application to the Subordinate Judge, dated the 11th June, 1909, for an order absolute to sell the mortgaged properties ; in other words, for an order directing enforcement of the order nisi which had been confirmed by the decision of the High Court of the 8th April, 1893. It is not necessary to go into the particulars of this application because their Lordships are of opinion that any such application was barred by the Statute of Limitation, Article 179, at the expiry of three years from the date of the decree, and therefore before the passing of the Code of Civil Procedure of 1908 under which the present proceedings purported to be taken, and their Lordships have no doubt Whatever that, inasmuch as the right to enforce the decree had once been barred, no provisions of the Code of Civil Procedure, 1908, operate to revive it.

4. The chief matter of argument before this Board was a contention that the decree which it is sought to enforce had been constructively turned into a decree of His Majesty in Council and assigned to the date of the 13th May, 1901, by virtue of the dismissal of the appeal for want of prosecution on that date, and that therefore the period of limitation was twelve years from the 13th May, 1901, by virtue of Article 180 of the Indian Limitation Act. Their Lordships see no foundation for this contention, which appears to have been the basis of the decision of the Courts below. The order dismissing the appeal for want of prosecution did not deal judicially with the matter of the suit and could in no sense be regarded as an order adopting or confirming the decision appealed from. It merely recognized authoritatively that the appellant had not complied with the conditions under which the appeal was open to him, and that therefore he was in the same position as if he had not appealed at all. To put it shortly, the only decree for sale that exists is the decree, dated the 8th April, 1893, and that is a decree of the High Court of Allahabad. The operation of this decree has never been stayed, and there is no decree of His Majesty in Council in which it has become merged. The period of limitation applying to the enforcement of it at all material times was therefore a period of three years. The respondents' right is therefore barred by limitation.

5. Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed, and that the application of the 11th June, 1909, should be dismissed and that the respondents should pay the costs of that application and of the appeal to the High Court as well as of this appeal.

Appeal allowed.