

CALCUTTA HIGH COURT

Shumbhoonath Shaha

Vs

Guruchurn Lahiri

(Morris and Prinsep, JJ.)

29.04.1880

JUDGMENT

Morris, J.

1. In this case application to execute a decree was made on 25th February 1878. The lower Court has rejected it, on the ground that, although the next preceding application for execution was made on the 31st July 1876, yet, under Act IX of 1871, Scheduleii, Article 167, which was then in force, "execution was on that date barred, owing to the application immediately before it having been made on the 27th March 1873, or more than three years previously. The decree which is sought to be executed was, undoubtedly, on the 31st July 1876, and no proceedings taken on the application of that date to execute it could revive it. The application could have been opposed on the ground of limitation, and, consequently, no process of execution could have lawfully issued under it. This principle is clearly laid down in the case of *Bissessur Mullick v. Dhiraj Mahtab Chand*¹ and in subsequent rulings of this Court [See. *Unnoda Pershad Roy v. Sheikh Koorban Ally*², and *Mungol Prashad Dichit v. Shama Kant Lahory*³, Rep. note).] But the objection now taken in appeal is, that, under Section 2, Act XV of 1877, execution can be allowed on the application of 25th February 1878.

2. It is contended that, as Section 2 of the Limitation Act (XV of 1877) declares, that nothing in that Act shall be deemed to affect any title acquired, or to revive any right to sue barred under Act IX of 1871, applications to execute decree which do not come within those terms, and which, under Act IX of 1871, are incapable of execution, became revived, the more so as, by Section 3 of Act XV of 1877, in the definition of the term "suit," an application is expressly distinguished from a suit.

3. It appears to us that it was not the intention of the legislature, by the enactment of Act XV of 1877, to revive decrees which were dead under previous laws of limitation. That this is so may be gathered from Section 230 of the contemporaneous Civil Procedure Act, X of 1877, which limits and cuts down the period for executing decrees then capable of execution.

4. In our opinion Act XV of 1877 cannot be applied to any thing which, at the time of its becoming law, was barred by the law of limitation which it replaced, unless it can be shown that such was the express intention of the legislature. Such an inference would be opposed to the principles of a law of limitation.

5. We may observe also, that there is no valid proceeding in the nature of an application "to take some step in aid of execution of the decree" within three years of which the application of the 25th February 1878 was made, consequently the decree-holder cannot take advantage of the alteration in the law regulating the mode of calculation of the period of limitation. We do not consider the application of the 31st July 1876 to be a valid application so as to give the decree-holder a fresh starting point.

6. We, therefore, dismiss the appeal with costs.

Cases Referred.

1(B.L.R. Sup. Vol., 967, S.C. 10 W.R., F.B., 8)

2I.L.R., 3 Cal. 518

3I.L.R., 4. Cal. 708