

(1879) 04 AHC CK 0001

Allahabad High Court

Case No: None

Kanchan Singh and
Others

APPELLANT

Vs

Sheo Prasad

RESPONDENT

Date of Decision: April 28, 1879

Citation: (1880) ILR (All) 294

Hon'ble Judges: Spankie, J; Pearson, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Pearson, J.

Article 167, q. v. supra 2 All. 274 Schedule ii of Act IX of 1871, provides that an application to enforce payment of an instalment which the decree directs to be paid on a specified date may be made within three years from the date so specified. The present application to enforce the payment of instalments which became due under the decree in Bhadon 1875 and Bhadon 1876 was preferred on the 17th July 1877, within the time allowed by the law. It is difficult therefore to understand how it can be contended that the application is barred by the Limitation Law. The ground of the contention is that there is no legal proof of any previous payments having been made under the decree which was passed in April 1866; and that, as the decree-holder was empowered by the terms of the decree to realise the whole amount at once in the event of two instalments not being duly paid, and failed to do so within three years from Bhadon 1868, he is now precluded from recovering the instalments of 1875 and 1876. This contention appears to me to be quite untenable. The decree-holder's omission in 1868, 1869, and 1870 to avail himself of his right to realise at once the entire amount of the judgment-debt may possibly preclude him from now enforcing that right; but he is not seeking to do so. By foregoing or forfeiting that right he has not lost his right to the instalments annually falling due. It seems to me to be immaterial whether former instalments have been paid or not;

but I observe that it was not seriously pleaded in the lower Courts that they had not been paid. What the judgment-debtors pleaded was that payments out of Court do not save limitation; and the Court of First Instance held that the payments having been made out of Court could not be recognised. The non-recognition of those payments does not, however, exclude the present application from the operation of the clause above-quoted of Article 167, Schedule ii, Act IX of 1871. The pleas in appeal are worthless in my opinion and I would dismiss the appeal with costs.

Spankie, J.

2. On the facts found by the lower Appellate Court that there had been no such default as that referred to in the decree in the payment of instalments, I do not think that I could interfere in second appeal, and this appears to be the more proper course, because the judgment-debtor does not really seem to have denied the payments out of Court allowed by the decree-holder to have been made to him in accordance with the terms of the decree. I would dismiss the appeal and affirm the order with costs.