

(1919) 07 AHC CK 0020

Allahabad High Court

Case No: None

Partab Singh and Another

APPELLANT

Vs

Jaswant Singh and Another

RESPONDENT

Date of Decision: July 31, 1919

Citation: (1920) ILR (All) 79

Hon'ble Judges: Wallach, J; Muhammad Rafiq, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Muhammad Rafiq and Wallach, JJ.

This is an application in revision from an appellate order of the learned District Judge of Farrukhabad setting aside an order of the Munsif passed on an application for review. It appears that the opposite party obtained a decree against the applicants on the 3rd of August, 1911. The first application for execution was made on the 26th of August, 1914. It was obviously time-barred, Notice was issued on the application to the judgment-debtors, but nobody appeared. The judgment-debtors were minors then and are minors still. Notice was issued to their guardian, No steps were taken on that application. Subsequently other applications were put in and the execution of the decree was allowed. The property of the judgment-debtors, the applicants before this Court, was attached and was advertised for sale. They objected to the execution proceedings on the ground of limitation. Their objection was disallowed on the 9th of January, 1917, and again on the 24th of March, 1917. On the 2nd of April, 1917, they filed an application for review before the court executing the decree. Before the application for review could be disposed of, they preferred an appeal on the 9th of May, 1917. Before the disposal of the appeal, the learned Munsif who was executing the decree disposed of the application for review. Thereupon the appeal was withdrawn. On the review application the learned Munsif allowed the objection of the judgment-debtors with regard to limitation, holding that the decree sought to be executed was barred. The decree-holders

preferred an appeal from the order of the learned Munsif passed upon the review" application. The learned District Judge held that the application for review could not be made when an appeal had been filed, though subsequently, to his court. He allowed the appeal and set aside order of the Munsif passed on the application for review.. The judgment-debtors have come up in revision to this Court. They contend that the learned District Judge could only set aside the order of the first court that was passed on the application for review for reasons given in Order XLVII, rule 7, on the ground of want of jurisdiction. No case was put forward by the decree-holders under XLVII, rule 7. They, however, objected to the order of the first court on the ground that it was passed without jurisdiction, inasmuch as an appeal was pending at the time the Munsif disposed" of the application for review. The view taken by the learned District Judge that the application for review could not be entertained as an appeal was pending in his court, is challenged by the judgment-debtors, who say that under the law their application could be entertained by the Munsif. They contend that the application was made before the filing of the appeal, and that the reasoning of the learned District Judge does not cover their case. The learned Judge relies upon the language of Order XLVII, rule I (a), which is to the effect that any person considering himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, may apply for a review of the decree or the order. The application of the judgment-debtors was made before the appeal was filed, and therefore it is contended that the words of Order XLVII, Rule 1(a), do not cover their case. The contention for the applicants before us is supported by the cases of Chenna Reddi v. Peddaobi Reddi I.L.R(1909) . Mad. 416 and Narayan Purshottarn Gargote v. Laxmibai ILR (1914) 38 Bom. 416. In view of the case law we must accept the contention of the applicants. We, therefore, allow the application and set aside the order of the lower appellate court with costs.