
(1878) 01 AHC CK 0008

Allahabad High Court

Case No: Miscellaneous Regular Appeal No. 34 of 1877

Jai Shankar and
Another

APPELLANT

Vs

Tetley

RESPONDENT

Date of Decision: Jan. 23, 1878

Final Decision: Disposed Of

Judgement

Sir Robert Stuart, Kt., C.J.

I agree with the other members of the Court that the appeal in this case must be allowed. Article 167, sch. ii of Act IX of 1871 clearly applies and governs the case, and the application therefore is not barred.

Pearson, J.

2. In my opinion the appeal lies. The law of limitation applicable to the case appears to be Art. 167, sch. ii of Act IX of 1871. Article 166 is not applicable, for execution is not sought of a decision but of a decree. The application is clearly within three years of preceding applications to enforce or keep in force the decree, and is therefore not barred.

Turner, J.

3. It is admitted at the bar that the application is not barred by limitation, if the application is governed by art. 167, sch. ii of Act IX of 1871. There were clearly applications sufficient to keep the decree alive made within three years before the present application was presented. That the application is governed by the provisions of that article I have held in Miscellaneous Special Appeal Nos. 10 of 1877 (see *Wilayat-un-nissa v. Najib-un-nissa*, ante p. 583). The order of the Court below must be reversed, and the proceedings returned to that Court that the application may be disposed of on the merits. The costs of this appeal should abide and follow the result.

Spankie, J.

4. I concur in the view expressed by Mr. Justice Turner.