(1868) 07 CAL CK 0002

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 156 of 1868

Teja Singh		APPELLANT
	Vs	
Rajnarayan Singh		RESPONDENT

Date of Decision: July 2, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

About 14 years and 3 months ago the plaintiffs obtained a decree, and we are now engaged in discussing whether they are barred by limitation from executing it. It appears that, from 1854 to 1861, the plaintiffs were trying to execute the decree; and that the decree was admittedly kept alive up to that time by the plaintiff"s endeavours to execute it. Subsequently, upwards of a year appears to have been wasted in a discussion as to the costs in the original decree; for, on the 15th June 1861, the costs of the original decree were modified by order of the Court, whose duty it was to execute the decree, and not to amend it. That order was, on the 19th August 1862, reversed on appeal, and no doubt properly so; for the Court which had to execute the decree had no powers in the execution department to modify or alter it. During the time occupied with those unnecessary proceedings, some of the plaintiffs died, and on the 28th of July 1863, an application was made by the heirs of the deceased plaintiffs to be substituted as decree-holders. Nearly another year was occupied upon this, and on 26th May 1864, an order was made for substitution of the heirs. One would have thought that things would have been allowed to go on; but in December 1864, about 9 months after the order for substitution had been made, a new Principal Sudder Ameen came in, who appears not to have been satisfied with the order of his predecessor, and who, although he had no power to reverse the order of his predecessor upon appeal, thought fit to require a certificate of heirship before he would execute the decree. Nine months were occupied in obtaining this certificate, which was not obtained till the 16th of September 1865. On the 20th of the same month an application for execution was made, which the Judge on appeal has now held to be too late. This case is one among many instances of the truth of the remark which I have frequently made, that as soon as a man obtains a decree, his difficulties appear to commence. I would remark that from the 28th July 1863 to the 16th

September 1865, was occupied in substituting heirs of the deceased plaintiff, decree-holder, for the purpose of executing the decree. This appears to me to have been wholly unnecessary. The judgment was a joint judgment for damages obtained by several persons, and might, I think, have been executed by the survivors alone, for the benefit of all who were interested in it. They might have proceeded u/s 207 of Act VIII of 1859.

2. The order of the Lower Appellate Court is reversed with costs.

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[1]Time for enforcing execution of judgment, etc., of a Civil Court not established by Royal Charter.

[Sec. 20:--No process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree, or order, or to keep the same in force, within three years next preceding the application for such execution.]