
(1870) 02 CAL CK 0006

Calcutta High Court

Case No: Miscellaneous Special Appeals Nos. 440 and 441 of 1869

Mussamat Kasturi
Kunwar and Others

APPELLANT

Vs

Mussamat Nanerbi
Kunwar

RESPONDENT

Date of Decision: Feb. 8, 1870

Judgement

Norman, J.

Kasturi Kunwar obtained a decree for possession of one anna of Mauza Shedpore and three other mauzas, and for the registration of her name as daughter and heiress of Baboo Rashbehari Sing. The defendants in that suit were Brajabehari Sing, brother of Rashbehari Sing, and Mussamut Nanerbi Kunwar, claiming to be the widow and heiress of Baboo Rashbehari Sing. The decree was passed on the 3rd February 1864. The rights and interests of Kasturi Kunwar in the decree in question were subsequently assigned to Kissendeo Narayan. On the 6th January 1868, Kasturi Kunwar filed an application for execution of that decree, stating that she had obtained possession of the three mauzas by a private compromise; and prayed that an order might issue for the registration of her name in the Touji of the Collectorate. It will be observed that this application was made more than three years after the date of the decree, no proceeding having been taken to enforce the judgment within three years next preceding the date of the application. The Sudder Moonsiff of Tirhoot made an order that a precept should issue to the Collector for registration of the name of Kasturi Kunwar in the place of Rashbehari Sing.

2. On the 24th November, Nanerbi Kunwar and Brajabehari, the defendants, filed petitions of objection to that order, alleging, firstly, that no notice was served upon them as would be required by section 216 of Act VIII of 1859; and, secondly, that under the provisions of section 20, Act XIV of 1859, the right to issue the precept to the Collector was barred, inasmuch as it was a process of execution to enforce the decree of the 3rd February 1864; and, therefore, not having issued within the period of three years from the date of the decree, the right to issue such process was barred by limitation. They also took objections denying the allegations of Kasturi Kunwar that she had obtained

possession, and that they had entered into the arrangements alleged by her. The Sudder Moonsiff disallowed these objections, and the Judge of Tirhoot, on appeal, affirmed that decision, holding that it was incumbent on the lower Court to send a precept to the Collector to register the decree-holder's came, without any petition on her part; and that if the Court did not do so, the decree-holder was at liberty at any time to move the Court to send the precept. The Judge added that he did "not consider that the law of limitation has anything to do with the case."

3. From this decision the present appeal has been preferred to this Court. I am of opinion that the precept requiring the Collector to insert the name of Kasturi Kunwar, in his register, in the place of that of Rashbehari, was a process to enforce the decree of the Court which ordered such mutation in 1864. If in pursuance of the provisions of Regulation XLVIII of 1793, section 24, clause 2, a copy of the decree had been transmitted to the Collector, either immediately after the passing of the decree, or at any subsequent period, the Collector would have enquired and decided for himself whether the mutation of names ought to take place. If the copy of the decree had been transmitted immediately after such decree had been pronounced, the Collector would, no doubt, as a matter of course, have inserted the name of Rashbehari. But if any considerable delay had taken place, a delay which might fairly lead to the inference that the position of the parties might have been changed, the Collector, on receiving the decree of the Court, would probably have ascertained for himself, or taken steps to ascertain whether anything which had taken place since the decree had or might have modified the rights of the parties. He would have exercised his own judgment in the matter, But in the case before us the Sudder Moonsiff in issuing a precept requiring the Collector to insert the name of Kasturi Kunwar, had deprived the parties of the power of raising any such question before the Collector. The proceeding was in fact taken to enforce the judgment of his Court pronounced more than three years previously. This precept, therefore, was a process which the Sudder Moonsiff was precluded from issuing by the 20th section of Act XIV of 1859.

4. The result is that the decision of the Judge holding that the law of limitation does not affect the case is reversed, and the order of the first Court sending the precept to the Collector quashed, with costs in this Court and in both the lower Courts.

5. This decision admittedly governs appeal No. 441 of 1869.

Bayley, J.

6. I concur in holding that the order of the lower appellate Court must be reversed. The lower appellate Court has admittedly issued a process directing the Collector to enter a certain name after the lapse of the period of three years from the date of the decree. It is admitted also that no action had been taken by the decree-holder himself within three years from the date of the decree. Now section 20, Act XIV of 1859, enacts: "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, &c., &c., within three years, &c., &c." In my opinion the Court, in sending the above direction to the Collector, did issue a process on the motion of the decree holder made three years after the date of the decree. I consider, therefore, that the Court's order was substantially opposed to the provisions of section 20. It is contended that it was for the Court to see its own order executed within due time; that the decree-holder could not take the command of the execution into his own bands; and that, therefore, there was no laches on the decree-holder's part. But, in the first place, even if this be a correct contention, the law, as it stands, makes the issue of any process after the lapse of three years illegal; and, secondly, I do not see why if a decree-holder finds Chafe the Court does not, within the period allowed for the issue of process, take any action itself, he should not (even if he do not have the command of the Court to cause the execution of its own proceedings directly and promptly), move the Court, and draw its attention to the duty of issuing a copy of the decree, and thereby causing the registration as provided in the decree. By section 20, Act XIV of 1859, the period of three years only has been allowed to a decree-holder to take bona fide steps to enforce his decree; and I see nothing in this case in which this provision of the law has been so acted up to by the decree-holder. I am, however, of opinion that the Collector, when he got the order of the Civil Court, dated the 6th January 1868, had to do nothing but obey the Court. Collectors are bound to take cognizance of all decrees and orders of a Civil Court transmitted to them for such cognizance. I do not deny that it was open to the Collector in this case to have drawn the attention of the Sudder Moonsiff to the great delay between the date of the decree in 1864, and his own order of the 6th January 1868. But having done that, it was for the Collector to obey whatever ultimate order the Civil Court might have passed in the matter.