

(1869) 03 CAL CK 0005

Calcutta High Court

Case No: None

Bhubaneswari Debi

APPELLANT

Vs

Dinanath Sandyal and Another

RESPONDENT

Date of Decision: March 13, 1869

Judgement

Sir Barnes Peacock, K.t., C.J.

I think that the plaintiff was entitled to prove the payments made under the kistbandi for the purpose of showing that his right to sue out execution under the kistbandi was not barred by limitation. I am not sure that a part payment under a decree may not be proved for the purpose of avoiding limitation, although the payment has not been made through the Court, or certified to the Court. I am disposed to think that the words "no adjustment of a decree in part or in whole shall be recognized by the Court" in Section 206, mean that no adjustment shall be recognized as an adjustment in favour of the debtor, unless it is made through the Court, or certified to the Court by the person in whose favour decree has been made; the meaning being that the person in whose favour the decree has been made, is not to be bound by an alleged payment out of Court, unless he has certified it. If the Legislature had contemplated the Statute of Limitation, and had intended to prevent a payment made within the period of limitation, from being made use of to prevent the operation of limitation, I should think they would have required the payment to be certified by the defendant, who would, in that case, be affected by it. I am corroborated in this view by finding that no time is fixed within which the plaintiff is to certify. If the plaintiff comes in at any time, and certifies that he has been paid, he must be bound by it; but if limitation was the object of the Legislature, they would have required the certificate to be within a made fixed time.

2. Further, in this case the defendant was paying under the kistbandi or agreement, and not under the decree, and the Court had recognized that agreement as the terms upon which the decree was to be executed. It was stipulated in that kistbandi or agreement that the payments were to be endorsed on the kistbandi, without any stipulation that they should be certified to the Court.

3. With these remarks the case will go back to the Court which referred it, to try, if necessary, whether the payments were made. At present it does not appear to this Court that proof of those payments is necessary, if it should appear that the plaintiff is seeking to enforce payment of installments which have become due within three years previous to the application. We express no opinion upon that point, inasmuch as the facts are not sufficiently before us, and we have only to answer the question put to us. We merely throw it out as a suggestion to the Small Cause Court Judge when he comes to deal with the case. The costs in this Court for either side will be costs in the execution case.