(1867) 05 CAL CK 0002

Calcutta High Court

Case No: Miscellaneous Appeal No. 445 of 1866 and Miscellaneous Special Appeal No. 719 of 1866

Kangalee Churn Ghosal		APPELLANT
	Vs	
Bonomalee Mullick and Others Mahabeer Persad and Others Vs Mussamut Pranputty Koer		RESPONDENT

Date of Decision: May 31, 1867

Judgement

Sir Barnes Peacock, Kt., C.J.

The questions of law which appear to arise in these cases, which have been referred for the opinion of a Full Bench, are, whether the provisions of s. 20, Act XIV of 1859, are applicable to decrees recovered prior to the passing of that Act, or whether such decrees are regulated by s. 21 only, and if by s. 21 only, whether actual process of execution must be issued within three years from the date of the Act. The two sections above referred to are ambiguously and not very accurately worded. But we are clearly of opinion that the words "process of execution" in s. 21 used as they are in conjunction with the introductory words of the section, and following immediately after the word "but," are used in the same sense as that in which the same words are used in the first part of s. 20. We think that in both sections they are used in the sense of warrant of execution under s. 221, Act VIII of 1859. In the case of Ram Sahai Sing v. Sheo Sahai Sing Ante, p. 492 the Court had occasion to remark that, "according to the literal wording of s. 20, no process of execution could ever issue to enforce a judgment, even within a week from the date of it, unless some proceedings were taken to enforce or keep it in force within three years next before the application for execution. The meaning of the section was, doubtless, to prevent process of execution from being issued on a judgment, decree or order of a Court not established by Royal Charter, after the expiration of three years from the date of it, unless some proceedings to enforce it or to keep it in force should have been taken within three years next before the application for execution." We think that is a proper construction of

s. 20. It is important to ascertain what is the proper construction of that section, in order to arrive at a correct conclusion as to the meaning of s. 21. S. 20 is as follows:-- "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." S. 21 says:-- "Nothing in the preceding section shall apply to any judgment decree or order in force at the time of the passing of this Act." According to the strict and literal interpretation of those words, nothing contained in s. 20 is to apply to decrees obtained prior to the passing of Act XIV of 1859. But we must read those words coupled with the other words of the section, and we proceed to the following words, "but process of execution may be issued either within the time now limited by law for issuing process of execution thereon, or within three years next after the passing of this Act, whichever shall first expire." If the first words of the section are to be read literally, and nothing in s. 20 applies to decrees obtained before the passing of Act XIV of 1859, and if the latter portion of s. 21, commencing at the word "but," is also read literally, there will be no limitation whatever to decrees obtained prior to the passing of the Act, because the old law of limitation which was applicable to those decrees had been repealed, and there are no negative words with regard to the time within which those decrees can be executed. It is merely an affirmative statement, that process of execution upon such decrees may be issued either within the time now limited by law for issuing process of execution thereon, or within three years next after the passing of the Act, whichever shall first expire. But there is no enactment that process of execution shall not be issued after the expiration of that time. If we read the first part of s. 21 literally, and the words "may be issued" in s. 21 as "must be issued," there will be this difficulty, that, unless the actual warrant of execution is issued within the period allowed by the old law, or within three years from the time of the passing of Act XIV of 1859, no process of execution can be issued upon a decree obtained before the passing of Act XIV of 1859, however active and diligent the execution-creditor may have been in endeavoring to enforce execution. The proper construction of the two sections taken together appears to the Court to be this, that the words coming after the word "but" in s. 21 were intended as a proviso to s. 20; and by this construction all the difficulties are got rid of. The two sections read together thus will be to this effect, that no process of execution shall issue upon any judgment more than three years old, unless some proceeding shall have been taken to enforce it or to keep it in force within three years next preceding the application for execution; provided that process of execution in respect of a decree obtained before the passing of Act XIV of 1859 may be issued either within the time limited by law, or within three years next after the passing of the Act, whichever shall first expire, even though no proceeding shall have been taken to enforce it or to keep it in force within three years next preceding the application for execution. If this be the correct reading of the Act, a process of execution may be issued upon decrees in force at the time of the passing of Act XIV of 1859 within the time mentioned in s. 21, without any prior proceeding having been taken; but if an application is made to enforce such a decree more than three years after the passing of Act XIV of 1859, no execution

shall be issued upon it, unless some proceeding shall have been taken to enforce it or keep it in force within three years next preceding the application for execution. If such proceeding has been taken, it is not too late, although the decree may be a decree which was in force at the time of the passing of Act XIV of 1859, and the application for execution may be more than three years after the passing of the Act. Reading the two sections together, it appears to us that the above construction is a reasonable one from which no injury can arise to any one, and which will carry out the real intentions of the Legislature.

2. We think, then, with reference to the first case, No. 445, it should go back to the Division Bench which referred it, in order that it may be determined by them whether any proceeding was taken by the person who claimed to enforce the judgment within the meaning of s. 20. This decision will also govern Miscellaneous Appeal No. 719 of 1866. But we think that in that case the regular suit, which was brought by the decree-holder to contest the validity of the decision made by the Court executing the decree, that the property was not the property of the decree-debtor and therefore could not be seized, was a proceeding for the purpose of enforcing the decree. The decree-holder having obtained a decree in that suit on 6th September 1864, establishing her right to seize the disputed property was not barred from proceeding on the 23rd June 1865 to execute the original decree. The appeal in No. 719 must be dismissed with costs.