

**(1915) 03 CAL CK 0030****Calcutta High Court****Case No:** Rule No. 984 of 1914

Kista Bar

APPELLANT

Vs

Srimati Banamoyi Debia

RESPONDENT

**Date of Decision:** March 10, 1915**Final Decision:** Allowed**Judgement**

Fletcher, J.

This is a rule obtained by the Defendant-Appellant calling on the Plaintiff-Respondent to show cause why a review of judgment should not be granted. The only question involved in the appeal was whether an application for an order absolute for sale of a decree in a mortgage suit, dated the 28th of September 1898, was barred by limitation. Following the decisions of this Court on appeals from Courts subordinate thereto, we held as we were bound to hold that no period of limitation applied to such an application and that the Code of Civil Procedure, 1908, had not taken away any vested right that the Plaintiff had. On the Original Side of the Court, a different view has been taken, namely, that an application for an order absolute for sale in a mortgage suit is a proceeding in execution and must be made within the time prescribed by the Indian Limitation Act [Amlook Chand Parrack v. Sarat Chandra Mukerjee (I. L. R. 38 Cal. 913 (1911))]. After our decision in the present case the learned Vakil for the Defendant appeared and called our attention to two decisions of the Privy Council published since the date of our judgment. These two decisions are Batuk Nath v. Munni Dei (I. L. R. 36 All. 284 : s. c. 18 C. W. N. 740 (1914)) and Abdul Majid v. Jawahir Lal (I. L. R. 36 All. 350 : s. c. 18 C. W. N. 963 (1914)). In both of these cases the Privy Council had expressed an opinion contrary to the view we expressed in our judgment. We therefore issued the present rule.

2. I think the present rule must be made absolute. The present case is covered by the two decisions of the Privy Council that I have cited above. Moreover, the case of Amolak Chand v. Sarat Chandra Mukerjee (I. L. R. 38 Cal. 913 (1911)) has been on appeal to the Privy Council and the decision of this Court has been affirmed [See

Munna Lal v. Sarat Chandra Mukerjee (21 C. L. J. 118 : s. c. 19 C. W. N. 561 (1914).] That being go, the present rule must be made absolute. The appeal of the Defendant must be allowed and the judgment of the Subordinate Judge set aside and that of the Munsif restored. The Plaintiff must pay to the Defendant his costs in this Court and the Courts below including the costs of this rule -- the hearing fee in the rule being one gold mohur.

Richardson, J.

I agree.