

(1866) 08 CAL CK 0013

Calcutta High Court

Case No: Summary Regular Appeal No. 569 of 1865

Musst. Anandamayi Dasi and
Others

APPELLANT

Vs

Purna Chandra Roy and Others

RESPONDENT

Date of Decision: Aug. 23, 1866

Judgement

Sir Barnes Peacock, Kt., C.J., Trevor and L.S. Jackson, JJ.

I am of opinion that a decree of Her Majesty in Council is neither a decree of a Court established by Royal Charter, nor a decree of a Court not established by Royal Charter, within the meaning of s. 20, Act XIV of 1859, and, consequently, that Act XIV of 1859 does not apply to it. It is contended that even if the decrees of Her Majesty in Council are not decrees of a Court not established by Royal Charter within the meaning of the latter section, they cannot be executed after the period limited by that section for the execution of decrees of the Mofussil Courts, and in support of that contention s. 1 of Act XXV of 1852⁽²⁾ is relied upon. That section enacts that:-- "Every decree or order in appeal of Her Majesty in Council, or of any Court of Sudder Dewanny Adawlut, or of any Zilla or City Judge, which shall be made after the passing of this Act, * * * * shall be enforced and executed by the Court which made the first decree or order appealed from, in the manner and according to the rules and laws applicable to the execution and enforcement of original decrees or orders made by such last mentioned Court." It is urged that the words "according to the rules and laws applicable to the enforcement of original decrees of such last mentioned Court" extend to the decrees of Her Majesty in Council all laws, including the law of limitation, which are applicable to decrees of the Court which made the first decree. But I am of opinion that that is not the proper construction of those words. The of that Act was merely to provide that decrees of Her Majesty in Council and decrees of the Sudder Court, which were formerly executed by that Court, as well as decrees made in appeal by the City or Zilla Judges, should, for the future, be executed by the Court which passed the first decree according to the procedure of such Court and the rules and laws regulating such procedure. It was never intended

to extend to such decrees any law of limitation. It would be a very strained construction of the words "according to the laws applicable to the execution and enforcement of decrees" to hold that they include a law of limitation which prohibits the enforcement of decrees after a certain period. As regards decrees of the Sudder and Zilla Courts, it was wholly unnecessary to provide any limitation, for the same limitation which applied to the decrees first passed applied to the decrees passed in appeal by the Sudder and Zilla Courts. As regards decrees passed in appeal by Her Majesty in Council, it appears to me that it was beyond the power of the Legislature to limit the period for their execution, as such an enactment would have been an interference with Her Majesty's prerogative. The 3 & 4 Wm. IV, c. 85, s. 43, expressly provided that the Governor-General in Council should not have power to make any law which should in any way affect any prerogative of the Crown ⁽³⁾. Further it was enacted by the 3 & 4 Wm. IV, c. 41, s. 21, that "the order or decree of His Majesty in Council on any appeal from the order, sentence, or decree of any Court of Justice in the East Indies, shall be carried into effect in such manner and subject to such limitations and conditions as His Majesty in Council shall, on the recommendation of the said Judicial Committee, direct; and it shall be lawful for His Majesty in Council on such recommendation, by order to direct that such Court of Justice shall carry the same into effect accordingly; and therefore such Court of Justice shall have the same powers of carrying into effect and enforcing such order or decree as are possessed by or are hereby given to His Majesty in Council." It was evidently to prevent any interference with these latter words that s. 4 of Act XXV of 1852 was introduced, so that upon appeals from the decrees of the Sudder Court that Court might itself carry the same into effect if ordered so to do by Her Majesty in Council. If the Legislature, when making a distinction between Courts established by Royal Charter and Courts not established by Royal Charter by Act XIV of 1839, had considered that by virtue of Act XXV of 1852, s. 20 of the new law of limitation would be in effect applicable to decrees of Her Majesty in Council in appeal from the Sudder Court, it is very unlikely that they would have so framed the Act as to allow a much shorter period for enforcing such decrees of Her Majesty in Council than for enforcing decrees of the Supreme Court. This, however, would be the case if s. 20 is held to apply to decrees of Her Majesty in Council.

2. I am further of opinion that decrees of Her Majesty in Council are not affected by cl. 16, s. 1, Act XIV of 1859, which enacts that in all suits for which no other limitation is expressly provided by that Act, the period of six years should be applied. The enforcement of a decree by execution is clearly not the institution of a suit within the meaning of that section.

3. For the above reasons I think that the right to enforce decrees of Her Majesty in Council is not affected by any law of limitation. Should any inconvenience arise from this decision it may be obviated by Her Majesty in Council upon the recommendation of the Judicial Committee under the provisions of s. 21, Act 3 & 4 Wm. IV, c. 41, to which I have already alluded.

4. The order of the Principal Sudder Ameen is reversed with costs with liberty to the decree-holders to proceed with the execution,

Loch, J.

5. It appears to me that the words used in s. 1, Act XXV of 1852, are sufficiently comprehensive to admit of the construction I have put upon them elsewhere, viz., that they enable the Courts to apply the law of limitation to decrees in execution. Previous to the enactment of Act XIV of 1859 there was no statute of limitation in respect to the execution of decrees. The Courts were under the rules laid down by the late Sudder Court in certain constructions of law. By those constructions it was ruled that the law of limitation applicable to suits, viz., twelve years, was applicable to the execution of decrees, and that a decree-holder could, not, except upon good and sufficient cause shown, execute his decree after the lapse of that period. When, therefore, the Act directs that certain decrees made in appeal are to be enforced and executed by the Court which made the first decree or order appealed from in the manner and according to the rules and laws applicable to the execution and enforcement of original decrees or orders made by such last mentioned Court, it appears to me that all rules then in force must be taken into consideration, and that if execution were barred by limitation, the rule of the Court which prohibited execution under such circumstances would have to be applied.

6. Whether the Legislature in this country had the power to limit the period for the execution of decrees of Her Majesty in Council is another question, but I believe that I am not wrong in stating that under the former practice the rule applicable to other decrees was considered applicable to them. Looking, however, to the wording of the Act 3 & 4 Wm. IV, c. 41, s. 21, quoted by the Chief Justice, I think that the Legislature in this country had not authority to pass any law limiting the period during which decrees of Her Majesty in Council should be executed, and I therefore concur in the judgment of the Court, that the provision of s. 1, Act XXV of 1852, cannot be applied in this case.

Macpherson, J.

I concur in the conclusion arrived at by the majority of the Court, because I think for the reasons which have been given that, whatever may be the construction of the word used in s. 1 of Act XXV of 1852, it was not in the power of the Indian-Legislature to limit the time for the execution of decrees of the Privy Council.

²Act XXV of 1852, s. 4 - "Nothing here-in contained shall be construed so as to prevent any Court of sudder Dewanny Adawalut from enforcing or obtaining execution of a decree or order made or passed by Her Majesty in Council, if Her Majesty in Council shall think fit to decree or order the said Court of Sudder Dewanny Adawlut to enforce or execute the same."

³See "The Indian Council"s Act 1861." 24 & 25 Vict., c. 67, s. 24.