

Jamnadas and ors. Vs. Lalitaram and ors.

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Court : Mumbai

Decided On : Aug-07-1877

Reported in : (1878)ILR2Bom294

Judge : Michael Westropp, C.J. and ;Melvill, J.

Appellant : Jamnadas and ors.

Respondent : Lalitaram and ors.

Judgement :

Michael Westropp, C.J.

1. The darkhast of the 24th July 1874 prays execution of the decree of the 10th December 1863 against certain specified moveable property of the defendants, on which decree the plaintiffs allege that Rs. 21,346-5-5 are still due. It had directed the defendants to pay to the plaintiffs the sum of Rs. 43,667-9-10, and also declared the plaintiffs entitled to a mortgage (dated 25th January 1856) upon a monthly permanent pension of Rs. 300 payable quarterly to the defendants. On the 16th April 1869, the plaintiffs, by a darkhast alleging that Rs. 30,789-3-5 were then due on the decree of 1863, prayed attachment of the pension; and the Court of the Subordinate Judge ordered the same accordingly. Subsequently, the Pensions Act XXIII of 1871 was passed, and the Deputy Collector of the Zillah of Surat, by letter of 13th May 1872 to the Court, in consequence of the passing of that Act, declined to continue to the plaintiffs the payment of the pension, which,

up to that date, had, pursuant to the order of the 16th April 1869, been paid to the plaintiffs, and the warrant of execution, which had been issued under that order of the 16th April 1869, was returned to the Court; and the Court on the 14th June 1872 made an order finally disposing of the darkhast of April 16th, 1869. On the 19th June 1872 the plaintiffs presented a fresh darkhast against the defendants, mentioning the act of the Deputy Collector, alleging that Act XXIII of 1871 did not affect the rights of the plaintiffs, and praying that the attachment of the pension should be continued, and that a letter should be written to the Collector, directing that the payment of the pension to the plaintiffs, as ordered on the 16th April 1869, should be continued. The Subordinate Judge refused that application. The plaintiffs appealed to this Court, which, on the 12th August 1874, reversed the order of the Subordinate Judge, and declared that the Pensions Act XXIII of 1871 was not retrospective, and did not affect the rights of the plaintiff's under their mortgage of the 25th January 1856, the decree thereon of 1863, or the order for attachment of the 16th April 1869 (*supra*, note to page 295). The Subordinate Judge has held that the application of the 19th June 1872 is not such an application as falls within the 4th clause of Article 167 of Schedule II to Act IX of 1871. In support of that view the learned pleader for the defendants has cited *Gouree Sunkur Tribedee v. Arman Ali Chowdhry* 21 Cal. W.R. 309, (the report of which is too meagre to be of any value) for the proposition, that the application spoken of in Article 167, Clause 4, must, at least, be such an application as is contemplated by Section 212 of the Civil Procedure Code (Act VIII of 1859). But Section 212 applies merely to the enforcement of decrees, whereas Article 167, Clause 4, speaks not only of applications to the Court to 'enforce,' but also of applications to the Court to 'keep in force' decrees or orders. The enforcement of the decree in the present case was for a time interrupted by the act of the Collector in stopping the payment of the pension to the plaintiffs. The darkhast of the plaintiffs of the 19th June 1872, presented five days after the occurrence of the interruption, seems to us most clearly to be, at least, an application to keep the decree in force, pursuant to the order of attachment of the 16th April 1869. For the defendant it has been argued that the applications of 1869 and 1872, having been directed against the pension only, could not serve to keep alive the decree, so that it might properly be enforced against other property of the defendant. But we find

no such limitation in Article 167, Clause 4. The language of that enactment is wide enough to include any application to enforce or keep in force decrees or orders. It cannot be successfully maintained that an application, within three years, for the arrest of the defendants under the decree, would not keep the decree alive against their property; still less can it be maintained that an application to enforce or keep in force the decree by attachment of a portion of their property would not keep the decree alive against the residue of their property or against their persons. It is no part of the duty of the Civil Courts to make Limitation Acts more stringent than the Legislature has made them; and, were we to yield to the argument on behalf of the defendants, we should do so.

2. Jibhai Mahipati v. Parbhu Bapu I.L.R. 1 Bom. 59 has been cited; but the darkhast, relied on there to take the case out of the Limitation Act, seems to have been of a different character from that which we have here, which latter is, if it be anything, an application to keep the decree in force. Moreover, the head-note of the case cited, appears to go further than the judgment of the Court in stating that Gouree Sunkur Tribedee v. Arman Ali Chowdhry 21 Cal. W.R. 309 was followed. That case certainly was referred to by West, J., in his judgment; but he went on to say that the application, even if it had been of a sufficient character to prevent the bar of limitation, had not been presented in sufficient time for that purpose.

3. It is as well to refer to our Circular Order at page 72 of the Circular Order Book, which provides that 'when an estate yielding a periodical payment is attached, it is not necessary to file a fresh darkhast for each payment.' This regards the execution of the decree as continuable under the original attachment, if the estate attached be one yielding a periodical payment.

4. For these reasons we reverse the order of the Subordinate Judge of the 27th February 1875, as we are of opinion that the decree is not barred by the law of limitation, inasmuch as the application of the 19th June 1872 gave to the plaintiff's a fresh terminus whence time began to run, and the period of three years from that terminus had not expired when the present application of the 24th July 1874 was presented. The prayer of the darkhast of that date should, therefore, be complied with, and execution accordingly must issue against the property named therein.

The defendants must pay to the plaintiff's the costs of that application in the Court below, and of the appeal therein to this Court.

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