

**Lalu Vs. Chhed**

**Lalu Vs. Chhed**

**SooperKanoon Citation :** [sooperkanoon.com/448705](http://sooperkanoon.com/448705)

**Court :** Allahabad

**Decided On :** Mar-04-1902

**Reported in :** (1902)ILR24All300

**Judge :** Banerji and ;Aikman, JJ.

**Appellant :** Lalu

**Respondent :** Chhed

**Judgement :**

**Banerji and Aikman, JJ.**

1. This appeal arises out of an application for the execution of a decree for pre-emption passed, on the 20th of December, 1897. The decree; provides that the purchase money should be paid within two months from its date, and, that on such payment the plaintiff should obtain possession of the property. The purchase money was paid on the 17th of February, 1898, and the present application for: execution was presented on the 16th of February, 1901. It was thus made after the lapse of three years from the date of the decree, but within three years from the date on which the money was paid. The Court of first instance on the objection of the judgment-debtor held the application to be barred by limitation, applying to it Article 179 of Schedule ii of the Indian Limitation Act. On the decree-holder's appeal the lower appellate Court set aside the order of the Court of first instance and remanded the case to that Court under Section 562, Code of Civil Procedure.

From this order of remand the present appeal has been preferred by the judgment-debtor, who renews his contention that the application for execution is barred by limitation.

2. It is clear that if the first paragraph of Article 179 applies, the application is beyond time. But in our opinion, having regard to the nature of the decree which was passed in the case, that article cannot be held to be applicable. It was, held in *Muhammad Sulaiman Khan v. Muhammad Yar Khan* (1894) I.L.R. 17 All. 39 that the first paragraph of the third column of Article 179 must necessarily apply only when there is a decree, or order which can at its date be executed. A decree for pre-emption is not capable of execution on the date on which it is passed, unless on that date the plaintiff pre-emptor pays the purchase money which the decree direct to be paid. In this case there was no decree in existence on the 20th of December, 1897, which was capable of execution on that date. It was only when the decree-holder plaintiff paid the purchase money within the time allowed by the decree that he acquired the right to execute the decree by applying to be put in possession of the property in suit. The decree was drawn up in the usual form under Section 214 of the Code of Civil Procedure, and one of the provisions of it was that on failure of the plaintiff to pay the purchase money within the time fixed the suit was to stand dismissed with costs, so that the decree was subject to a condition, the performance or non-performance of which made it one which could be enforced at the instance of the plaintiff or the defendant as the case might be. Such being the case, we are of opinion that the article properly applicable to the first application for the execution of such a decree is Article 178, and that the three years provided in that article should be calculated from the date on which the right to apply accrued. Subsequent applications for the execution of the decree will of course be governed by Article 179. We think the learned Judge was right, and we dismiss the appeal with costs.