

Thondi Ram Vs. Lachman

Thondi Ram Vs. Lachman

SooperKanoon Citation : sooperkanoon.com/450223

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1885)ILR7All382

Judge : W. Comer Petheram, C.J. and; Straight, J.

Appellant : Thondi Ram

Respondent : Lachman

Judgement :

W. Comer Petheram, C.J.

1. I think that this appeal must be dismissed with costs, and for the purposes of my judgment, I propose only to state the view which I take in connection with Article 179 of the Limitation Act. My brother STRAIGHT will deal with the facts of the case, and with the procedure which has been followed.

2. The question as to Article 179 is whether an application to execute an attached decree is a 'step in aid of execution' of the original decree. It appears to me that an application for execution of a money-decree means an application to the Court to get the money by sale of property belonging to the judgment-debtor, so that the Court may be able to pay the creditor the amount due to him. In the present case such an application was made by the judgment-creditor, and the Court then took the first step in aid of the execution of the decree by attaching the debtor's

property, and the property so attached included a judgment-debt. That judgment-debt had to be sold or realized in some way, and it could only be done by applying to the Court in which the judgment was to execute it by selling the debtor's property. It would then be necessary to make an application to the Court executing the original decree to bring the amount so received into account, and that is what was done in the present case. If I am right in the view which I take of execution of decree, this must be 'a step in aid of execution' within the meaning of Article 179 of the Limitation Act, because the object of it was to obtain money in order to pay off the judgment-debt; and it was in execution for that reason. I am therefore of opinion that the order of the Lower Appellate Court was right, and that the appeal must be dismissed with costs.

Straight, J.

3. It will be convenient, in reference to what the Chief Justice has said, that I should illustrate his observations by describing the circumstances of the case. The decree now in question was passed on the 20th February 1878, and it was passed by the Munsif of Muthra. On the 21st November 1878, an application was put in for the transfer of the decree to the Munsif of Jalesar, and, in accordance with the provisions of Section 223 of the Civil Procedure Code, it was transferred to him, and he then became seized of it, and, under Section 228 of the Civil Procedure Code, acquired thereupon the same powers in regard to its execution as if he had himself passed it. On the 21st January 1879, the application for execution proper, so to speak, was made to the Munsif of Jalesar, who seems to have issued an order for the attachment of some immoveable property belonging to the judgment-debtor, as also for attachment of three decrees standing in his Court in favour of the judgment-debtor against other persons. Two at least of these decrees related to immoveable property. On the 18th March 1882, a formal application was made by the decree-holder, the respondent in the present appeal, to the Munsif of Jalesar to execute one of these decrees on his behalf; and he further asked that whatever might be realized in such execution should go to the account of the decree which had been transferred, and which was being executed. We are now invited by the learned Counsel for the appellant to hold that a subsequent application for execution of the decree, dated the 12th April 1883, was barred by

limitation. He contends that the application of the 18th March 1882, was no such a proceeding as could keep alive the decree of the 20th February 1878. I am wholly unable to accept this contention. Under Section 228 of the Code, the decree having been transferred to the Munsif of Jalesar, he had, in executing it, the same powers as if he had himself passed it; and any order passed by him under Section 273 would be made under the first paragraph of that section, because it would be an order directing the proceeds of the former decree to be applied in satisfaction of the latter decree. I cannot see what other course the judgment-creditor could have adopted than that which he actually took. It appears to me that the application of the 18th March 1882, was perfectly in order and perfectly legal, and I therefore hold that the application of the 12th April 1883 was not barred by limitation, and the appeal should be dismissed with costs. I may add that I entirely concur with the Chief Justice in the construction which he puts upon the terms used in the third column of Article 179 of the Limitation Act.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com