

Khetpal Vs. Tikam Singh

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Court : Allahabad

Decided On : Mar-11-1912

Reported in : (1912)ILR34All396

Judge : Karamat Husain and ;Tudball, J.

Appellant : Khetpal

Respondent : Tikam Singh

Judgement :

Karamat Husain and Tudball, JJ.

1. In this case the decree-holder obtained a simple money decree against the judgment-debtor on the 19th of December, 1896. Various infructuous applications were made for execution of the decree, and the decree-holder, on the 15th of December, 1908, applied for the transfer of the decree from the court at Agra, to that at Aligarh. The application was granted on the 24th of February, 1909. He, then, on the 23rd March, 1909, applied to the court at Aligarh for execution. The court came to the conclusion that the application, dated the 23rd of March, 1909, was barred by the 12 years' rule of limitation. The decree-holder has preferred an appeal to this Court, and his learned vakil argues that the application in question is an application in continuation of the application for transfer, dated the 16th of December, 1908, and is thus not barred by limitation. In support of this contention reliance is placed upon Ram Sahai v. Nanni Weekly Notes 1886 p. 137. It lays

down in substance that an application for transfer is tantamount to an application for execution. The learned vakil for the judgment-debtor relies upon *Sundar Singh v. Doru Shankar* (1897) I.L.R. 20 All. 78 in which a Bench of this Court was of opinion that an application for transfer was not an application for execution of a decree, though they rejected the application for revision on another ground. We are of opinion that an application for execution can in no sense of the words be regarded as an application in continuation of an application for transfer of a decree from one court to another. In order that an application may be a continuation of another application, it is necessary that the two applications be of the same nature, and the application for transfer being an application of an entirely different nature from that for execution of a decree, we agree with the view taken by the learned Judges in *Sundar Singh v. Doru Shankar* in preference to that expressed in *Ram Sahai v. Nanni*. We therefore, dismiss the appeal with costs.

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