

**Shugan Chand Vs. Ramjas**

**Shugan Chand Vs. Ramjas**

**SooperKanoon Citation :** [sooperkanoon.com/458908](http://sooperkanoon.com/458908)

**Court :** Allahabad

**Decided On :** Jan-20-1910

**Reported in :** 5Ind.Cas.292

**Judge :** Tudball, J.

**Appellant :** Shugan Chand

**Respondent :** Ramjas

**Judgement :**

**Tudball, J.**

1. This appeal arises out of execution proceedings. Both the lower Courts have held that the present application for execution is barred by limitation. As far as it is necessary for the purposes of this appeal, the facts are as follows: The last application for execution was made on the 14th of June 1905 for attachment and sale of a certain house. Objection was made by two persons to the attachment and sale on the ground that the property belonged to them and not to the judgment-debtor. On the 28th of June 1905, the Court fixed the 23rd of September for the trial of the objection. On the 23rd September, the decree-holder filed a written reply and asked the Court to reject the objections. He also filed a second application asking the Court to receive and record the evidence of certain witnesses whom he had brought with him. The Court recorded the evidence and on the 25th of September held that the property belonged to the objectors and not

to the judgment-debtor. It appears that the objectors, who were two ladies, subsequently died and the property devolved on the judgment-debtor; whereupon on the 22nd of September 1908, the decree-holder again applied for the attachment and sale of the same property. The question is, whether the two applications of the 23rd September 1905 are applications made in accordance with law to a proper Court to take steps in aid of the execution of the decree. In the case of *Ali Muhammad Khan v. Gur Parshad* 5 A. 344, it was held that 'an application by a decree-holder in the course of an investigation into an objection to the attachment of property to have his witnesses summoned is an application within the meaning of Article 179(4) Schedule II of the Limitation Act, 1877.' That ruling is, as the lower appellate Court has admitted in its judgment, decidedly in favour of the appellant's case. For it is clear that if an application to have the witnesses summoned is an application within the meaning of the article, an application to the Court to actually examine those witnesses is equally an application to it to take a step in aid of the execution. In both cases it is an application to a Court to do something to further the execution of the decree-holder's decree. But the lower Court has held that this ruling has been overruled by the decision in the case of *Shib Lal v. Radha Kishen* 7 A. 898. In this, it is quite clear that the lower Court is incorrect. In the latter case the plaintiff sued certain defendants and obtained a decree against some of them. As against one defendant his suit was dismissed with costs. This latter defendant put into execution as against the plaintiff his decree for costs. The plaintiff decree-holder filed an objection to that application for execution. The Court held that the offering of objections under these circumstances did not amount to an application to the Court to take steps in aid of the execution of the plaintiff's decree. It is quite clear that the plaintiff in that case when he filed objections to the defendant decree-holder's application for execution was not attempting in any way whatsoever to further the execution of his own decree. He was only attempting to block the execution of another person's decree, which had really no concern whatsoever with his own decree. The lower Court has further remarked in its judgment: 'The principle that an objection raised by the decree-holder to objections raised even by the judgment-debtor to the validity of a step in execution taken by the decree-holder is not an application in execution within the meaning of Article 179(4) Act

XV of 1877, is further laid down in *Umesh Chandra Datta v. Sunder Narain Das* 16 C. 747. It is very difficult indeed to follow the lower Court's reasoning. All that was held in the case quoted was that the mere appearance of the decree-holder by his pleader to oppose an application made by the judgment-debtor to set aside a sale in execution of decree was not an application, within the meaning of Article 179(4), Schedule II of the Limitation Act, to take a step in aid of execution. All that that ruling lays down is that a mere appearance does not amount to an application. On the other hand in the case of *Gobind Parshad v. Rung Lal* 21 C. 23, it was held: 'an application by a decree-holder praying that a petition of the judgment-debtor to set aside the sale of property belonging to him should be rejected and the sale be confirmed, is an application falling within the meaning of Article 179(4) of Schedule II of the Limitation Act XV of 1877 and application for execution of the decree, made within three years from such a former application, is not barred.' In the present case, the decree-holder on the 23rd September 1905 made two clear and distinct applications to the Court, first, to reject the objections filed by the two ladies, and, secondly, to examine his witnesses, who were present in Court. Both the applications were made in writing and are on the record. In my opinion they clearly were applications to the Court to take steps to which if the Court had acceded the execution of the decree would certainly have been furthered. It is clear that the execution was blocked for the time being by the objection raised by the second parties. It is clear that the decree-holder wished to remove that block and he applied to the Court to take steps which if they had been taken would have removed the block and furthered the execution of the decree. The ruling in *Ali Muhammad Khan v. Gur Parshad* 5 A. 344, mentioned above, was not overruled by that in *Shib Lal v. Radha Kishen* 7 A. 898. In my opinion the second application of the 22nd September 1908, which was made within three years of the application of the 23rd September 1905 is not barred by limitation. I, therefore, admit the appeal and set aside the order of the lower Courts. The application for execution will be remanded to the Court of first instance through the lower appellate Court in order that the execution may be proceeded with according to law. The appellant will have his costs in all Courts.