

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

Budh Singh and ors. Vs. 8th Additional District Judge, Meerut and ors.

Budh Singh and ors. Vs. 8th Additional District Judge, Meerut and ors.

SooperKanoon Citation : sooperkanoon.com/464369

Court : Allahabad

Decided On : Apr-05-1985

Reported in : AIR1986All49

Judge : B.D. Agrawal, J.

**Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47 - Order 22, Rule 12;
[Limitation Act, 1963](#) - Schedule - Article 137**

Appeal No. : Civil Misc. Writ Petn. No. 4386 of 1985

Appellant : Budh Singh and ors.

Respondent : 8th Additional District Judge, Meerut and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : B.D. Tripathi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B.D. Agrawal, J.

1. Heard counsel.

2. The sole decree-holder died on Feb. 22, 1979. The legal representatives of the deceased decree-holder made an application on Sept. 8, 1983, for being permitted to proceed with the execution which had been filed and registered in the year 1969. For the petitioners it is contended that in the absence of provision for limitation in respect of such application contained in Order 22, Civil Procedure Code, Article 137 of the Schedule to the [Limitation Act, 1963](#), should be taken as applicable and hence the application by the legal representatives could be made only within three years and not beyond the same. I am unable to agree.

3. Upon reference to Order 22, Rule 12, C.P.C. it will appear that according to that provision nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order. This means, in other words, that in relation to execution, the legal representatives are not called upon to seek substitution upon the death of the decree-holder or the judgment-debtor, as the case may be. Were, as in this case, the decree-holder dies it is open to the legal representatives claiming interest in the estate of the deceased or as being entitled to proceed with the decree, to come up just by way of information to the execution Court and thereafter proceed with the execution. Since under the Code no application for substitution or otherwise is required to be made by such legal representatives, it cannot be claimed that the bar of Article 137 of the Limitation Act is attracted. Article 137 may be invoked where an application is required under the law to be necessarily made in order to confer or create a right to proceed in a matter, but where no such application is the requirement of law, the bar of limitation is inapplicable.

4. For these reasons the petition is dismissed in limine.

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