

**Amar Singh Vs. Mt. Ram Dei**

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**Court :** Allahabad

**Decided On :** May-01-1925

**Reported in :** AIR1925All802

**Appellant :** Amar Singh

**Respondent :** Mt. Ram Dei

**Judgement :**

**Boys, J.**

1. In this case, on the 10th of April 1920, the decree-holder obtained a final decree for Rs. 2,338 on a mortgage. On the 6th of April 1923, the decree-holder is said to have received Rs. 50 from the judgment-debtor towards satisfaction of the decree. On the 3rd of July 1923, the decree-holder applied under Order 21, Rule 2, certifying the payment of Rs. 50, and this was duly recorded by the Court. On the 19th of September, 1923, the decree-holder applied for execution. Without issuing notice to the judgment debtor the first Court summarily rejected the application as barred by limitation. It will be seen that the date of the alleged payment of Rs. 50 was a few days within the period of limitation, whereas the certificate was some three months after the period of three years from the date of the decree had expired. The first Court then held that the application for execution was barred by limitation in that payment was certified under Order 21, Rule 2, after the period of three years from the date of the decree, and that the 'certification cannot revive the

decree.' The lower appellate Court, relying upon the case reported in Bhajan Lal v. Chede Lal (1914) 12 A.L.J. 825 dismissed the appeal.

2. The question for final decision in the case will be whether the application for execution was barred by limitation and the preliminary questions that we have to decide may be stated as follows:

(1) Assuming that a payment has been made within three years of the last starting point of limitation for the execution application (in this case the date of the final decree) must that payment, in order to avoid exclusion from recognition by the terms of Order 21, Rule 2(3), be certified under Rule 2 within any particular period of limitation?

(2) If the answer is in the affirmative, (a) does the period of limitation for the certification commence from the last starting point for the execution application or from the date of the payment? and (b) was the certification within the period?

(3) If the certification was not barred by any rule of limitation, does the certification make - the payment entitled to recognition as a payment made on the date on which it was actually made or as a payment made on the date when it was certified?

We have endeavoured to state these questions in unmistakable terms because it appears to us that the ruling of this Court by which the lower appellate Court has considered itself bound has been misunderstood not only by that Court, but that that case and others of this Court, to which we shall refer have been misappreciated in several subsequent cases of other High Courts.

It is necessary to be clear that there are two distinct aspects of the law of limitation to be distinguished namely, the law of limitation, if any, applicable to the certification of a payment and the law of limitation applicable to an application for execution. We shall have at present to discuss only the law of limitation, if any, applicable to certification. If we find that there is no impediment in the way of certification, the materials before us are not complete for a decision as to whether the application for execution is within the period of limitation applicable to

applications for execution. The case will for that purpose, should the necessity arise, have to be remanded for findings as to whether a payment was in fact made; if so, on what date, and was the payment, if made, such as to constitute within the meaning of Section 20 of the Limitation Act a fresh starting point for limitation so as to make the present application for execution within time. At present the only finding by the lower Courts has been that the certification could not be made.

3. We have been referred to several cases of this Court : Gokal Chand v. Bhika (1914) 12 A.L.J. 387 Bhajan Lal V. Chede Lal (1914) 12 A.L.J. 825; chattar Singh v. Amir Singh (1916) 38 All. 204 and Baij Nath v. Panna Lal A.I.R. 1924 All. 706. We do not consider that any of these cases are material to the point that we have to decide. The certification set up, and the validity of which is questioned, may be prior to, contemporaneous with and part of, or subsequent to the application for execution. In the case before us it was prior; in the cases to which we have just referred it was contemporaneous; and in Shaft Mahomed v. Choitram (1919) 13 S.L.R. 37 it was subsequent. It is clear that there is a difference between the practice in this Court and that of some other Courts, including that of Calcutta, in the matter of whether an application under Order 21, Rule 2(1), must be made by a separate and prior proceeding to an application for execution, or whether it can form part of and be contemporaneous with the application for execution and whether the manner of making it must be in any particular form. We are not concerned here with this difference in practice. It is clear, that in the present case application under Order 21, Rule 2(1), was made by a distinct and prior proceeding. All that was held in the oases of this Court, to which we have referred, was that because there was no prior and separate proceeding, there was in fact no certificate such as is required. The question, therefore, of limitation did not really arise at all. On the other hand, we have, on behalf of the appellant also, been referred to Jatindra Kumar Das v. Gagan Chandra Pal (1919) 46 Cal. 22, Pandurang Balkrishna v. Jagya Bhau A.I.R. 1921 Bom. 411 and Masilamani Mudaliar v. Sethuswami Aiyar (1918) 41 Mad. 251. The case at Masilamani Mudaliar v. Sethuswami Aiyar (1918) 41 Mad. 251 has no bearing on the question before us. The Court decided merely that a contemporaneous certifying was a good certification within Order 21, Rule 2(1), and remanded the case for a finding

as to whether a payment had in fact been made; and if so, whether it operated to save limitation. The finding on remand was that no payment had been made, and that concluded the matter. Very similar was the case at Pandurang Balkrishna v. Jagya Bhau A.I.R. 1921 Bom. 411.

4. The case reported in Jotindra Kumar Das v. Gagan Chandra Pal (1919) 46 Cal. 22 is, however, directly in point and in favour of the decree-holder. It was held that the alleged payment being within three years of the date of the decree and the application under Order 21, Rule 2(1), being again within three years from the date of payment the decree-holder would have a fresh starting point for limitation. The case was, therefore, remanded for evidence to be taken as to the payment. To the same effect is the case reported in Rajam Aiyar v. Anantha Ratnam Aiyar (1915) 9 S.L.R. 27.

5. On behalf of the respondent reliance was placed without any justification on Narsoomal v. Tirthamal (1915) 9 S.L.R. 27. We say 'without justification;' for though the case is in respondent's favour the two learned Judges who decided it themselves repudiated it later in the case reported in Shafi Mahomed v. Choitram (1919) 13 S.L.R. 37. We have no hesitation in holding that the 'certifying of the payment before the application for execution sufficed to remove the bar contained in Order 21, Rule 2(3), and to make it necessary for the trial Court to take evidence in regard to the payment, if it was denied, and if it was admitted or denied and proved, to determine the effect of such payment in view of Section 20 of the Limitation Act. It is clear at least that there is no provision that the payment must be certified on the day that it is made. Is there any provision that it must be certified within any particular period? The only possible limitation to be found is in Article 181 of the Limitation Act. It is not necessary for the purposes of this case to determine whether or not that article is applicable; for, even if it is applicable, the certifying was in this case within three years of the payment. If then the certification was not barred by any period of limitation, what is to be the effect of such certification? Sub-section 3 of Rule 2, Order 21, merely declares that the payment shall not be recognised until it has been certified. That is merely a rule of procedure, and the contrary proposition may reasonably be inferred that when the payment has been certified it can be recognized. If it can be recognized, is it to be

recognized as having been made on the day on which it was certified? We think that the former is clearly the correct proposition. If the date of payment, and the date of certifying, were both dates within a period of three years from the last starting point of limitation, in this case the date of the final decree, it appears to us that it could not be reasonably suggested that the Court in subsequently executing the decree would consider the date of payment to be not that on which the actual payment was made, but the date on which the actual payment was certified. If that rule would apply, as we think it must be applied where both the payment and the certificate were within a period of three years from the date of the last starting point of limitation, there appears to be no possible reason for holding that some different rule should apply where the date of certifying was beyond the period of three years from the date of the last starting point of limitation.

6. We hold, therefore, that assuming that the alleged payment was made on 6th April 1923, a certification of that payment on 3rd July 1923, is not barred by any law of limitation; that the certification was, therefore, a valid certification; and that, assuming the payment to have been made on 6th April 1923, any effect which it may have by reason of Section 20 of the Limitation Act will be the effect of a payment made on 6th April 1923, and not as if made on the date of certification, 3rd July 1923.

7. The result is, that we set aside the orders of the Courts below, and direct the Subordinate Judge to restore the case to its original number, to take the evidence as to whether the payment was in fact made and to decide the case according to law. The costs of this appeal will be costs in the cause with Counsel's fees on the higher scale.