

**Rup Narain and ors. Vs. Sheo Prakash Alias Munnu Lal**

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**SooperKanoon Citation :** [sooperkanoon.com/478488](http://sooperkanoon.com/478488)

**Court :** Allahabad

**Decided On :** Jan-05-1921

**Reported in :** 61Ind.Cas.129

**Judge :** Piggott and; Walsh, JJ.

**Appellant :** Rup Narain and ors.

**Respondent :** Sheo Prakash Alias Munnu Lal

**Judgement :**

1. In the case out of which this appeal arises a filial decree for sale was passed on the 26th of November 1806. The plaintiff, although his claim had been decreed in full, appealed to the High Court by reason of certain remarks which the Trial Court had made in its judgment when passing the final decree. This Court held that no appeal lay under the circumstances, i.e., that it was not competent to the plaintiff to appeal against the decree in order to obtain a reconsideration of matters referred to in the judgment but not embodied in the decree. The appeal was dismissed on the 29th of June 1903, and the question before us for determination is, whether twelve years period of limitation referred to in Section 48 of the Code of Civil Procedure began to run from this latter date or from the 16th of November 1906, the date of the final decree in the Court of first instance. On the wording of Article 182 of the Schedule to the Indian Limitation Act the decision of the Court below, which held that twelve years period of limitation must be reckoned from the later of these two dates, appears correct. There is also authority on the same side

Ahshoy Kumar Nundi v. Chunder Mohun 16 C. 250 : 8 Ind. Dec. (N.S.) 165 and Fazl-ur-Rahman v. Shah Muhammad Khan 30 A. 385 : 5 A.L.J. 680 : A.W.N. (1908) 161. An appeal had been preferred, although this Court decided that the plaintiff had no right under the circumstances to maintain the appeal. Moreover, in this particular case, execution was actually taken out in the first instance some five years after the date of the decree of the first Court, although it was on an application presented within three years of the date of this Court's final decree. The question of the terminus a quo of limitation was really raised by the very first application for execution and seems to have been decided in favour of the decree-holder then. We dismiss this appeal with costs, including fees on the higher scale.

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