

Luchmun Persad Singh and ors. Vs. Kishun Persad Singh and ors.

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Court : Kolkata

Decided On : Jan-20-1882

Reported in : (1882)ILR8Cal219

Judge : Richard Garth, C.J., ;Pontifex, ;Morris, ;Mitter and ;Prinsep, JJ.

Appellant : Luchmun Persad Singh and ors.

Respondent : Kishun Persad Singh and ors.

Judgement :

Richard Garth, C.J.

1. We are of opinion that the application in question is governed by Article 180 of the 2nd schedule of the Limitation Act.
2. Although an order of Her Majesty in Council may confirm the decree of the Court below, that order is undoubtedly the paramount decision in the suit, and any application to enforce it is, in point of law, an application to execute the order, and not the decree which it confirmed: see *Pitts v. La Fontaine* L.R. 6 App. Cas. 482.
3. The test of this is, that before the decree-holder can obtain execution, he must apply to the High Court under Section 610 of the Code to transmit the order of Her Majesty to the Court whose duty it is to issue execution, and it is clear from the language of that section, that the Court to which the order is transmitted has to execute, not its own decree, but the order itself. If this were not so there would

seem no necessity for applying to the High Court at all.

4. As the application, therefore, in this case was to execute the order of Her Majesty, it comes directly within the scope of Article 180 of the Limitation Act.

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