"some person executing" it; this expression means the person actually and in fact executing the document and it does not refer to the principal who may be considered to be executing the document by means of an agent. The basic principle underlying these provisions of the Registration Act is to get before the Sub-Registrar the actual executant who in fact executes the document in question."

Following this decision, it has to be held that Shri Kartar Singh Chawla, who had actually and in fact executed the sale-deed, Exhibit D/1, was a proper person, within the meaning of section 32(a) of the Registration Act, to present the document for registration before the Sub-Registrar. That being so, the question of the applicability of the provisions of sections 32(c) and 33(a) does not arise in the instant case. There is thus no force in this objection as well. It may be mentioned that the learned counsel for the appellants challenged the correctness of the decision in *Ram Gopal's case* and cited *Puran Chand Nahatta* v. *Monmotho Nath Mukherjee and others* (2), *D. Sardar Singh* v. *Seth Pissumal-Harbhagwandas, Bankers* (3), and *Abdus Samad* v. *Majitan Bibi and another* (4), which, according to him, had taken a contrary view. Sitting singly, however, I am bound by the Bench decision of this Court.

In view of what I have said above, this appeal fails and is dismissed. In the circumstances, of this case, however, I will leave the parties to bear their own costs throughout.

B. R. T.

APPELLATE CIVIL

Before Harbans Singh and J. N. Kaushal, JJ.

SANTOKH SINGH,—*Appellant.*

versus

DALIP KAUR AND OTHERS,—*Respondents.*

Execution First Appeal No. 34 of 1962.

December 16, 1966.

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—S. 37—Decree passed by Tribunal directing its adjustment from compensation payable to

(2) A.I.R. 1928 P.C. 38.
(3) A.I.R. 1958 And. Prad. 107.
(4) A.I.R. 1961 Cal. 540.

judgment-debtor—Compensation payable to judgment-debtor exhausted in adjustment of public dues—Decree-holder—Whether can execute decree after expiry of six years from date of decree.

Held, that section 37 of the Displaced Persons (Debts Adjustment) Act, 1951, is an overriding provision and no decrees passed after the commencement of the Act can be executed after the expiry of six years from the date of the decrees. No advantage can be taken by the decree-holder of sub-section (2) of section 48 of the Code of Civil Procedure. Section 37 of the Act overrides section 48 of the Code and it is not open to any Court to have recourse to the provisions of that section. There is no doubt that the decree-holder has suffered in the present case because of the act of the judgment-debtor in making default in the payment of Government dues, which resulted in the adjustment of his claim for the payment of those dues and nothing was left for the decree-holder. This consideration, however, cannot override the express provisions of section 37 of the Act. The date of the decree in the present case within the meaning of section 37 of the Act would be the date on which the decree was passed and not the date when the Rehabilitation Department informed the decree-holder that no amount out of the compensation payable to the judgment-debtor was available as the entire amount had been adjusted against the public dues due from him.

Case referred by the Hon'ble Mr. Justice Harbans Singh to a larger Bench for the decision of the important questions of law involved in the case, on 9th August, 1966, *and the case was finally decided by the Division Bench consisting of the Hon'ble Mr. Justice Harbans Singh and the Hon'ble Mr. Justice J. N. Kaushal, on 16th December,* 1966.

H. S. Wasu, and L. S. Wasu, Advocates, for the Appellant.

A. S. Sarhadi, and S. S. Dhingra, Advocates, for the Respondents.

ORDER OF THE DIVISION BENCH

Kaushal, J.—Execution First Appeals 34 of 1962 and 35 of 1963 came for hearing in the first instance before Harbans Singh, J., who referred it to a Division Bench with the following observations :—

> "The decree in this case was obtained by the decree-holder more than 12 years back, and the appeals have been pending in this Court for the last four years. In view of the fact that these are execution first appeals, an appeal would lie as a matter of right to the Letters Patent Bench against my order. The points involved in this case are rather important on which there is hardly any authority. I, therfore, feel that it would be proper that the case be

decided in the very first, instance by a Division Bench to give a finality to the decision."

This is how these appeals have been placed before us for decision.

The facts giving rise to the appeals are like this. Messrs Amar Singh Bhagwan Singh of Mandi Mian Channu owed a sum of Rs. 8,250 to Messrs Manmohan Singh Kishan Singh of the same place. After partition of the country, both parties migrated to India and the above-mentioned debt was assigned by Messrs Manmohan Singh Kishan Singh to Smt. Dalip Kaur by a conveyance deed, dated 27th December, 1949. Smt. Dalip Kaur filed a suit against Santokh Singh, son of Bhagwan Singh, who was the owner of the firm Messrs Amar Singh-Bhagwan Singh. During the pendency of the suit, Displaced Persons (Debts Adjustment) Act of 1951 (hereinafter called the Act) came into force. Consequently, Smt. Dalip Kaur made an application before the Debt Adjustment Tribunal. The Tribunal by its order, dated 31st May, 1954, found that Rs. 7,254-12-0 were due to Smt. Dalip Kaur and the final order was passed in these terms—

"I pass a decree that the debt of Mst. Dalip Kaur, amounting to Rs. 7,254-12-0 be adjusted against the verified claim of Santokh Singh, petitioner amounting to Rs. 8,000 by the Claims Officer, Jullundur,—*vide* index No. 8/ML-12/197 (Register No. 1133), dated 6th February, 1952, and against the decree in favour of the petitioner for Rs. 7,755-0-3 passed *ex parte* against Jhanda Ram and others in suit No. 226 on 22nd of August, 1950. Mst. Dalip Kaur will be entitled to carry out the execution of the above-said decree. The petitioner will bear the costs of Mst. Dalip Kaur. Information of the above order, be sent to the Chief Settlement Commissioner, Rehabilitation Department, Khan Market, New Delhi, for adjustment of the amount according to law."

A formal decree was also prepared in the same terms.

Smt. Dalip Kaur entered into correspondence with the Chief Settlement Commissioner, for realising the amount of the verified claim of Santokh Singh. She, however, did not succeed in realising anything and ultimately she was informed on 5th October, 1960,—*vide* letter Exhibit P.A., that no amount was due to Santokh Singh because whatever amount was payable to him against his claim of

Rs. 8,000 had been adjusted by making deductions out of his claims of arrears of rent (namely, Rs. 2,065.25 nP., in respect of shop and Rs. 4,150.50 nP. in respect of the house) and Rs. 1,035.25 nP. in respect of urban land. Within three months of this date, namely, 5th October, 1960, Smt. Dalip Kaur took out execution in the Court of Senior Subordinate Judge, Kapurthala, in which certain land belonging to the judgment-debtor was attached. The judgment-debtor resisted the execution proceedings and raised a number of objections. The executing Court framed the following issues—

(1) Whether the decree is executable ?

(2) In case issue No. 1 is proved in affirmative, what is the amount for which the decree can be executed ?

(3) Is the execution petition within time ?

(4) If issue No. 1 is proved in affirmative and some amount is found due, can land of the judgment-debtor be attached for the realisation of the same ?

On issue No. 1, the executing Court found that inasmuch as the decree-holder had not been able to recover anything from out of the claim due to the judgment-debtor, she was entitled to realise the amount by taking out execution and that the decree to that extent was executable, on issue No. 3, the finding was that the execution application was within time, since the decree-holder had been making all possible efforts to realise the amount from the Chief Settlement Commissioner and there was no negligence on her part, section 36 of the Act was held to be no bar to the taking of the execution. So far as issue No. 2 was concerned, the finding was that the decree-holder could get an amount proportionate to the amount that was to be got by the claimant against the verified claim in accordance with sub-section (6) of section 32 of the Act. Issue No. 4 was also decided in favour of the decree-holder and it was held that under section 38 of the Act, the land of the judgment-debtor could be attached.

The judgment-debtor has filed execution First Appeal 34 of 1962 and the decree-holder has not filed any appeal against the findings recorded by the executing Court. It was, however, contended before Harbans Singh, J., when the matter came before him in the first instance that the final decree granted by the Debt Adjustment Tribunal could not be scaled down by the executing Court. Since

the executing Court had found that the execution application could proceed the judgment-debtor filed another objection petition contending that the property attached was not liable to attachment by virtue of clause (r) of section 31 of the above-mentioned Act. After trying this matter separately, the executing Court came to the conclusion that the judgment-debtor had failed to establish that the property attached was exempt from attachment. It is this order which has been appealed against by means of execution First Appeal 35 of 1963.

Mr. H. S. Wasu, learned counsel for the judgment-debtor appellant, has raised the following contentions—

(1) The decree passed by the Debt Adjustment Tribunal on 31st May, 1954, could not be executed and proceedings could only be taken to realise the decretal amount from the two sources which were indicated in the decree itself, namely, the claim for Rs. 8,000 verified in favour of the judgment-debtor and a decree for Rs. 7,755-0-3 obtained by the judgment-debtor against Jhanda Ram and others; and

(2) the application for execution was barred by limitation under the provisions of section 37 of the Act.

In my opinion, there is force in the second contention raised by the learned counsel and consequently no definite finding need be recorded on the first contention. In order to appreciate the point of limitation, it is necessary to reproduce section 37 of the Act—

"37. Notwithstanding anything contained in section 48 of the Code of Civil Procedure, 1908 (Act V of 1908), or in any other law for the time being in force, no order for the execution of a decree in respect of a debt against a displaced person shall be made, upon an application presented after the expiration of—

(a) in the case of decrees passed before the commencement of this Act, six years from such commencement;

(b) in the case of decrees passed after the commencement of this Act, six years from the date of the decrees;

(c) in the case of decrees directing payment of money to be made at prescribed intervals or on certain dates, six

years from the date of default in making the payment in respect of which the decree-holder seeks to have the decree executed:

Provided that nothing in this section shall be construed as extending the limit of time for execution as provided in section 48 of the said Code for an application for the execution of a decree passed before the commencement of this Act."

A plain reading of this section leaves no doubt that this is an overriding provision and no decrees passed after the commencement of the Act can be executed after the expiry of six years from the date of the decrees. The decree in hand was certainly passed after the commencement of the Act on 31st May, 1954. The Act came into force on 7th November, 1951. The point for consideration, therefore, is as to what is the date of the decree. The date of the decree is the date which the decree bears and it is not open to argument that the date of the decree in the present case is any other except 31st May, 1954. It is contended on behalf of the decree-holder that although the date of the decree is the date on which it was passed, but since the decree was not executable in a civil Court unless the decree-holder was told by the Rehabilitation authorities that no amount was due to the judgment-debtor because whatever amount was payable to him against his claim of Rs. 8,000 had been adjusted by making deductions out of his claim regarding arrears of rent, etc., time would not start running against the decree-holder. Reliance was placed for this contention on *Rameshwar Singh* v. *Homeswar Singh* (1) and *Rango Ramacharya Katti* v. *Gopal Narayan Kulkarni* (2). On behalf of the judgment-debtor, reliance was placed on *Khulna Loan Co: Ltd:* v. *Jnendra Nath Bose and others* (3) and *(Nawab) Shuja-ul-mulk Bahadur* v. *Umir-ul-umra Bahadur and others* (4).

The case of *Khulna Loan Co, Ltd.* decided by the Privy Council clinches the matter. Their Lordships approved the reasoning of the High Court in interpreting the phrase "date of the decree" as used in section 48 of the Code of Civil Procedure. The High Court had observed—

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(1) A.I.R. 1921 P.C. 31.
(2) A.I.R. 1939 Bom. 75.
(3) A.I.R. 1917 P.C. 85.
(4) A.I.R. 1926 Mad. 20.

"The 'date of the decree' is fixed by Order 20, rule 6, and we cannot understand how there can be any other date of the decree from which limitation should run."

The ratio of the above case is summed up in the headnote which reads as under—

"A decree directing that the mortgaged property should be sold and if the proceeds of the sale were insufficient, the balance should be realised from the other properties and the persons of the judgment-debtors, does not give 12 years to the decree-holder, for proceeding against the person and other properties of the judgment-debtor dating from the time when the mortgaged property has been sold nor can such a decree be regarded as one in which the payment of money is directed to be made at certain date, namely, after the mortgaged property had been sold."

The subsequent Privy Council case of *Rameshwar Singh,* relied upon by the learned counsel for the decree-holder, is not applicable to the facts of the present case. In that case the facts were that on 27th July, 1906, a decree was passed against Ekradeshvar and the decree did not provide that he was to be personally liable but declared that the decretal amount was to be realised by the sale of the property belonging to Janeshvar and left in Ekradeshvar's possession. It so happened that the property left by Janeshvar was in possession of his widow and Ekradeshvar came in possession of the property only after litigation with the widow which terminated successfully in his favour on 22nd July, 1914. In December, 1914, the decree-holder made an application for the execution of the decree-against Ekradeshvar. A plea was raised that the application was barred by limitation. Overruling this plea, their Lordships observed—

"They are of opinion that, in order to make the provisions of the Limitation Act apply the decree sought to be enforced must have been in such a form as to render it capable in the circumstances of being enforced. A decree so limited in its scope as that of the 27th July, 1906, under consideration cannot in their opinion, be regarded as being thus capable of execution."

It was further remarked:—

> "They are of opinion that when the Limitation Act of 1908 prescribes three years from the date of a decree or order as the period within which it must be forced, the language, read with its context, refers only, as they have already indicated to an order or decree made in such a form as to render it capable in the circumstances of being enforced. This interpretation appears to them not only a reasonable one in itself, but to be in accordance with the previously expressed opinion of this Board in *Shaik Kamar-ud-Din Ahmad* v. *Jawahur Lal* (5). The case may also be put in this way. The decree against Ekradeshvar could not have been executed without a further application. This application could not have been made till Ekradeshvar had come into possession of the property of Janeshvar, and by Article 181 in the Schedule to the Limitation Act, the period of limitation for making an application is three years from the time when the right to apply accrues."

It is thus clear that the decree in the above-mentioned case was limited in its scope and it could not be executed unless the property against which it could be executed came in possession of the judgment-debtor. In my opinion, this judgment does not, in any way, help us in the decision of the present case. In the case in hand, it cannot be said that the decree was not executable at all when it was passed. It can, of course, be argued with plausibility that the decree was not executable so far as the first source mentioned in the decree was concerned. Unless the Rehabilitation authorities had refused the claim of the decree-holder, she was not entitled to come to the civil Court, for recovering that amount. That amount, however, it is agreed on all hands, was Rs. 3,507, that is, the proportionate amount as provided under sub-section (6) of section 32 of the Act. The decree was, therefore, certainly executable in the Civil Court, regarding the remaining amount. It would be, under the circumstances, anomalous to say that the application of the decree-holder for the execution of the decree would be within limitation regarding a part of the decree and would be barred by limitation regarding the other part. In my view, the date of the decree in the present case within the meaning of section 37 of the Act would be the date on which the decree was passed.

(5) I.L.R. (1905) 27 All. 334.

Inasmuch as the present application for execution was made by the decree-holder after six years of the passing of the decree, it is obviously barred by limitation. The same view was taken in (*Nawab*) *Shuja-ul-mulk Bahadur's* case by the Madras High Court. In that case, on a difference of opinion arising between the two Judges the matter was referred to a third Judge. Phillips, J. agreed with Devadoss, J., and the decision was in the following words:—

> "Where a decree directs that money is recoverable from a party only on failure to recover from another party, the execution of the decree becomes barred against the former after 12 years from the date of the decree."

Phillips, J., followed the earlier Privy Council judgment in *Khulna Loan Co: Ltd:'s* case, and with regard to the later Privy Council decision in *Rameshwar Singh's case,* he held as follows:—

> "This decision has reference to Article 182 of the Limitation Act and not to section 48 of the Code of Civil Porcedure, but I think it can be distinguished on another ground, namely, that it deals with a decree which was wholly unexecutable on the date it was passed. In the present case, and in the case of mortgage decrees, the decree is undoubtedly executable, at least in part, on the date of the decree, and consequently so far as that part is concerned, the 12 years under section 48 must undoubtedly run from the date of the decree itself. If the Legislature had intended that in such a case a further period of limitation shall commence from the date when the second portion of the decree became executable, I think it would have said so, for there is a provision in section 48, clause 1(b) that where a decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making payments or delivery in respect of which the applicant seeks to execute the decree is to be the date from which the 12 years is to run. Therefore, in a mortgage decree and other decrees like the present it may well be open to the Court to pass a subsequent order declaring that the second portion of the decree had become executable, and directing execution to proceed, and such an order would come within the meaning of the subsequent order referred to in section 48, clause 1(b)."

Rango Ramacharya Katti's case relied upon by the counsel for the decree-holder also does not help him. The head-note (a) of that case reads as follows:—

> "In cases where the decree grants more than one relief, time under section 48 begins to run against all the reliefs from the date of the decree.
>
> But in the case of a decree not executable, except on the happening of a particular contingency, time will not begin to run under section 48 until that contingency occurs".

In this case, the view taken by the Madras High Court in (*Nawab*) *Shuja-ul-mulk Bahadur's case,* which followed *Khulna Loan Co., Ltd.'s case,* was approved. Another case decided by the Madras High Court in *Swaminatha Odayar* v. *Thiagarajaswami Odayar* (6), was also referred to. It was also observed that the opposite view which was taken in *Narhar Raghunath* v. *Krishnaji Govind* (7) and the Full Bench decision of the Madras High Court in *Aiyasamier* v. *Venkatachela Mudali* (8), were no longer good law in view of the decision of the Privy Council in *Khulna Loan Co., Ltd.'s case.* A subsequent decision of the Privy Council in *Banku Behari Chatterji* v. *Narain Das Datt and others* (9), was also relied upon.

Mr. A. S. Sarhadi, learned counsel for the decree-holder, tried to take advantage of the proviso to section 37 of the Act. In my opinion, the proviso does not help him. It only talks of the decrees which were passed before the commencement of the Act. The decree in the present case, as already observed, was passed after the commencement of the Act. Similarly, no advantage can be taken by the decree-holder of sub-section (2) of section 48 of the Code of Civil Procedure. Section 37 of the Act overrides section 48 and it is not open to any Court to have recourse to the provisions of that section. There is no doubt that the decree-holder has suffered in the present case because of the act of the judgment-debtor in making default in the payment of Government dues, which resulted in the adjustment of his claim for the payment of those dues and nothing was left for the decree-holder. This consideration, however, cannot override the express provisions of section 37 of the Act.

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(6) A.I.R. 1926 Mad. 954.
(7) I.L.R. (1912) 36 Bom. 368.
(8) I.L.R. 40 Mad. 889 (F.B.).
(9) A.I.R. 1927 P.C. 73.

Due to all the reasons stated above, I am constrained to hold that no order for the execution of the decree can be passed in the present case in view of section 37 of the Act. Issue No. 3 is consequently decided in favour of the judgment-debtor and against the decree-holder. In this view of the matter, it is not necessary to give any separate decision in Execution First Appeal 35 of 1963. The decree-holder cannot proceed to attach any property of the judgment-debtor. The result is that both the appeals are accepted and the execution application filed by the decree holder is dismissed. In the circumstances, the parties will bear their own costs.

HARBANS SINGH, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

LAL SINGH AND ANOTHER,—*Petitioners.*

versus

MST. CHHOTTO—*Respondent.*

Civil Revision No. 30 of 1966.

January 3, 1967.

Guardians and Wards Act (VIII of 1890)—S. 33—Order for delivery of possession of land or money due to minor to his guardian—Whether can be made—Joint property—Remedy of the guardian—Whether to obtain partition and then exclusive possession.

Held, that any opinion, advice or direction that the Guardian Court can give under section 33 of the Guardians and Wards Act, 1890, can only be on any question respecting the management or administration of the property of the ward. Delivery of possession of land from the possession of a third party is obviously not anything connected with the management or administration of the property of a ward, nor is a direction for payment of money to the guardian of the ward. In case of joint property the guardian can obtain partition and after partition have exclusive possession of the property of the minor.

Petition under Section 115 of the Code of Civil Procedure, for revision of the order of Shri Harish Chandra Gaur, Guardian Judge, Barnala, dated 7th October, 1965, ordering that the respondents should deposit the amount received