APPELLATE CIVIL

Before Gurdev Singh, J.

MUKAND SINGH, AND OTHER.,—*Appellants.*

versus

SHADI, AND OTHERS,—*Respondents.*

Execution Second Appeal No. 24 of 1964.

1965

July, 13th

Limitation Act (IX of 1908)—Article 182 (5)—Application for amendment of decree sheet and plaint dismissal—Whether amounts to step in aid to execution.

Held, that before any application can be considered as a step-in-aid of execution, it has to be proved by the decree holder that it was made not only to advance its further execution but that it was made to the Court whose duty it was to execute the decree or order to which the execution proceedings relate. The words used in explanation (2) of Article 182 of the Limitation Act, 1908, are clear and unambiguous, and they cannot be disregarded or stretched so as to include the making of an application to a Court other than the one whose duty it is to execute the decree or order in question. Moreover in clause (4) of Article 182 of the Indian Limitation Act, 1908, the period of three years for execution of the decree is to be reckoned from the date of the amendment of the decree only in such cases in which the decree is ordered to be amended. Quite clearly, the legislature contemplated that if an application for amendment was disallowed, then this clause would not apply and the mere making of an application for amendment would be of no avail to the decree-holder in saving the limitation.

Execution Second Appeal from the order of Shri J. P. Gupta, Additional District Judge, Ludhiana, dated the 1st October, 1963, affirming that of Shri Harbans Singh, Sub-Judge 1st Class, Ludhiana at Samrala, dated the 23rd March, 1963 dismissing the execution application and leaving the parties to bear their own costs.

J. N. KAUSHAL, ADVOCATE-GENERAL AND M. R. AGNIHOTRI, ADVOCATE, for the Appellants.

K N. TEWARI, ADVOCATE, for the Respondents.

JUDGMENT.

Gurdev Singh, J. GURDEV SINGH, J.—This second appeal is directed against the appellate order of the Additional District

Judge, Ludhiana, dated 1st October, 1963, whereby he affirmed the finding of the executing Court that the execution application made by the appellants on 22nd July, 1961, was barred by time. It is only the correctness of this decision that has been challenged before me, and the question turns on the interpretation of clause (5) of Article 182 of the Indian Limitation Act (IX of 1908).

In a suit brought by the present appellants Mukand Singh and others challenging the alienation of certain ancestral property and for its possession, they were granted decree for two-third share of the property in dispute measuring 9 Bighas 12 Biswas by a Subordinate Judge, Third Class, Fatehgarh Sahib at Bassi. This decree was, however, modified in Regular Second Appeal No. 244 of 1950 by the erstwhile High Court of the Patiala and East Punjab States Union on 25th May, 1953, and the appellants were held to be entitled to 4/9th share of the property in dispute.

On 25th May, 1956, the appellants applied for execution of the decree of the Court of Subordinate Judge, III Class at, Fatehgarh Sahib. In the course of those proceedings it came to light that in giving the details of the land of which 4/9th share was to be obtained by the appellants one of the Khasra numbers did not find mention in the decree-sheet. This omission was also found in the plaint of the suit. Since the decree obtained by the appellants was for possession of 4/9th undivided share in the entire land measuring 9 Bighas 12 Biswas the appellants were faced with the situation that the decree could not be executed as one of the Khasra numbers which formed a part of the land decreed in their favour was not incorporated in the decree. Accordingly, on 31st July, 1957, the counsel for the decree-holders (the present appellants) prayed that the execution proceedings be consigned to the record room as unsatisfied, stating as follows:—

> "Khasra No. 1209 has not been mentioned in the decree-sheet because of inadvertent mistake. It has become necessary to apply for the amendment of the decree and thereafter a fresh application for execution will be put in. The present execution application be consigned to the record

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room as unsatisfied, and the relevant certified copies be returned to the decree-holders."

The executing Court thereupon dismissed the execution application as unsatisfied in view of the statement of the decree-holders' counsel.

In the meantime the erstwhile Patiala and East Punjab State Union had been merged into the State of Punjab, and thereafter on 2nd February, 1958, the appellant-decree holders applied to this Court for amendment of the decree passed in their favour on 25th May, 1953, by the Pepsu High Court in Regular Second Appeal No. 244 of 1950. This application (C.M. 206 of 1958) was, however, dismissed on 10th October, 1958, holding that the amendment sought for could not be allowed.

Later, on 22nd July, 1961, the appellants again applied for the execution of the appellate decree, dated 25th May, 1953. They were promptly met with the objection that this second application for execution was barred by time having been made more than three years after the dismissal of the first execution application on 31st July, 1957. In asserting that their second application for execution was within time, the appellants relied upon clause (5) of Article 182 of the Indian Limitation Act IX of 1908, and urged that the application made by them on 2nd February, 1958, under sections 151 and 153 of the Civil Procedure Code for amendment of the decree being necessary for the proper execution of the decree was a step-in-aid of the execution, and as such the period of three years prescribed under Article 182 of the Limitation Act, 1908, had to be reckoned from 10th October, 1958, when this application for amendment was dismissed by this Court. The learned Subordinate Judge rejected this contention holding that the making of the application for amendment of the decree, which was sought to be executed, did not amount to a step-in-aid of the execution. This view of the executing Court has been upheld by the learned Additional District Judge.

In assailing this finding of the Courts below on the question of limitation, the learned Advocate-General, appearing for the appellants, has argued that since the decree awarded to the appellants by the Pepsu High Court was for possession of an undivided 4/9th share of the land

measuring 9 Bighas 12 Biswas comprised of various Khasra numbers, it could not be executed unless the Khasra numbers of all the fields which went to make up this area of 9 Bighas 12 Biswas were incorporated in the decree, and consequently when it was discovered that one of the Khasra numbers (No. 1209) had not been incorporated in decree because of an inadvertent clerical mistake, it became necessary for the appellant-decree holders to apply for the amendment of the decree. He argues that in that situation, before the decree could be executed, it became incumbent upon the appellants to have the mistake corrected by making an application to this Court for amendment of the decree. This, according to him, was a step-in-aid of the execution because without such amendment the decree could not be executed. In this connection, he relies upon the Full Bench decision of the Lahore High Court in *Ghanaya Lal and others* v. *Nathu Ram* (1), and urges that any application made by a decree-holder for taking an action which advances its further execution is a step-in-aid of the execution. He further argues that it is not necessary that such an application should have been allowed, and even if the application is dismissed, as in the instant case, it will constitute a step-in-aid of the execution. Reference in this connection is made to a Single Bench decision of this Court in *Siri Ram and others* v. *Jagan Nath and others* (2), where Kapur, J., (as he then was) ruled that it was not necessary that the proposed step should actually be taken or that even an order of the Court should be passed on the application, and as soon as an application asking the proper Court to take a step-in-aid of execution is made, the period of limitation would run from the date of presentation of the application. In that case, the learned Judge held that an application made to the Court for determination of the amount of stamp duty required and for engrossing the decree on a stamp-paper was a step-in-aid of execution and would stop the running of time and give a fresh period of limitation as from the date the application was made.

It is no doubt true that the decree of the Pepsu High Court, dated 25th May, 1953, as it originally stood, could not be executed because one of the Khasra numbers of the

(1) A.I.R. 1931 Lah. 81.
(2) I.L.R. 1957 Punj. 365=A.I.R. 1957 Punj. 65.

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undivided land in dispute out of which 4/9th share was to be obtained by the appellant-decree-holders had not been mentioned and before possession of their share could be obtained by the appellants it was necessary for them to have the decree amended, yet, in my opinion, the application for amendment of the decree which could only be granted on amendment of the plaint in which there was a similar omission, cannot be considered as a step-in-aid of execution. Such a contingency has been separately provided for in Article 182 of the Indian Limitation Act, 1908. In clause (4) thereof it is stated that the period of three years prescribed under this Aritcle for execution of the decree would run from the date of the amendment where the decree is ordered to be amended. If the mere making of an application for amendment amounts to a step-in-aid of execution, there was no necessity for making this separate provision relating to the execution of amended decrees. It may further be noticed that in clause (4) of Article 182 of the Indian Limitation Act, 1908, the period of three years for execution of the decree is to be reckoned from the date of the amendment of the decree only in such cases in which the decree is ordered to be amended. Quite clearly, the legislature contemplated that if an application for amendment was disallowed, then this clause would not apply, and the mere making of an application for amendment would be of no avail to the decree-holders in saving the limitation. In *Ratanchand Bhalchand* v. *Chandulal J. Doshi* (3), a learned Judge of that Court ruled that an application for reconstruction of the decree was not a step-in-aid of execution within the meaning of Article 182.

To avail of Article 182(5) of the Limitation Act, 1908, the decree-holder has to satisfy the following conditions:

(1) There must be an application in accordance with law requesting the proper Court to take a step,

(2) The step required to be taken by the Court must be in aid of execution; and

(3) The application for taking such step must be made to the proper Court.

Of course, in the case with which we are dealing the proper Court for the amendment of the decree was the High

(3) A.I.R. 1934 Bom. 113(2).

Court, as the decree which was sought to be executed was passed by its predecessor (Pepsu High Court), and it could only be amended by the High Court itself, but that is not the sense in which the expression "proper Court" is used in clause (5) of Article 182 of the Limitation Act, 1908. Explanation (2) to Article 182 itself tells us what the expression "proper Court" means. It says :

> "Proper Court" means the Court whose duty it is to execute the decree or order."

From this it is obvious that before any application can be considered as a step-in-aid of execution, it has to be proved by the decree-holder that it was made not only to advance its further execution but was made to the Court whose duty it was to execute the decree or order to which the execution proceedings relate. The words used in Explanation (2) of Article 182 of the Limitation Act are clear and unambiguous, and they cannot be disregarded or stretched so as to include the making of an application to a Court other than the one whose duty it is to execute the decree or order in question. Thus on this short ground the appellants' plea must fail. In this view I am fortified by several decisions of the various High Courts. In *T. V. K. Chokkalinga Tevar* v. *Kailasa Tevar and others* (4), a Division Bench of that Court ruled that an application "to constitute a step-in-aid of execution has to be filed in the execution proceedings themselves and not in any other suit or proceeding however intimately connected the latter might be with the proceedings of the former". Reliance was placed upon an earlier decision of that Court in *Surisetti Ramasubbayya* v. *Palur Thimmiah and others* (5), were it was held that the filing of a declaratory suit under Order 21, rule 63, C.P.C., in respect of a property of the judgment-debtor, which was sought to be seized in execution of the decree, could not be regarded as a step-in-aid of execution within the meaning of Article 182(5) of the Limitation Act.

In *Tilla Singh and others* v. *Tirbhuwan Singh and others* (6), it was held that one of the essential conditions which must be satisfied before a decree-holder can avail of

(4) A.I.R. 1956 Mad. 238.
(5) A.I.R. 1942 Mad. 5.
(6) A.I.R. 1933 Oudh. 664.

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clause (5) of Article 182 of the Limitation Act is that the application for step-in-aid of the execution was made to the proper Court, and an application made to the Collector for declaration of the decree-holder's mortgage lien under the decree was not an application which could constitute a step-in-aid of the execution. In *Khushi Ram* v. *Ram Sumer* (7), King C.J., ruled that the filing of a suit for declaration in a Munsif's Court that the judgment-debtor's property was liable to attachment cannot be step-in-aid of the execution of a decree which is sought to be executed in the Court of Judge, Small Causes as it is not the proper Court within the meaning of Explanation 2 of Article 182 of the Limitation Act.

Even under the Limitation Act XV of 1877 in which the corresponding provision, was contained in Schedule II of Article 179, it was held by a Division Bench of the Calcutta High Court in *Sahu and others* v. *Kamta Pershad* (8), that to constitute a step-in-aid of execution, an application must be made to the Court whose duty it is to execute the decree, and it must be for a relief which that Court is competent to grant.

I thus find that the appellants' application for execution has been rightly dismissed as barred by time, and there being no merit in this appeal, it is dismissed with costs.

K. S. K.

REVISIONAL CIVIL

Before S. K. Kapur, J.

MOHD. ISLAM,—*Petitioner.*

versus

DELHI WAKF BOARD AND ANOTHER,—*Respondents.*

Civil Revision No. 109 of 1965

1965

July, 26th

Code of Civil Procedure (Act V of 1908)—Order 6 Rules 14, 15 and 17—Plaint signed and verified by agent not duly authorized—Whether can be got signed and verified by the plaintiff or his duly authorised agent after the Court holds that it was signed and verified by an unauthorised agent.

(7) A.I.R. 1935 Oudh. 430,
(8) 2 I.C. 941.