

## Babu Lal vs Kanhai And Ors. on 28 July, 1950

**Equivalent citations: AIR1952ALL303, AIR 1952 ALLAHABAD 303**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### JUDGMENT

V. Bhargava, J.

1. This is a second appeal by an objector whose objection under Section 47, Civil P. C. on the ground that the execution application was time-barred was dismissed by the executing Court and whose appeal was dismissed by the lower appellate Court. The facts of the case are that both the appellant and respondents were defendants in a partition suit in which a final decree was passed on 25-8-1939. The final decree allotted separate shares to the plaintiff of that suit and the present appellant and respondents, who were all defendants in that suit. In addition some portion of the land was kept joint by the decree. The first execution application in respect of that decree was presented by the plaintiff decree-holders on 14-10-1939. This execution was for costs only. A second execution application by the plaintiff-decree-holders was presented on 15-12-1942, and in this execution the plaintiff decree-holders obtained separate possession over the kura which was separately allotted to them. Thereafter the present respondents presented an execution application for possession over their separate kura on 9-8-1944. This execution application was dismissed for default and the present execution application was presented on 19-3-1946. Thereupon the appellant took the objection that this application was time barred. But both the lower Courts held that this objection had no force and dismissed it.

2. In this case the sole question for consideration is whether the execution application presented on 15-12-1942, by the plaintiff decree-holders would or would not enure to the benefit of the respondents so as to save limitation under Article 182, Limitation Act. In case the execution application presented by the plaintiff-decree holders on 15-12-1942, enures to the benefit of the respondents also, their execution application of 9-8-1944, would be within time and so also the present application which was presented on 19-3-1946, i.e., within three years of their previous application of 9-8-1944. On behalf of the appellant, it was contended that the partition decree had allotted separate kuras to the plaintiff decree-holders, the appellant and respondents as well as had directed some land to remain joint. But, since the execution applications by the plaintiff-decree-holders as well as the respondents were only in respect of the decree granting them separate possession, the execution application by the plaintiff-decree-holders could not operate to the benefit of the respondents. In support of this argument reliance was placed on the views expressed by a Division Bench of this Court in *Nandlal Saran v. Dharam Kirti Saran*, 24 ALL. L. J

465 It, however, appears that the facts of the present case differ considerably from the case relied upon by the appellant. One point of difference is that in the case, dealt with by the Division Bench, the first execution application had not impleaded the other defendants who were subsequently the objectors in the later execution application. In the present case, I find that in the execution application presented by the plaintiff-

decree-holders, they had sought execution against the appellant as well as against the respondent. All of them were parties to that execution application. The second and the most important point is that the case dealt with by the Division Bench was not a case of a decree in favour of several persons but a case of a decree in favour of one person against several persons. In the present case the decree is a joint decree as well as a separate decree in favour of a number of persons. It is not a case where there may be joint and separate decrees against several persons. Consequently it is the first part of Explan. (1) of Article 182 that applies and not second part of that explanation. This first part of Explan. (1) of Article 182 came up for discussion before a Division Bench of the Patna High Court in the case of Sarju Prasad v. Deoki Singh, A. I. R. (27) 1940 Pat. 147. The facts of that case were exactly similar to those of the present case before me. In that case also, a partition decree had been passed and this decree had allotted separate shares to the various parties as well as had directed some land to remain joint. One of the parties to the decree executed it for possession over the separate portion allotted to him. Subsequently, another party made a similar application and it was held that the application presented by the first party enured to the benefit of the second party for the purposes of Article 182 Limitation Act. The facts of that case are entirely indistinguishable from the facts of the case before me and I see no reason at all to differ from the view taken in that case. This Patna case had relied on the view expressed by a Division Bench of the Calcutta High Court in Mon Mohan v. Madhu Sudan, A. I. R. (19) 1932 Cal. 869. This Calcutta case also proceeded on the same reasoning. In both the cases, it was held that, where there is a decree in favour of several persons which partly grants possession separately over certain lands and partly grants joint possession over other lands, the whole decree must be treated as one single decree and it must be considered to be a joint decree. The decree could not be divided into two parts and held to be two decrees--one joint and the other separate. I entirely agree with this view taken by these two Courts. Since the decree is to be treated as a joint decree, the execution application presented by the plaintiff-decree holders must be taken into consideration when considering the period of limitation for the execution applications presented by the respondents; and, if this is done, then under Article 182, Limitation Act, the execution application of 9-8-1944, by the respondents was within time. Consequently in this case the decision by the lower appellate Court that the execution was within time was quite correct.

3. There is no force in the appeal. The appeal is dismissed with costs.