

**Wilayat-un-nissa Vs. Najib-un-nissa**

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**Court** : Allahabad

**Decided On** : Dec-31-1969

**Reported in** : (1875)ILR1All583

**Judge** : Robert Stuart, C.J., ;Pearson, ;Turner and ;Spankie, JJ.

**Appellant** : Wilayat-un-nissa

**Respondent** : Najib-un-nissa

**Judgement** :

Robert Stuart, C.J.

1. The question submitted to the Court in this reference was raised almost under identical circumstances in a case before and decided by Mr. Justice Oldfield and myself--Ramanand v. The Bank of Bengal I.L.R. 1 All. 377--and to our ruling in that case I advisedly and deliberately adhere. Indeed, the reasoning that arrives at a different conclusion is, to my mind, after an experience of thirty years in the practice of the law, absolutely unintelligible.

2. The provision in Section 53 of Act XX of 1866 enacts that 'such decree may be enforced forthwith under the provisions for the enforcement of decrees contained in the Code of Civil Procedure,' and this lets in the Code so far as the enforcement of decrees made under this portion of Act XX of 1866 is concerned, but it does not follow, and it is not the law, that this Section 53 lets in and enforces the whole provisions of the Code of Civil Procedure, Act VIII of 1859 relating to the execution of decrees. To hold otherwise would be, in effect, to render nugatory Section 55 of Act XX of 1866 which provides that 'there shall be no appeal against any decree or order made under Section 53, Section 54, or this section.' To that extent therefore this section forbids the application of the Code of Civil Procedure, that is, so far as appeals are concerned, and only imports the Code 'for the enforcement of decrees.' The ruling of the Calcutta High Court therefore in 7 W.R. 130 and 18 W.R. 512 is clearly right.

3. It is suggested that the prohibition against appeals in Section 55 is intended only to apply to orders passed under that and the two previous sections, and not to decrees in course of execution under the Civil Procedure Code. But no such distinction is admissible in this case. The Civil Procedure Code, so far as it relates to the enforcement of decrees, is, by the sections in question, 53, 54, and the first part of Section 55, made part of Act XX of 1866, only limited by the proviso of the first part of Section 55, which takes away all appeals. In all other respects the Code of Procedure for the enforcement of decrees applies, and this is the meaning of Act XX of 1866 in regard to all decrees and orders whatsoever passed 'in any proceeding

under this part of the Act,' as Section 54 provides. The proceeding which is the subject of the reference before us is an order passed on an application for the execution of a decree under Section 53 of the Act, and the order of the Subordinate Judge was that the decree was barred by lapse of time, and this is clearly an order within the meaning of Section 55, which takes away all right of appeal whatever.

Pearson, J.

4. I am of opinion that the orders in execution of the decree given under Section 53 of Act XX of 1866 are not passed under that section, but under the Civil Procedure Code, which that section makes applicable to them, and are appealable under the Code.

Turner, J.

5. With every respect for the opinions of those learned Judges who have entertained a different view, I am of opinion that the words 'there shall be no appeal against any decree or order made under Sections 53, 54, or this section,' are to be construed as confined to decrees or orders passed under the express provisions of the sections of the Act, and that they do not prohibit appeals from orders passed when the decree is in course of execution under the provisions of the Procedure Code. It was evidently intended that in certain cases of special registration a bond-holder should be enabled to go to the Court and obtain an ex parte and final decree without having recourse to a suit. To carry out this intention the Legislature provided that the decree so passed should not be open to appeal. But to guard against hardship and injustice the law gave the Court which passed the decree powers to set aside its decree or stay execution, and declared those powers also should not be open to appeal.

6. Where a person has executed a bond consenting at the time of registration that it should be registered in such a manner that the bond-holder may at once obtain a decree, it is intelligible that the law should declare the decree final unless the alleged executant of the bond could show cause why the decree should be stayed. But the reasons which induced the Legislature to declare such decrees and orders final do not extend to orders passed under the provisions of the Civil Procedure Code for the execution of such decrees. Construing the terms of Section 55 strictly, they do not deprive the parties to the decree of such rights of appeal as the Code of Civil Procedure declares to attach to orders in execution passed under the provisions of that Code.

7. It is a more difficult question whether the execution of the decrees obtained under the Registration Act, 1866, is governed by Clause 166 or Clause 167, Schedule ii of the Limitation Act, 1871. They are not mere decisions of a Civil Court, but on the other hand they are not decrees or orders passed in a regular suit. They are decrees passed without the formalities prescribed for regular suits. They resemble decrees passed on awards filed under the provisions of the Procedure Code. It has, I believe, never been doubted that the execution of decrees passed on awards is governed by Clause 167 and not Clause 166, and I consider that Clause 167 is equally applicable to decrees obtained under the special provisions of the Registration Act of 1866.

Spankie, J.

8. I concur in the views expressed by Mr. Justice Turner on the point expressly

referred to.

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