

*Privy Council Appeal No. 87 of 1932.*  
*Bengal Appeals Nos. 1 and 2 of 1931.*

Chandra Mani Saha and others - - - - - *Appellants*  
v.  
Sreemati Anarjan Bibi and others - - - - - *Respondents*  
Same - - - - - *Appellants*  
v.  
Sreemati Anarjan Bibi and others - - - - - *Respondents*

*(Consolidated Appeals.)*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 10TH MAY, 1934.

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*Present at the Hearing :*

LORD BLANESBURGH.

LORD WRIGHT.

SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

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These are two consolidated appeals from two decrees dated the 19th August, 1930, of the High Court of Judicature at Fort William in Bengal, which reversed two orders dated the 28th February, 1929, of the Court of the First Subordinate Judge of Tippera at Comilla.

The question for determination is, whether the appellants, who purchased with the leave of the Court at two auction sales certain mortgaged property in execution of two mortgage decrees in their favour, are entitled to delivery of possession of the said property.

It was alleged on behalf of the respondents that the two applications which were made by the appellants for delivery of possession of the said property were out of time and barred by the Indian Limitation Act, 1908.

The Subordinate Judge held that the applications were not barred and made an order for delivery of possession of the property referred to in each application.

The respondents Nos. 1 to 3 appealed in each case to the High Court, and on the 19th August, 1930, the learned Judges of the High Court delivered a judgment which disposed of the two appeals. In pursuance thereof decrees were made setting aside the orders of the Subordinate Judge and dismissing the applications for possession on the ground that they were barred by the Limitation Act.

From these decrees the appellants have appealed to His Majesty in Council. The respondents were not represented.

The material facts are as follows :—

In 1901 respondents 1 to 8 or their predecessors executed a mortgage in respect of 19 immoveable properties in favour of appellant No. 1 who took the mortgage for himself and his co-sharers the other appellants or their representatives. In 1914 the appellants sued on the mortgage making the mortgagors respondents 1 to 8 or their predecessors principal defendants and the remaining respondents or their predecessors *pro forma* defendants. On the 10th July, 1919, the final mortgage decree for sale was passed.

The same respondents executed in 1903 in favour of the appellants another mortgage in respect of the same 19 and 19 other immoveable properties and in 1914 the appellants sued the respondents in the same manner as mentioned before. On the 10th July, 1919, the final mortgage decree for sale was passed.

In March, 1922, the appellants took out execution of both decrees, the first for Rs. 19,315-3-0 and the second for Rs. 32,180-15-9. At auction sales in execution in both cases the appellants purchased with the leave of the Court on the 10th February, 1923, the mortgaged properties, in the first case for Rs. 18,225-0-0 and in the second case for Rs. 30,026-0-0.

Applications to the Subordinate Judge were made on behalf of the judgment debtors under Order 21, rule 90, of the Code of Civil Procedure, 1908, to set aside the sales.

On the 15th April, 1924, the Subordinate Judge made orders disallowing the said applications, and on the 22nd of April, 1924, he confirmed the sales in pursuance of Order 21, rule 92, of the said Code.

On the 21st July, 1924, appeals by certain of the judgment debtors were filed in the High Court against the orders of the Subordinate Judge, dated the 15th April, 1924.

On the 17th March, 1927, the High Court dismissed the said appeals.

In pursuance of Order 21, rule 94, the Subordinate Judge granted sale certificates to the appellants in the first case on the 19th May, 1928, and in the second case on the 6th June, 1928.

On the 10th September, 1928, the appellants made an application in each case to the Subordinate Judge for possession of the properties purchased by them at the said auction sales. The applications were made under Order 21, rule 95, of the first schedule of the Code of Civil Procedure.

The respondents Nos. 1 to 3 objected to the said applications on the ground that they were barred by limitation. They alleged that the sales had become absolute on the 22nd April, 1924, when the Subordinate Judge confirmed the sales, and that inasmuch as the applications for delivery of possession were not made until the 10th September, 1928, the said applications were out of time by reason of article 180 of the Limitation Act, which provides that such an application must be made within three years from the time when the sale becomes absolute.

As already stated, the Subordinate Judge held that the applications were not out of time; he considered that inasmuch as the judgment debtors appealed against his orders of the 15th April, 1924, time did not begin to run until the date of the disposal of the appeals, viz., the 17th March, 1927, and, therefore, the applications for possession made on the 10th September, 1928, were made within the three years specified by article 180 of the Limitation Act.

The learned Judges of the High Court were of opinion that the sales became absolute on the 22nd of April, 1924, when the Subordinate Judge confirmed the sales, and, therefore, that the applications for possession, which were made on the 10th September, 1928, were barred by reason of the said article.

There is no doubt that article 180 of the Limitation Act, 1908, is applicable to the matter now under consideration. It provides that a purchaser of immovable property at a sale in execution of a decree for delivery of possession, must make the application within three years from the time when the sale becomes absolute.

In order to ascertain when such a sale as is referred to in the said article becomes absolute, reference must be made to the Code of Civil Procedure, and the orders and rules contained in the first schedule thereto, for that is the Code which contains the provisions relating to the sale of immovable property in execution of decrees.

Order 21, rules 82 to 96, in the said schedule are applicable to sales of immovable property. Rules 89, 90 and 91 deal with applications to set aside a sale and rule 92 (1) provides as follows:

“Where no application is made under rule 89, rule 90, or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.”

There is no doubt that the above-mentioned rule is applicable to the present case : for as already stated the judgment debtors did apply to set aside the sales, and the Subordinate Judge disallowed the applications on the 15th April, 1924, and on the 22nd April, 1924, he confirmed the sales.

The sales therefore became absolute on the 22nd April, 1924, at any rate so far as the Court of the Subordinate Judge was concerned.

But the judgment debtors had a right of appeal under Order 43, rule (1) (j) against the orders of the Subordinate Judge by which he disallowed their applications to set aside the sales. This right of appeal the judgment debtors exercised. Upon the hearing of the appeals, the High Court, by reason of the provisions of section 107 (2) of the Code had the same powers as the Court of the Subordinate Judge.

In the present case, the High Court dismissed the appeals and on such dismissal the orders of the Subordinate Judge confirming the sales became effective and the sales became absolute.

In considering the meaning of the words in article 180 of the Limitation Act, it is useful to consider the converse case. Take a case in which the Subordinate Judge allowed the application to set aside the sale ; in that case, of course, there could be no confirmation of the sale as far as the Subordinate Judge was concerned, as there would be no sale to be confirmed.

But if, on appeal, the High Court allowed the appeal, and disallowed the application to set aside the sale, the High Court would then be in a position to confirm the sale, and on such an order of confirmation by the High Court the sale would become absolute.

Again, take a case in which the Subordinate Judge disallowed the application to set aside the sale ; there would then be confirmation of the sale by the Subordinate Judge and the sale would become absolute as far as his Court was concerned. If the High Court allowed an appeal, and set aside the sale, there would then be no sale, and, of course, no confirmation and no absolute sale.

Upon consideration of the sections and orders of the Code, their Lordships are of opinion that in construing the meaning of the words "when the sale becomes absolute" in article 180 of the Limitation Act, regard must be had not only to the provisions of Order 21, rule 92 (1) of the schedule to the Civil Procedure Code, but also to the other material sections and orders of the Code, including those which relate to appeals from orders made under Order 21, rule 92 (1). The result is that where there is an appeal from an order of the Subordinate Judge, disallowing the application to set aside the sale, the sale will not become absolute within the meaning of article 180 of the Limitation Act until the disposal of the appeal, even though the Subordinate Judge may have confirmed the sale, as he was



bound to do, when he decided to disallow the above-mentioned application.

Their Lordships, therefore, are of opinion that on the facts of this case the sales did not become absolute within the meaning of article 180 of the Limitation Act until the 17th March, 1927, and that the applications for possession of the properties purchased at the auction sales were not barred by the Limitation Act.

Their Lordships' attention was drawn to certain cases decided by the High Court at Calcutta, from which it appears that there has been a difference of opinion on the point now under consideration.

The learned Judges in their judgment in this case referred to two unreported cases which in their opinion covered the point.

The first of these cases, decided on the 27th July, 1928, viz. : *Neckbar Sahai v. Prakash Chandra Nag Chaudhuri*, is now reported in I.L.R. 56 Cal. : 608. This is undoubtedly a decision which supports the judgment of the learned Judges now under consideration, for it was held that—

“ The period of three years provided for in Article 180 of the Limitation Act, 1908, for an auction-purchaser's application for delivery of possession should be reckoned from the date of the confirmation of the sale under Order 21, rule 92 and not from that of the final disposal of the judgment-debtor's application under Order 21, rule 90.”

The decision of the High Court in the present case was given on the 19th August, 1930, and followed the decision in the above-mentioned cited case. It may be noted that it is now reported in 56 Cal. L.J., at page 574.

On an earlier page of the same volume of the Calcutta Law Journal, the case of *Chhogan Lal Bagri v. Behari Lal Saha Ray*, 56 Cal. L.J. 520, is reported. That case was decided by a Division Bench of the High Court at Calcutta on the 15th July, 1932, *i.e.*, nearly two years later than the decision in the case now under appeal. In *Chhogan Lal Bagri v. Behari Lal Saha Ray*, the head-note is as follows :

“ the decree-holder (appellant) in execution of his mortgage decree purchased the property on the 17th September, 1924. An application for setting aside the sale by one of the judgment-debtors was dismissed on the 30th May, 1925, and the sale was confirmed on that date. An appeal was afterwards filed against the order dismissing the application for setting aside the sale, and the appeal was dismissed on the 25th July, 1927. The present application for delivery of possession was made on the 18th January, 1929.”

It was held that the application, being governed by article 180, schedule I of the Limitation Act was in time ; that the three years can from the 25th July, 1927, when there was a final, conclusive and definite order confirming the sale, and not from the 30th May, 1925.

The learned Judges were able to distinguish the case of *Neckbar Sahai v. Prakash Chandra Nag Chaudhuri* (*supra*) from the case which they were considering, and held that it was not

an authority against the appellants. Their Lordships find considerable difficulty in appreciating that conclusion, for it seems to them that the decisions in the two above-mentioned cases are directly in point on the matter now under consideration, and that the decisions are in conflict.

Reference was also made to the case of *Muthu Korakkai Chetty v. Madar Ammal*, I.L.R. 43 Mad. 185, which was a decision of a Full Bench; the question which was referred to the Full Bench was:—

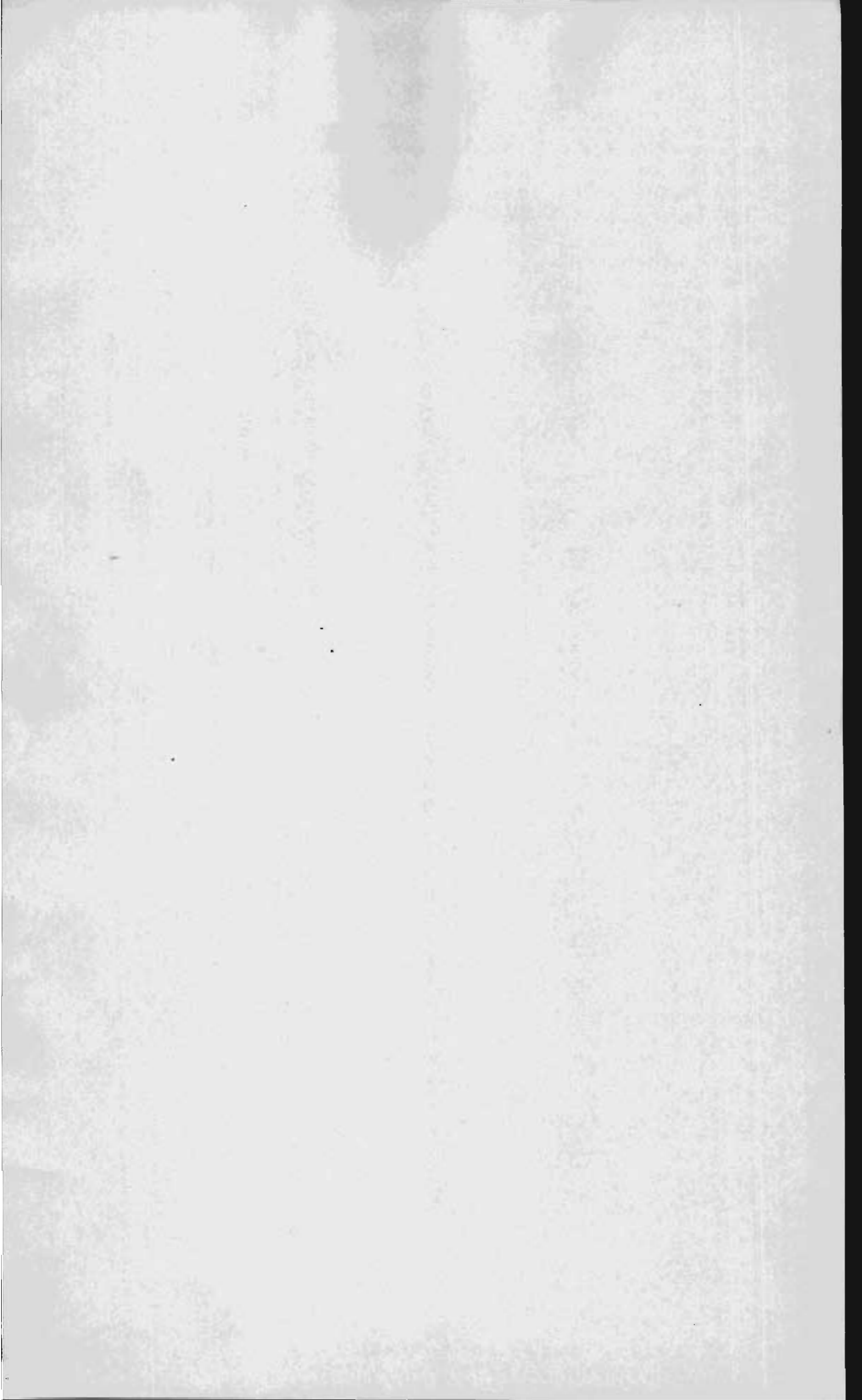
“Whether the existence of the cause of action for an application for delivery of possession to which Article 180, Schedule I, of the Limitation Act applies, is suspended during the pendency of proceedings for setting aside the sale.”

In their Lordships' opinion, the decision on that question, apart from observations which were made in the judgments, does not assist in the present appeal, for there is here no question of any suspension of any cause of action.

For the reasons already given, their Lordships agree with the decision of the High Court in *Chhogan Lal Bagri v. Behari Lal Saha Ray* (*supra*), so far as it relates to the matter now under consideration.

Two further points were raised on behalf of the appellants. (1) That there was no right of appeal from the decision of the Subordinate Judge on the question of limitation, and (2) that if the application under Order 21, rule 95 was out of time, a suit might have been brought by the appellants to recover possession and that the suit would have been in time. Neither of these points was taken in the High Court, and in view of their Lordships' above-mentioned conclusion, it is not necessary for them to express, and they do not express, any opinion in respect of either of them.

The result is that their Lordships are of opinion that the appeals must be allowed, the decrees of the High Court dated the 19th August, 1930, set aside, and the orders of the Subordinate Judge of the 28th February, 1929, restored, and they will humbly advise His Majesty accordingly. The respondents must pay the costs of the appellants in the High Court and of these appeals.



In the Privy Council.

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CHANDRA MANI SAHA AND OTHERS

v.

SREEMATI ANARJAN BIBI AND OTHERS.

SAME

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SREEMATI ANARJAN BIBI AND OTHERS.

*(Consolidated Appeals.)*

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DELIVERED BY SIR LANCELOT SANDERSON.

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