affairs discloses a cause of action—*Dadaji* v. *Rukmabai*[1]; *Binda* v. *Kaunsilia*[2]; *Bai Sari* v. *Sankla Hirachand*[3].

We do not wish to express an opinion as to whether, if the defendant had been of full age when the demand and refusal deposed to by the defendant's witnesses took place, a suit by the plaintiff would have been absolutely barred, nor as to whether section 23 of the Limitation Act applies to such a case as this. The question apart from the authorities, appears to us to be one of doubt and difficulty.

Decree reversed and appeal remanded for retrial. Costs, costs in the cause.

Decree reversed and case remanded.

(1) (1886) 10 Bom., 301. (2) (1890) 13 All., 126.
(3) (1892) 16 Bom., 714.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

RAJARAM (ORIGINAL PLAINTIFF), APPELLANT, *v.* BANAJI MAIRAL (ORIGINAL DEFENDANT), RESPONDENT.*

1898. *June* 20.

Limitation Act (*XV of* 1877), *Art.* 179, *Cl.* 4—*Step in aid of execution—Application for return of a copy of a decree.*

An application to the Court by a decree-holder asking for the return of the copy of a decree filed with a former darkhást is not a step in aid of execution within the meaning of article 179 (4) of the Limitation Act (XV of 1877).

SECOND appeal from the decision of C. H. Jopp, District Judge of Poona.

Plaintiff and defendant were owners of two adjoining houses. On the 20th June, 1892, the plaintiff obtained a decree directing the defendant to remove certain work which he had done upon the plaintiff's wall, and restraining him from doing any new work thereon, or causing any obstruction to the plaintiff in repairing the wall.

On the 20th January, 1894, the plaintiff presented his first darkhást for execution of the decree. Notice under section 248

* Second Appeal, No. 72 of 1898.

1898.

RAJARAM v. BANAJI MAIRAL.

of the Civil Procedure Code was issued and made returnable on the 8th March, 1894. The plaintiff, however, failed to attend, and his darkhást was dismissed on the 3rd April, 1894.

On the 10th April, 1894, plaintiff applied to the Court for a return of the copy of the decree which had been filed with his darkhást.

On the 23rd February, 1897, plaintiff filed a second darkhást for execution. He contended that his application of the 10th April, 1894, for a return of the copy of the decree was a step in aid of execution and prevented the bar of limitation.

This contention was overruled by the Court of first instance, and the darkhást was rejected as barred by limitation.

This order was upheld, on appeal, by the District Judge.

Plaintiff thereupon preferred a second appeal to the High Court.

M. V. Bhat for appellant.

N. G. Chandavarkar for respondent.

The following authorities were cited in argument:—*Kunhi Mannan* v. *Seshagiri Bhakthan*(1); *Chowdhry Paroosh Ram* v. *Kali Puddo*(2); *Rajkumar Banerji* v. *Rajlakhi Dabi*(3); *Gopilandhu* v. *Domburu*(4); *Aghore Kali Debi* v. *Prosunno Coomar*(5); *Chundra Nath* v. *Gurroo Prosunno*(6); *Krishnayyar* v. *Venkayyar*(7).

PARSONS, J.:—The point is whether the action of the decree-holder asking the Court for the return of the copy of the decree filed with a former darkhást is applying to the Court to take some step in aid of execution of the decree within the terms of article 179 (4) of the Limitation Act. In my opinion it is not. The words of the enactment seem clear. They require an application to be made to the Court for it to take some step in aid of execution of the decree. The return by it of a copy of a document cannot, in my opinion, be held to be a step in execution taken by the Court. If the copy were a necessary adjunct to an application for the execution of his decree, it would be, at the

(1) (1882) 5 Mad., 141.
(2) (1889) 17 Cal., 53.
(3) (1885) 12 Cal., 441.
(4) (1888) 11 Mad., 336.
(5) (1895) 22 Cal., 827.
(6) (1895) 22 Cal., 375.
(7) (1882) 6 Mad., 81.

most, an act which would enable the applicant to make that application in the future. He is not, however, required by law, when he presents his application to execute the decree, to file along with it a copy of the decree. This is provided by rule only. No doubt when he presents his application he is bound to present it in the manner required by the rules of the Court, but it seems to me that he would not be entitled to treat an application to the Court to obtain something which would enable him merely to comply with the rules as an application to the Court itself to take a step in aid of execution. For instance, to take a somewhat analogous case, assuming that the Court supplied the paper on which, under the rules, applications were to be made, I do not think that an application for the paper on which the application for execution was to be written would be entitled to be called an application to the Court to take a step in aid of execution. This is the principle of the decision in *Gopilandhu* v. *Domburu*[1] and in *Aghore Kali Debi* v. *Prosunno Coomar*[2] and is, in my opinion, a perfectly correct one. The decree is confirmed with costs.

RANADE, J.:—The appellant in this case obtained a decree on 21st June, 1889, in the First Class Subordinate Judge's Court, Poona, which was finally confirmed in second appeal on 20th June, 1892. The decree directed certain works to be removed, and the respondent was restrained from doing any new work in the wall or obstruct appellant in repairing his wall on respondent's side. The first darkhást for the execution of this decree was given on 20th January, 1894. Notice under section 248 was issued and made returnable on 8th March, 1894, when respondent obtained a postponement till 3rd April, 1894. On that day, appellant failed to attend, and the darkhást was dismissed for his default. On the 10th April, 1894, appellant applied for a return of the copies of the decrees filed with his first darkhást, and he gave his present darkhást on 23rd February, 1897, filing the copies of the decrees returned to him. In this darkhást the appellant stated, that though more than three years had elapsed since the presentation of the first darkhást, yet the second darkhást was within time by reason of the notice under section

(1) (1888) 11 Mad., 336. (1895) 22 Cal., 827.

1898.

RA'ARAM v. BANAJI MAIRAL.

248, and the application made by respondent on the 8th March, 1894, as also by the order of 3rd April, 1894. In both the lower Courts, as also before us, the appellant did not rest his case on either the proceedings of the 8th March or 3rd April, 1894, but it was contended that the application of 10th April, 1894, for a return of the copies of the decrees prevented the bar of limitation. Both the Courts below overruled this contention, and held that the darkhást was time-barred. We have now to consider how far the application of 10th April, 1894, can be considered as a step in aid of execution within the meaning of clause 4 of article 179 of the Limitation Act.

The point has never been formally raised and decided in this Court. The Madras High Court has, however, ruled in *Gopilandhu* v. *Domburu*[1] that an application by a decree-holder for a copy of the decree with intent to apply for execution is not a step in aid of execution within the meaning of article 179, clause 4. Two decisions of the Calcutta High Court to the same effect are reported in *Ganga Pershad* v. *Debi Sundari*[2], as also in *Rajkumar Banerji* v. *Rajlakhi Dabi*[3]. The appellant's pleader, however, urged that the Madras ruling did not apply because the ground on which it was based was that, under the provisions of the Code, it is not absolutely necessary to file copies of the decrees with a darkhást. He contended that the rules framed by this Court required the production of such copies, and that, therefore, the ruling is inoperative here. We do not think that there is any difference in the rules framed by this Court and those to which the Madras High Court refers in its judgment, and the ruling, therefore, is one which applies to the present case. If applications for copies of decrees were held to be steps in aid of execution, the starting points laid down in the first three clauses of article 179 would be enlarged, and an element of uncertainty introduced which would defeat the purpose of the law. As regards the Calcutta decision in *Ganga Pershad* v. *Debi Sundari*[4] it was argued that the decision would have been otherwise if the lady who applied for the copy had got her name entered as heir in the record in the place of the deceased judgment-creditor. This circumstance,

(1) (1888) 11 Mad., 336.
(2) (1885) 11 Cal., 227.
(3) (1885) 12 Cal., 441.
(4) (1885) 12 Cal., 227.

though it is referred to in the judgment of the Court, does not appear to us to be the sole or even the chief ground for the conclusion arrived at. These reasons are more fully set out in the judgment in *Rajkumar Banerji* v. *Rajlakhi Dabi*[1]. "An application for the return of a document in the record room is by itself an indifferent act," and "no copy of the decree is required by law to be filed in execution." These reasons appear to us to be good and sufficient reasons for holding that the lower Courts were right in rejecting the darkhást in the present case.

The other cases cited by the appellant's pleader have no bearing on the merits of his present contention. The ruling in *Chundra Nath* v. *Gurroo Prosunno*[2] that an application for a transfer of decree to another Court is a step in aid of execution, as also the ruling in *Krishnayyar* v. *Venkayyar*[3] which held that an application to the second Court to return the decree back to the first Court when complete execution has not been obtained, was a step in aid of execution, have obviously no bearing in the present case. So also the decision in *Kunhi Mannan* v. *Seshagiri Bhakthan*[4], which held that an application for a certificate that a certain copy of a revenue register is necessary, stands on the same footing. The applications in all these cases had one common feature. They were applications made in furtherance of an application to put a decree in execution. In the present case the first darkhást had been dismissed on 3rd April, 1894. The application on 10th April was not an application in aid of any darkhást then pending, nor was it an application which was required by law as a necessary preliminary step. It was mainly on this account that the appellant in his present darkhást laid no stress on this application of 10th April, but chiefly relied on the proceedings of 8th March and 3rd April, 1894. The Courts below have very properly disallowed his contention based on the application for a return of the copies made after the darkhást was disposed of, and we accordingly confirm the order of the lower Court and reject the appeal.

(1) (1885) 12 Cal., 441.
(2) (1895) 22 Cal., 375.
(3) (1882) 6 Mad., 81.
(4) (1882) 5 Mad., 141.