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find such a large sum of Rs. 3,000 and to tender it to the District Magistrate of whose whereabouts at the time we have no certain knowledge. I am of opinion that this interval cannot be regarded as an unreasonable time, and in that view of the case I think that the applicant was not rightly convicted of having kept in his possession a press for the printing of books or papers without making a deposit when required so to do. I would, therefore, making the rule absolute, reverse the conviction and order that the fine, if paid, be refunded to the applicant.

HEATON, J.:—I concur. Broadly speaking I hold that the applicant has not behaved in any way that is unreasonable. He received the notice on the 28th September and by the 3rd October he had relieved himself of all responsibility in the matter by withdrawing his declaration and disposing of the press to another person. There is nothing in the Act of 1910 to suggest that it should be interpreted or enforced in such a way as to either compel a person to act with a rapidity that it is unreasonable to expect; or in default of his so doing to be subjected to a penalty. Therefore I think the Magistrate is wrong and that his order ought to be set aside.

*Order set aside.*

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## APPELLATE CIVIL.

*Before Mr. Justice Batchelor and Mr. Justice Heaton.*

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*April* 3.

MURGEPPA MUDIWALLAPPA KOTTANHALLI (ORIGINAL DEFENDANT), APPELLANT, *v.* BASAWANTRAO KHALILAPPA DESAI (ORIGINAL PLAINTIFF), RESPONDENT.*

*Limitation Act (IX of 1908), Schedule I, Article 182, clause (5)—Decree—Execution—Step-in-aid of execution—Application for certificate under Succession Certificate Act (VII of 1889).*

An application by the representative of a judgment-creditor to obtain a certificate under the Succession Certificate Act (VII of 1889) is not a step-in-

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aid of execution within the meaning of the Indian Limitation Act, 1908, Schedule I, Article 182, clause (5).

SECOND appeal from the decision of F. K. Boyd, District Judge of Bijapur, comprising the decree passed by V. R. Kulkarni, Subordinate Judge at Muddebihal.

Proceedings in execution.

On the 2nd July 1907, the plaintiff applied to execute a money decree which he had obtained against the defendant. The decree-holder then died, and his legal representative applied on the 16th February 1908 to the Court to obtain a succession certificate to the property of the deceased, under the provisions of the Succession Certificate Act. The next *darkhast* was made on the 7th September 1910. The judgment-debtor contended *inter alia* that the *darkhast* was barred by limitation, it having been made more than three years after the date of the foregoing *darkhast*.

Both lower Courts held that the *darkhast* in question was filed in time, because the application to obtain succession certificate was a step-in-aid of execution of the decree.

The defendant applied to the High Court.

*K. H. Kelkar*, for the appellant.

*N. V. Gokhale*, for the respondent.

BATCHELOR, J. :—This is a second appeal brought in execution proceedings, and the only question involved is the question of limitation. Admittedly the judgment-creditor's present application for execution is *primâ facie* barred. He seeks, however, to support it by deducting the time which was occupied by him in getting from the Court a succession certificate to the original judgment-creditor, and if that time is allowed

to be deducted, then admittedly the application is within time. The whole question, therefore, is whether the deduction should or should not be allowed. The answer to the question depends upon the construction to be placed on Article 182, clause 5, to the first Schedule of the Limitation Act. That clause gives a period of three years from the date of applying in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree.

It is to be noted, in the first place, that the step in aid of execution is to be taken not by the applicant but by the Court. The clause means, as we read it, an application in accordance with law made to the proper Court asking that Court to do one of two things, that is either to execute or to take some step in aid of execution. Now, confessedly, this application to obtain the succession certificate was not an application to the Court to execute the decree. The only question, therefore, to be considered is whether it can be said to have been an application to the proper Court asking that Court to take some step in aid of execution of the decree. We are of opinion that that question must be answered in the negative. It appears to us that an application to the Court to obtain a succession certificate is a perfectly independent thing, and although the ultimate object of it may be to use the certificate when obtained in order to further execution of the decree, none the less we think it impossible to say that the application to get the certificate is an application to the proper Court to take some step in aid. We think also that the occurrence of words 'proper Court' also tends to support this conclusion. An application to obtain a succession certificate may be made in one of several Courts. Obviously it could not be such an application as clause 5 contemplates, unless it were made to the proper Court which is defined as meaning the Court whose duty

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it is to execute the decree. If, therefore, Mr. Gokhale's arguments were sound, the question whether such an application would or would not save time, would depend upon the mere accident whether it was filed in the Court whose duty it was to execute the decree, or in some other Court. It appears to us that it could not have been the intention of the Legislature that such a question as this should be decided on a mere accident of that sort. In our opinion the application to obtain the succession certificate was a mere preparation or preliminary, and cannot be said to have been an application asking the Court to take a step in aid of execution. We have not been referred to any case which appears to be in conflict with the view which we are taking unless it be the decision in *Kunhi* v. *Seshagiri*[1]. But we are so uncertain as to what was the state of facts upon which that decision was pronounced that we cannot regard the decision as adverse to our present opinion. On these grounds we come to the conclusion that this *darkhast* cannot be saved by the deduction of the time occupied in getting the succession certificate. If that is so, then admittedly the *darkhast* is time-barred. We, therefore, reverse the decree of the District Judge and order that the application be dismissed with costs throughout.

*Decree reversed.*

R. R.

[1] (1882) 5 Mad. 141.