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of adverse possession is entitled to an injunction against the defendants restraining them from taking proceedings in a Court of law or otherwise than under the Watan Act to recover possession from the plaintiff. The words "otherwise than under the Watan Act" must be inserted in the injunction in order to make it clear that this Court does not make any order purporting to interfere with or hamper the Collector in the execution of such powers as are given to him by section 11A of the Watan Act.

The respondents must pay the costs throughout.

Decree reversed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

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BANDO KRISHNA KUNBARGI (ORIGINAL PLAINTIFF), APPELLANT, *v.* NARASIMHA KONHER DESHPANDE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Limitation Act (XV of 1877), Schedule II, Article 179—Execution of decree—Applications for execution—Applications when not "in accordance with law."

The plaintiff obtained a decree against the defendants. He sought to execute the decree by filing six *darkhasts* all within time. The lower Court held that the sixth *darkhast* was not filed in time, for the first five *darkhasts* could not be taken into consideration for purposes of limitation as they were not in "accordance with law" because every one of them sought relief or reliefs which on considering the merits of the *darkhasts*, the Court could not have granted. On appeal:—

Held, that the *darkhast* in question was in time, for the first five *darkhasts* were "in accordance with law" as each one of them claimed relief granted by and therefore within the decree and the question whether on a consideration of all the facts the Court could in the events that had happened grant the relief was only a question for trial on the merits.

APPEAL from the decision of G. N. Kelkar, Subordinate Judge of Belgaum.

* First Appeal No. 105 of 1911.

Execution proceedings.

The plaintiff obtained a decree for Rs. 56,575 against the defendants on the 17th November 1897. The material provisions of the decree were as follows :—

1. Defendants should pay Rs. 56,575 to the plaintiff. Of this Rs. 575 should be paid by the defendants to the plaintiff just now. This payment leaves a balance of Rs. 56,000. Out of this Rs. 6,000 should be paid at the end of January 1898. If that amount is not paid by that time, that amount of Rs. 6,000 should carry interest at 4½ per cent. from 1st November 1897 till payment. The remaining Rs. 6,000 (out of the sum of Rs. 12,575 for costs and interest, included in Rs. 56,575 should be paid with interest thereon at 4½ per cent.

The principal is Rs. 44,000 to be paid off by annual instalments of Rs. 1,000 each payable before the end of January in each year; first instalment of Rs. 1,000 to be paid by the end of January 1898. If default be made in the payment of these instalments, the whole balance of principal, with interest thereon at 4½ per cent., should be recovered by the sale of the property mortgaged, without minding the aforesaid instalment clause ("Varil Hapteche Huzur Na Dharita"). The deficit, if any, to be recovered from the person and the estate of the defendants.

2. The yearly interest on the aforesaid principal amounts to Rs. 1,980. For the payment of this interest, the defendants to give possession of the mortgaged property to the plaintiff; or the plaintiff to take possession through Court. If there be any obstacle in getting possession, the defendants should remove it. Plaintiff to recover the Vasul of Inam villages Kablapur and Kenchanhatti and Rs. 90½ out of the Vasul of Inam village Ashte directly from the village officers. Defendants to order the village officers accordingly and to see that the Vasul is so paid to the plaintiff.

3. The possession of non-Inam lands is to be given by making the tenants pass kabulayats to the plaintiff. If the defendants do not do this before Chaitra Sud 1 every year, if the tenants do not pay the Vasul, if the Vasul fails, or if the plaintiff does not receive the Vasul at all, the responsibility is on defendants' head.

4. If the defendants fail to cause the kabulayats to be passed before Chaitra Sud 1, the plaintiff to take possession through Court and to give leases to his own tenants. The defendants are not to dispute the rent at which the plaintiff gives the leases. If, on any account, the Vasul is not recovered from the village officers or from the tenants, the defendants to make up the deficit. If the Vasul exceeds Rs. 1,980 the defendants are not entitled to the excess.

5. If the yearly interest and Rs. 1,000 of the principal be paid to the plaintiff the plaintiff should give back to the defendants land, the rent of which is Rs. 45. If the defendants pay more than Rs. 1,000, the plaintiff to give back more land in proportion.

6. If plaintiff's possession be obstructed by Government or by Bhaubands or if on any other account the possession of the mortgaged property is not continued to the plaintiff, the defendants should remove that obstruction. If they do not, they

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should at once (immediately) give to plaintiff land or cash (principal) in proportion to the extent of the obstruction. If they do not, the plaintiff should at once recover the amount from them.

All Government dues in respect of the mortgaged property are to be paid by the defendants. If the plaintiff has to pay the same, defendants should repay the same to the plaintiff with interest at 12 per cent. thereon.

7. If the above written sums of Rs. 6,000 (each) be not paid at the appointed time, the plaintiff should recover the same with interest by sale (of the mortgaged property) subject to the lien for the abovementioned mortgage amount; or the plaintiff may recover the same from the defendants personally; or he may recover it in both ways.

8. The whole mortgaged property, including the whole Inam village Ashte, is subject to the aforesaid sum of Rs. 56,575 with interest thereon, till the whole amount with interest is repaid. The plaintiff has his mortgage lien thereon till full satisfaction.

The defendants failed to carry out the obligations imposed upon them by the decree. To secure this, the plaintiff had to file *darkhasts* (applications for execution) from time to time. The present *darkhast*, which was the sixth, was filed by the plaintiff on the 2nd December 1909. It was contended by the defendants that the first five *darkhasts* were not "in accordance with law" and could not therefore help to bring the present *darkhast* within time.

The first *darkhast* was filed on the 18th June 1898. The plaintiff prayed to recover Rs. 56,575 with interest at 4½ per cent., (1) by attachment and sale of defendants' moveable property, and (2) by sale of mortgaged property; and he also applied to obtain possession of the mortgaged property till the recovery of the principal amount. In execution, the plaintiff obtained possession of a third of the mortgaged property and also some money. This *darkhast* was disposed of on the 5th October 1900. The objections to this *darkhast* were that the combination of the prayers for attachment and sale of defendants' moveables and for the sale of the mortgaged property was not legal; and that the prayer for possession of the mortgaged property till the recovery of the principal was inconsistent with the other two prayers.

On the 4th January 1901, the plaintiff filed the second *darkhast*, seeking to recover Rs. 26,254-2-9 with costs by sale

of the mortgaged property, subject to the mortgage-lien for Rs. 44,000. In execution under this *darkhast* the village of Ashte was sold for Rs. 1,000, which was paid to the plaintiff. The *darkhast* was disposed of on the 11th July 1903. The defendants' contention as to the effect of the *darkhast* was that the plaintiff made a wrong prayer as he was not entitled to sell the mortgaged property subject to his own mortgage-lien created by the very decree which he was seeking to enforce in execution.

The third *darkhast* presented on the 13th August 1901 was supplementary to the second *darkhast* and was kept pending on it. On the 23rd December 1903, the *darkhast* was disposed of without any proceedings. The objection advanced as to this *darkhast* was that it was not according to law because the plaintiff gave no *khata* extracts from Government Records in respect of the lands sought to be sold in execution under sections 234 and 236 of the Civil Procedure Code of 1882.

The plaintiff presented the fourth *darkhast* on the 1st August 1904. He prayed to recover the sum of Rs. 23,022-3-9 by arrest and imprisonment of the defendants and by attachment and sale of their moveables. As no *batta* for the attachment of moveables was paid, the *darkhast* was disposed of on the 15th September 1904. The vice of this *darkhast* was stated to be the omission of the list of moveables under sections 234 and 236 of the Civil Procedure Code of 1882. In the opinion of the Subordinate Judge, the plaintiff was not entitled to apply for the arrest and imprisonment of the defendants or for attachment and sale of the moveables belonging to them, without first bringing the mortgaged property to sale.

The fifth *darkhast* to execute the decree was presented on the 26th July 1907. The plaintiff prayed thereby to recover the whole of the mortgage money with full interest thereon till the date of the presentation of the *darkhast*, by the attachment and sale of defendants' moveables at Ashte. No list of the moveables was given as no *batta* was paid for notice to defendants under section 248 of the Civil Procedure Code of

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1882. The *darkhast* was disposed of on the 28th August 1907. It was held to be not in accordance with law, because "the relief sought against the defendants' moveables before the sale of the mortgaged property was illegal."

The present *darkhast* was filed on the 2nd December 1909. The Subordinate Judge excluded from his consideration the fourth and the fifth *darkhasts*, on grounds stated above, and having done so he held the present *darkhast* to be time-barred. He was also of opinion that none of the first five applications for execution was strictly according to law.

The plaintiff appealed to the High Court.

Coyajee with *C. A. Rele*, for the appellant:—Each of the five foregoing *darkhasts* were quite in accordance with law, each was within three years of its predecessor, and each one claimed reliefs which were granted by the decree. See *Narhar Raghunath* v. *Krishnaji Govind*(1). The cases of *Pandarinath Bapuji* v. *Lilachand Hatibhai*(2) and *Munawar Husain* v. *Jani Bijai Shankar*(3) are distinguishable.

G. S. Rao for respondent No. 2:—Of the *darkhasts* preferred by the appellant, the third *darkhast* was defective, as it was not accompanied by a copy of the decree sought to be executed; *Sadashiva* v. *Ramchandra*(4). The two following *darkhasts* were also defective. The fourth *darkhast* was not accompanied by an inventory of moveable property sought to be attached, under section 236 of the old Civil Procedure Code. The fourth and the fifth *darkhasts* were dismissed for non-prosecution and they cannot save limitation. See *Rajah Sutto Surn Ghossal* v. *Bhyrub Chunder Brohmo*(5): *Raghu Ram* v. *Dannu Lal*(6). In the fifth *darkhast* the appellant sought to recover the whole sum by attachment and sale of moveable property; but he was not entitled to do so, before bringing the mortgaged property to sale: *Munawar Husain* v. *Jani Bijai*(3); *Chattar* v. *Newal Singh*(7); *Bhagwan* v. *Dhondi*(8). This *darkhast* was

(1) (1912) 36 Bom. 368.
(2) (1888) 13 Bom. 237.
(3) (1905) 27 All. 619.
(4) (1903) 5 Bom. L. R. 394.
(5) (1868) 11 W. R. 80.
(6) (1879) 2 All. 285.
(7) (1889) 12 All. 64.
(8) (1896) 22 Bom. 83.

further open to the objection that no list of moveable property was given.

Nilkanth Atmaram, for respondent No. 1.

Coyajee, in reply :—The cases relied upon by the respondents are distinguishable as the reliefs claimed there were outside the decree. The omission to furnish an inventory was a purely technical defect and did not affect the validity of the *darkhast*: *Hari* v. *Narayan*[1]. The third *darkhast* is in accordance with law although not accompanied by a copy of the decree: *Ramchandra* v. *Laxman*[2]. A *darkhast* which is dismissed for non-prosecution or is withdrawn saves limitation: See *Premraj* v. *Abdul*[3]; *Shankar Bisto Nadgir* v. *Narsinghrao Ramchandra*[4]; and *Thakur Pershad* v. *Sheikh Fakir-Ullah*[5].

Cur. adv. vult.

CHANDAVARKAR, J. :—This is an appeal from the decision of the Subordinate Judge, First Class, Belgaum, rejecting *darkhast* No. 443 of 1908, presented by the appellant for execution of the decree in suit No. 434 of 1897. The ground of rejection is that the *darkhast* is barred by time, inasmuch as the previous five *darkhasts* were not in accordance with law, having each claimed relief or reliefs which it was not competent for the Court to grant.

The decree of which execution was sought by the *darkhast* in question had been passed originally on the 17th of November 1897; but it was amended on the 20th of January 1899. The amount payable under it was split up into four items. The first was a sum of Rs. 575 for costs made payable at once. The second consisted of two sums of Rs. 6,000 each; the first sum was directed to be paid by the end of January 1908; in case of non-payment, interest at 4½ per cent. was made to run on the sum from the 1st of November 1897 up to the date of payment. As to the second sum of Rs. 6,000, the decree directed that interest should run at 4 per cent. from its date to

(1) (1887) 12 Bom. 427 at p. 430.
(2) (1906) 31 Bom. 162.
(3) (1896) P. J. 753.
(4) (1887) 11 Bom. 467.
(5) (1894) L. R. 22 I. A. 44.

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the date of payment. The third item of the decree was a sum of Rs. 44,000 with Rs. 1,980 as interest thereon. The decree made Rs. 44,000 payable in forty-four years by instalments each of Rs. 1,000 a year. For satisfaction of Rs. 1,980 the judgment-debtor was directed to put the decree-holder in possession of certain lands; and it was provided that should the profits thereof fall short of the amount payable, the judgment-debtor should make up the deficiency by payment in cash. It was also provided in the decree that if the judgment-debtor should put the decree-holder in possession of only part of the lands, instead of the whole, the former should place the latter in possession of other lands so as to enable the decree-holder to obtain the full amount of interest. The decree then wound up with a final clause, making the whole of the mortgaged property therein mentioned security for the whole of the decretal amounts.

The first *darkhast* for execution was presented on the 18th of June 1898; the second on the 4th of January 1901; the third on the 13th of August 1901; the fourth on the 4th of August 1904; the fifth on the 26th of July 1907. These were all *primâ facie* sufficient in law to keep the decree alive, because every application after the first was within three years of the last preceding application. And the present *darkhast*, having been presented on the 2nd of December 1909, is also *primâ facie* in time, being within three years of its immediate predecessor, the *darkhast* of the 26th of July 1907.

But the Subordinate Judge has disallowed the *darkhast* now in dispute on the ground that all the previous *darkhasts* were not "in accordance with law." And they are not "in accordance with law," in the opinion of the Subordinate Judge, because every one of them sought relief or reliefs which, on considering the merits of the *darkhast*, the Court could not have granted.

In so construing the words "applying in accordance with law to the proper Court for execution" the learned Subordinate Judge has put upon them a construction not warranted by their plain meaning. To apply for the execution of a decree

in accordance with law is to apply in the manner provided for by the law relating to execution of decrees. And that law is embodied in the Code of Civil Procedure, which is, for its purposes an exhaustive Code. Chapter XIX of the Code of 1882, which was in force when the first five *darkhasts* in the present case were presented, deals in sub-division B of the Chapter with "Application for Execution." The provisions therein point out, first, who may apply for execution, and against whom the application may be made; secondly, what the contents of the application should be; and thirdly, what should accompany the application and in what cases. These are specific provisions and they must be the guide in determining whether, under Article 179 of Schedule II to the Limitation Act, a *darkhast* is "in accordance with law." Section 235 clause (*j*) requires the application for execution to state "the mode in which the assistance of the Code is required." The last words of the clause "as the nature of the relief sought may require" show that even if the application seek relief not strictly claimable, yet the application would not be bad in itself. In the present Code (Act V of 1908) for "sought" we have "granted"—*i. e.*, granted by the decree. If a person other than one entitled to apply applies for execution, or if the person entitled applies for execution in a mode and for a relief outside the decree, the application is not in accordance with law for the plain reason that the decree of which execution is sought is not in reality the decree to which the application professes to relate but some other decree, one not existing and, therefore, incapable of execution according to law. The decree in such a case not existing, the application made as to it shares its fate and is treated as non-existent. Where, on the other hand, a decree gives certain reliefs, and the application for execution seeks some or all of them, it may be that, after going into the merits of the application and considering on evidence all the circumstances and equities of the case, the Court comes to the conclusion that the particular relief or reliefs sought shall not be granted. But that decision of the Court on the merits cannot affect the application for the purposes of the question whether it is by itself in accordance with law, provided it meets

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in substance the requirements of the Code of Civil Procedure or any other law relating to execution.

Where, again, the application asks partly for reliefs granted by the decree and partly for reliefs totally outside the decree, the application may be void as to the latter, but all the same it is good in law as to the former and therefore "in accordance with law."

In the present case the fallacy of the Subordinate Judge's reasoning is that he has held every previous *darkhast* to be not in accordance with law after examination of the merits and surrounding circumstances of the *darkhast*. That is going outside the *darkhast*, whereas all that the law (Article 179 of the Limitation Act) requires the Court to see for the purposes of limitation is whether the *darkhast* itself, whatever its merits on the evidence, is an application made in due conformity with the requirements of the law relating to execution.

According to the Subordinate Judge, the second *darkhast* is not in accordance with law because at that point of time the only relief which the decree-holder could claim *under the decree* was to bring the mortgaged property to sale, whereas, instead of seeking that relief, the decree-holder prayed for payment of Rs. 12,575. That might or might not be; that was a question to be determined on a consideration of the circumstances extrinsic to the decree and depending on questions of default, and waiver. But because a decree-holder does not ask by his application for execution for that relief to which he is entitled under the decree in a certain event, and asks for a relief given by the decree until the happening of that event, it does not follow that he has applied for relief outside the decree and that, therefore, his application is not in accordance with law. It is this view which has substantially affected the Subordinate Judge's judgment with reference to each of the *darkhasts*. In the case of some of them, he has assigned the additional ground that the *darkhasts* were not accompanied by inventories—a purely technical defect which could not affect the question whether the *darkhast* itself was substantially in accordance with law.

Each of the first five *darkhasts* in the present case claimed relief granted by and, therefore, within the decree. Whether on a consideration of all the facts the Court could, in the events that had happened, grant the relief was a question for trial on the merits. But each application by itself was in order in that it sought relief which was in the decree.

Hence it was "in accordance with law."

On these grounds the decree appealed from must be reversed and the *darkhast* remanded to the lower Court for disposal on the merits according to law. The appellant must have the costs of this appeal from the respondents; other costs to be costs in the *darkhast*. At the fresh hearing in the Court below it will be open to the respondents to object to execution on any ground such, for instance, as that all or any of the items in the decree are time-barred. Parties will be at liberty to adduce evidence.

BATCHELOR, J.:—The question before us is whether limitation in this case is saved by certain previous *darkhasts* under clause 4 of Article 179 of the Limitation Act (Act XV of 1877). That clause provides a period of three years from the date of applying in accordance with law to the proper Court for execution. The only question before us is whether the earlier *darkhasts* were cases of applying in accordance with law or not. If they were cases of applying in accordance with law, then, admittedly, the present *darkhast* is saved. If I were free to decide the present question solely upon the authority of the words of the Statute, I should be inclined to think that those words had no reference to the application's likelihood of success or to the Court's competency to award any particular relief which had been prayed. As I understand the words, they are merely an adverbial qualification of the word "applying," and they seem to me to look only to the form or procedure of the application. I should think, moreover, that the words as they stand receive ample meaning by reference to sections 235 and 236 of the Code of Civil Procedure of 1882, which sections prescribe the particulars to be furnished with an application for execution. It is worthy of remark that the critical words qualify the word "applying."

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It is not even an application, but it is the applying which must be in accordance with law, and the meaning seems to me to be wholly distinct from what would be conveyed if the words ran "applying for execution in accordance with law."

On the other hand if it is to be said that a decree-holder is not applying in accordance with law merely because he asks for something, which under the decree the Court cannot grant him, we are, I think, confronted, at least in all cases where the decree is complicated or intricate, with this difficulty that the question whether an applying is made according to law can only be decided by an adjudication of the application on its merits. I venture respectfully to doubt whether that is intended. If the applying complies with the forms and the procedure prescribed in that behalf, I should be disposed to say that the applying was in accordance with law, and not the less so, because, on the merits of the application, whether for one reason or another, the application had to be refused; nor do I think that the difficulty which I have mentioned is satisfactorily removed by any distinction between what appears on the face of the application and of the decree and what appears by a more careful consideration of those documents; for in practice I should doubt whether it would be possible to maintain any such distinction. If, however, the decisions of this Court oblige us to reject this view of the meaning of the words in clause 4 of Article 179, then, I am of opinion that in this particular case the appeal should be allowed on the other ground that, as explained in my learned colleague's judgment, the former applications asked for reliefs which were not wholly outside the decree.

Decree reversed.

R. R.