

order in favour of the plaintiff granting him an injunction against the defendant in 1913. The plaintiff then made an application to the First Class Magistrate under section 145 of the Code of Criminal Procedure and the Magistrate made an order against the plaintiff and in favour of the defendant allowing him possession, at any rate, with regard to the crop of the suit land. The suit is clearly within time with regard to the order of the First Class Magistrate.

We think that the order of the District Judge dismissing the appeal on the preliminary issue is wrong. Therefore this appeal must be allowed and the first appeal sent back to be dealt with by the District Judge on its merits. The appellant must have the costs of this appeal.

*Appeal allowed.*

R. R.

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## APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

SAYAD HAMIDALLI WALAD KADAMALLI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS v. AHMEDALLI WALAD MHIBUBALLI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS<sup>o</sup>.

1920.

December 1.

*Civil Procedure Code (Act V of 1908), section 144—Restitution of property—Application for execution—Indian Limitation Act (IX of 1908), Article 182.*

An application for restitution, under section 144 of the Civil Procedure Code, 1908, is an application for execution of a decree, and is governed by Article 182 of the Indian Limitation Act, 1908.

*Kurgodigouda v. Ningangouda*<sup>(1)</sup>, followed.

*Krupasindhu Roy v. Mahanta Balbhadra Das*<sup>(2)</sup> and *Ram Singh v. Sham Parshād*<sup>(3)</sup>, dissented from.

<sup>o</sup> Second Appeal No. 308 of 1920.

<sup>(1)</sup> (1917) 41 Bom. 625.

<sup>(2)</sup> (1917) 3 P. L. J. 367.

<sup>(3)</sup> (1918) P. R. No. 67 of 1918.

1920.

HAMIDALLI  
v.  
AHMEDALLI.

SECOND appeal from the decision of C. N. Mehta, Acting District Judge at Ahmednagar, confirming the order passed by N. K. Bapat, First Class Subordinate Judge at Ahmednagar.

Execution proceedings.

On the 26th September 1905, the plaintiffs obtained a decree entitling them to recover a half share in certain property by partition from defendants. This decree was confirmed on the 14th September 1906 by the District Court; but it was modified by the High Court on the 13th April 1910, when the plaintiffs' share was reduced to one-quarter.

During the pendency of the first appeal the plaintiffs executed the trial Court's decree and obtained possession of a half share on the 11th April 1906.

On the 16th September 1911, one of the defendants presented a Darkhast to the Court claiming to recover a quarter share from the plaintiffs which they had recovered in excess of the High Court decree. On the 15th August 1912, the Court, after hearing both parties, transferred the application to the Collector. On the 26th September 1912, the defendant made an application to the Court to arrest the plaintiffs. Then the defendant died and the Darkhast was struck off.

The defendant's son Mahabub presented a second Darkhast on the 13th August 1915. It was struck off on the 7th October 1916, as Mahabub died.

Ahmedalli and others presented the third Darkhast on the 29th November 1917.

The plaintiffs contended that the Darkhast was not an application for execution of a decree or order; that it was governed by Article 181 of the Indian Limitation Act, 1908; and that it was time-barred.

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The trial Court held that the application in question was for restitution under section 144 of the Civil Procedure Code ; that it was governed by Article 182 of the Indian Limitation Act, 1908 ; that the second Darkhast though filed more than three years from the date of the first Darkhast was within time owing to the steps-in-aid of execution taken by the defendant in August and September 1912 ; and that the present Darkhast was also within time. The Court ordered execution to proceed.

This order was, on appeal, confirmed by the District Judge, for the following reasons :—

“As observed in *Kurugodigauda v. Ningangauda* (19 Bom. L. R. 638, on page 641), ‘it appears to us that an order made under section 144 is an order in execution of a decree of the appellate Court ;’ and that ‘we are, therefore, of opinion that the lower Court was right in holding that the application was virtually an application for the execution of the High Court decree, amending the decree of the Dharwar Court.’ I must prefer this ruling to those of I. L. R. 10 Mad. 66 and I. L. R. 28 Cal. 113.”

The plaintiffs appealed to the High Court.

*J. G. Rele*, for the appellants.

*S. R. Bakhale*, for the respondents.

MACLEOD, C. J. :—This is an appeal from the order of the District Judge confirming the order of the lower Court directing the execution to proceed further.

The plaintiffs had obtained a decree on the 26th September 1903 entitling them to recover a half share in certain property by partition from the defendants. In second appeal the plaintiffs' share was reduced to one quarter. Meanwhile the plaintiffs got possession under the decree of the trial Court, and the defendants were seeking execution according to the terms of the decree of the appellate Court.

The first question which was raised in objection to the defendant's application was whether the application was

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in time. It was argued that this was not an application in execution of the decree and therefore Article 182, First Schedule, of the Indian Limitation Act, was not applicable. But it was decided by a Bench of this Court in *Kurgodigouda v. Ningangouda*<sup>(1)</sup> that an order under section 144 of the Civil Procedure Code is an order in execution of the decree of the appellate Court. That decision is binding upon us. The question there arose because the applicant was a minor at the time when the appellate decree was passed and presented an application under section 144 after he attained majority. The Court held that his application was an application for the execution of the decree within the meaning of section 6 of the Indian Limitation Act. No doubt, as mentioned by Mr. Mulla in his Code of Civil Procedure, last edition, page 315, a different view has been taken by the High Court of Patna<sup>(2)</sup> and the Chief Court of the Punjab<sup>(3)</sup>. With all due respect to the learned Judges of those Courts, it appears to me that the decision I have referred to is correct, and that an application for restitution cannot be treated as anything else than an application for execution of the decree of the appellate Court. It is the decree of the appellate Court which entitles the successful appellant to get back something which he had been deprived of by the decree of the lower Court, under which the then successful party had actually received possession. In order, therefore, to get back what he has lost, the successful appellant must apply for execution of the order which entitles him to get back that possession. Clearly, therefore, Article 182 applies to applications under section 144.

Then the question was raised that this particular application was barred even under Article 182. We

<sup>(1)</sup> (1917) 41 Bom. 625.

<sup>(2)</sup> *Krupasindhu v. Mahantu Balbhadra Das*  
(1917) 3 P. L. J. 367.

<sup>(3)</sup> (1918) *Ram Singh v. Sham Parshad*, P. R. No. 67 of 1918.

agree with the learned Judge in the Court below that there had been steps-in-aid of execution which have kept the order for restitution alive and therefore there was no bar. We dismiss the appeal with costs.

SHAH, J. :—I agree.

*Appeal dismissed.*

R. R.

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FULL BENCH.

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APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, Mr. Justice Shah and  
Mr. Justice Hayward.*

DATTATRAYA KESHAV DESHPANDE (ORIGINAL PLAINTIFF), APPELLANT  
v. TUKARAM RAGHU CHORAGE (ORIGINAL DEFENDANT), RESPONDENT<sup>2</sup>.

1920.

December 23.

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*Bombay Revenue Jurisdiction Act (X of 1876), section 4 (a)—Vatandar—  
Alienation—Declaration that alienation by Vatandar is null and void—  
Refusal of Collector to make the declaration—Suit in civil Court to obtain the  
declaration—Cognizance of suit—Hereditary Offices Act (Bombay Act III  
of 1874), sections 10, 11.*

Where a Vatandar applies to the Collector to declare that a particular alienation of vatan property is null and void and the Collector refuses to make the order declaring the alienation null and void, the party aggrieved can file a suit in a civil Court against the alienee in respect of the alienation.

APPEAL from an order passed by N. S. Lokur, Assistant Judge with appellate powers at Satara, reversing the decree passed by and remanding the suit to V. G. Gupte, Joint Second Class Subordinate Judge at Karad.

Suit to recover possession of vatan property.

<sup>2</sup> Appeal No. 49 of 1919 from Order.