category of the class of heirs under the heading of "brothers". It is not so much the meaning of the word सोदर as the context, coupled with the basic principles of Hindu law, that is against the defendants' contention. I have no hesitation whatever in holding that the view taken by the lower Courts is correct. The appeal must, therefore, be dismissed with costs.

MACLEOD, C. J. :—I agree.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

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

SITABAI KOM ZUKAPPA MHETRE, AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* KESHAVRAO PARVATRAO KATE (ORIGINAL DEFENDANT), RESPONDENT*.

1921.

December 2.

Indian Limitation Act (IX of 1908), Schedule I, Article 182, clause 5—Step-in-aid of execution—Instalment decree—Application for recovery of one of the instalments due—Step-in-aid of execution with regard to all the instalments then due.

A decree of 24th July 1908 directed that the decretal debt should be paid by annual instalments of Rs. 1,000. In execution of the decree, a Darkhast was filed in 1915 after two instalments (of 1909 and 1910) had been paid, but it was not prosecuted. In 1918 another Darkhast was filed to recover the instalments due in 1911, 1912 and 1913, and the same were recovered. In 1919 a Darkhast to recover the instalments due in 1914 and 1915 was filed. It was contended that these instalments being time-barred, the Darkhast could not proceed.

Held, that the Darkhast could proceed, as the Darkhast of 1918, although an application for the recovery of some only of the instalments due, at that date, could be considered as a step-in-aid, so as to start a new period of limitation with regard to all the instalments then due.

* Second Appeal No. 18 of 1921, under Letters Patent.

1921.

SITABAI v. KESHAVRAO.

APPEAL under the Letters Patent against the decision of Pratt J. in First Appeal No. 32 of 1921, preferred against the decision of E. F. Rego, First Class Subordinate Judge of Poona.

The facts material for the purposes of this report are sufficiently stated in the judgment.

Coyajee with *J. R. Gharpure*, for the appellants.

V. D. Limaye, for the respondent.

MACLEOD, C. J. :—The plaintiffs in this suit got a decree on the 24th July 1908 for Rs. 6,693 with interest on Rs. 6,500 at 12 annas per cent. per mensem. The decree was made payable by instalments of Rs. 1,000 each. The first instalment was to be paid at the end of Ashad Shake 1831 corresponding with July 1909. Apparently nothing further was done by the plaintiff although no instalments had been paid under the decree until the 7th of April 1914 when an order was made making the decree final for the sum become due. It is strange that that order was made as it was absolutely unnecessary. But it has been made, and, therefore, it must be considered that that order kept the decree alive.

In December 1915 the first Darkhast was filed. At that time all the instalments payable under the decree had become due. But we have not been told to what instalments the Darkhast related. The Judge says that that Darkhast fell through on account of the plaintiffs' laches. But it is admitted that the two instalments for 1909, 1910 with interest had been paid.

The next Darkhast was filed in November 1918 to recover the instalments which fell due in 1911, 1912 and 1913. The Judge said that that Darkhast was evidently time-barred, and it would be so unless the Darkhast of 1915 could be considered as a step-in-aid of

execution with regard to the instalments which were sought to be recovered in the Darkhast of 1918. However that may be, execution proceeded under the Darkhast of 1918 and recoveries were made. It appears from the Darkhast that the instalments for 1914, 1915, were first entered in it, but were afterwards struck out, so that the Court did not pass any order with regard to those instalments by which the plaintiff's right to recover them was reserved.

The present Darkhast was filed in 1919 to recover the instalments for 1914, 1915. Those instalments were clearly barred at the date of the Darkhast, unless the previous Darkhast of 1918 could be considered as a step-in-aid in respect of all the instalments then due, and a point arises for which we can find no direct authority.

We have been referred to the decision in *Nepal Chandra Sadookhan* v. *Amrita Lall Sadookhan*[1] where the decree directed not only that possession should be given by the execution-debtor but also that he should pay costs. The plaintiff first sought execution with regard to the costs reserving his right to execute the decree for possession, and three years later when he sought execution of the decree for possession he was met with the contention that he ought to have done so when he executed the decree for costs. But this contention was disallowed on the ground that an application for partial execution of a decree would be a step-in-aid with regard to the whole decree. No doubt there is a considerable difference between a decree which directs several things to be done by the defendant without specifying any particular date or dates for their performance and a decree which directs instalments to be paid on

[1] (1899) 26 Cal. 888.

1921.

SITABAI v. KESHAVRAO.

particular dates; but we see no reason why a Darkhast, which asks for the assistance of the Court for the recovery of one of several instalments due at the date of the Darkhast, should not be considered as a step-in-aid so as to start a new period of limitation with regard to all the instalments then due. In our opinion the appeal should be allowed and the Darkhast should proceed with costs throughout.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

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

1921.

December 2.

VENKATESH DAMODAR MOKASHI (ORIGINAL PLAINTIFF), APPELLANT *v.* MALLAPPA BHIMAPPA CHIKKALKI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS*.

Agreement to sell immoveable property—Payment of purchase money—Vendee in possession—No sale deed executed—Right of vendee to seek specific performance barred by limitation—Suit by vendor to recover possession of property—Vendee can resist the claim.

The plaintiff agreed to sell certain property to the defendants which was already in their possession. The defendants paid up the full purchase money to the plaintiff, but omitted to take from him a registered sale deed. After their right to obtain specific performance of the agreement to sell had become time-barred the plaintiff sued to recover possession of the property:—

Held, dismissing the suit, that the defendants were entitled to remain in possession against the plaintiff.

SECOND appeal from the decision of D. A. Idgunji, Assistant Judge of Belgaum, reversing the decree passed by R. N. Nadgir, Subordinate Judge at Athni.

Suit to recover possession of lands.

* Second Appeal No. 200 of 1921.