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than the mere circumstance that the plaintiff, who had independent means of support as a Government employé and lived apart from the village, had not continued to participate in the profits of the field to justify the inference that the plaintiff had, subsequently to the writing of the letter, been excluded; and there is no evidence of that nature.

We must, therefore, reverse the decree of the Assistant Judge, and send the case back for a decision on the merits. Respondent to pay the appellant his costs here. Costs in the Court below to depend on the result.

*Decree reversed.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánabhái Haridás.*

1887.

January 27.

KHANDERA'V RÁ'YAJIRA'V, (ORIGINAL PLAINTIFF), APPELLANT, v.  
GANESH SHA'STRI, (ORIGINAL DEFENDANT), RESPONDENT.\*

*Certificate of administration under Regulation VIII of 1827, Sec. 7—Holder of such certificate a transferee of decree within the meaning of Section 232 of the Civil Procedure Code (Act XIV of 1882)—Right of such person to execute decree.*

A holder of a certificate of administration granted under section 7 of Regulation VIII of 1827 is a transferee by law of a decree obtained by the deceased, within the meaning of section 232 of the Civil Procedure Code (Act XIV of 1882), and is competent to apply for execution of such a decree.

THIS was a second appeal from a decision of W. H. Crowe, District Judge of Sátára.

The plaintiff, claiming to be a representative of one Kamaljábái, presented an application for the execution of a decree obtained by Kamaljábái against the defendant. Along with his application the plaintiff presented an administration certificate granted to him under Regulation VIII of 1827.

The defendant opposed the application; but the Subordinate Judge of Wái, to whom the application was presented, overruled the defendant's opposition, and ordered execution to issue.

\*Second Appeal, No. 331 of 1884.

From this order the defendant appealed, and the District Judge reversed the order of the lower Court with the following remarks:—

“The appellant in this case opposed an application for execution preferred by the present respondent, on the ground that the land, referred to in the decree, had been resumed by the Government, and that the plaintiff could not represent the decree-holder, Kamaljábái. The plaintiff produced before the lower Court a certificate of administration under Regulation VIII of 1827 granted by the District Court. Such a certificate does not, in the opinion of the Court, entitle the holder thereof to execute a decree passed in favour of a deceased person, especially when his legal relationship to the deceased person is denied. Section 232 of the Civil Procedure Code (Act XIV of 1882) contemplates the execution of a decree on the application of a transferee, either by assignment in writing or by operation of law. Now there is no evidence before the Court to show that the plaintiff is such a transferee \* \* \* \*”

The plaintiff appealed to the High Court.

*Mánékhá Jehángirshá* for the appellant:—It is a matter of indifference whether the heir recognized is the right or wrong heir to whom the letters of administration are granted. A certificate of heirship, though not evidence of title, is good against a third person—*Abáji Gopál v. Rámchandra Chinnáji*<sup>(1)</sup>. He can sue in respect of the estate of the deceased person, and such a right continues as long as the letters of administration are in force. The effect of the grant of the certificate is to enable the holder thereof to collect debts and to receive property of the deceased. Section 4 of Act V of 1881 provides that the whole of the estate vests in the administrator. The administrator has the same right as the deceased. He can, therefore, apply for execution of the decree. Section 365 read with section 647 of the Civil Procedure Code (Act XIV of 1882) applies to this case.

*Pándurang Shridhar Páthak*:—The plaintiff is not a transferee, by law, of a decree within the meaning of section 232 of the

(1) Printed Judgments for 1884, p. 149.

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Code of Civil Procedure (Act XIV of 1882) and he cannot apply for execution of the decree. The certificate gives him no right beyond administration of the estate, and would not include the power to execute a decree. Section 7 of Regulation VIII of 1827 says that, as heir, the holder of a certificate can apply. The plaintiff is not the heir. The lower Court having exercised its discretion, its finding should not be disturbed.

SARGENT, C.J.:—The applicant for execution in this case had had a certificate of administration granted him under Regulation VIII of 1827, which, by section 7 of the Regulation enabled him “to do all acts competent to a legal administrator”, amongst which the most important one is the getting in the outstandings of the deceased, including judgment-debts. By section 232 of the Code of Civil Procedure (Act XIV of 1882) the transferee, by law, of a decree may apply for its execution, and we think that the holder of the certificate of administration having the power to do all acts necessary to get in the estate, which would comprise the executing decrees obtained by the deceased, is a transferee of such decrees within the contemplation of the above section.

We must, therefore, discharge the order of the Court below, and direct the District Judge to proceed to dispose of the appellant's *darkhást* on the merits. Appellant's costs of appeal to follow the result.

## FULL BENCH.

*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Nándbhái Hariddás, and Mr. Justice Birdwood.*

BANKAT HARGOVIND, PLAINTIFF, v. NÁRÁYAN VÁMAN  
DEVBHANKAR, DEFENDANT.\*

1887.  
February 1.

*Jurisdiction—Malicious prosecution—Suit against a mámlatdár for malicious prosecution undertaken by him at the instance of his superior officer, to clear his character—Subordinate Judge competent to try such suit.*

The defendant, who was a mámlatdár, was required by his superior officer to clear his character from certain charges of bribery which had been brought against him in an anonymous letter, and he accordingly prosecuted the plaintiffs, whom he suspected of having written the letter.

\*Civil Reference, No. 23 of 1886.