

The only obstacle to the operation of the clause of tenancy being thus removed, the defendant had a right to retain occupation at least of the vineyard, subject only to a rent of Rs. 50 a year. We, therefore, reverse the decree of the Assistant Judge, and restore that of the Subordinate Judge, with all costs on respondent.

*Decree reversed.*

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Birdwood.*

SHANKAR BISTO NA'DGIR AND ANOTHER, (ORIGINAL PLAINTIFFS),  
APPELLANTS, v. NARSINGHRA'O RA'MCHANDRA AND ANOTHER,  
(ORIGINAL DEFENDANTS), RESPONDENTS.\*

1887.

January 26.

*Execution of decree—Limitation—Effect of dismissal of application for execution duly made—Act XV of 1877, Art. 179, paras. 4 and 5 of Schedule II.*

If an application for execution of a decree is duly made so as to satisfy the terms of article 179, paras. 4 and 5, of Schedule II of Act XV of 1877, but is dismissed, such dismissal does not prevent the application from furnishing a point of time for the beginning of a new term of limitation.

THIS was an appeal from the order of Rāv Bahādūr G. V. Bhānāp, First Class Subordinate Judge of Dhārwar, in *darkhāst* No. 137 of 1883.

One Bisto Shankar obtained a decree for possession of certain lands on 30th April, 1878.

The first *darkhāst* or application for execution was made on the 16th September, 1880. A warrant was issued for delivery of possession of the lands decreed; but the decree-holder not being present to take possession, the application was struck off the file by the Court on the 27th September, 1881.

The next *darkhāst* was dated 22nd April, 1882. The officer in charge of the warrant for execution reported that one lot of the lands decreed could not be identified, the boundaries as stated in the decree not corresponding with those of the land pointed out by the decree-holder. Thereupon his pleader requested the Court to dispose of the *darkhāst* without proceeding further in

\* Appeal No. 111 of 1885.

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the matter, as he intended to file a fresh *darkhást*. The Court accordingly ordered the *darkhást* to be struck off the file on the 31st July, 1882.

A third *darkhást* was presented on the 12th August, 1884. The judgment-debtors appeared and filed a written statement, resisting the execution on several grounds. Thereupon the decree-holder made an application to the Court, stating that he was not prepared to proceed with the execution in the absence of certain documents which he had to procure from the Revenue Department, and that he intended to file a fresh *darkhást* after collecting the necessary documentary evidence. The Court accordingly dismissed the *darkhást* on the 15th November, 1884.

The last application for execution was made on the 21st February, 1885.

The judgment-debtors contended (*inter alia*) that the application was barred by limitation.

The Subordinate Judge held, on the authority of *Pirjádé v. Pirjádé*<sup>(1)</sup>, that the second and third *darkhásts* having been withdrawn, were to be regarded as if they had never been presented, and that, therefore, the present application was barred by limitation, and he accordingly rejected it.

Against this decision the decree-holder appealed to the High Court.

*Inverarity* (with him *Máneksháh Jehángirsháh* and *G. R. Kirloskar*) for the appellant.

*Branson* (with him *M. C. Apté*) for the respondent.

WEST, J.:—The application in the present case was made on the 21st February, 1885, for execution of a decree, dated 30th April 1878. There had been intermediate applications for execution, one of which was dated 22nd April, 1882. The Subordinate Judge has considered that this application was withdrawn, and, therefore, to be regarded as if never made. For this he has relied on the case of *Pirjádé v. Pirjádé*<sup>(1)</sup>. That decision has recently been dissented from by a Division Bench of this Court in *Taráchand Megráj v. Káshináth Trimbak*<sup>(2)</sup>; but whichever

(1) I. L. R., 6 Bom., 681.

(2) I. L. R., 10 Bom., 62.

of the conflicting views as to the effect of a withdrawal from an application for execution is right, the present case is not affected by either. There was not, in fact, any withdrawal from or of the application of 22nd April, 1882. What the pleader of the judgment-creditor did, was to request the Subordinate Judge to dispose of the application, as he proposed to make a fresh one. The Subordinate Judge thereon struck it off, or, in effect, dismissed it. If an application duly made so as to satisfy the terms of article 179, paras. 4 and 5, of Schedule II of Act XV of 1877 could, by any means, be unmade, those means were not adopted here. The application having been made and continuing to exist, was dismissed by the Subordinate Judge. Such dismissal did not prevent the application from furnishing a point of time for the beginning of a new term of limitation computed under article 179 of the Act.

We, therefore, reverse the order of the Subordinate Judge, with costs, and direct that he dispose of the application on its merits.

*Order reversed and case remanded.*

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Birdwood.*

PADGAYA SOMSHETTI, DECEASED, BY HIS SON AND HEIR, NAGYA, (ORIGINAL DEFENDANT No. 2), APPELLANT, v. BA'JI BA'BA'JI, DECEASED, BY HIS SON AND HEIR, GOVIND, (ORIGINAL PLAINTIFF), RESPONDENT.\*

1887.  
February 7.

*Dekkhan Agriculturists' Relief Act—Act XVII of 1879, Sec. 12—Act XXIII of 1881, Sec. 4—Act XXII of 1882, Sec. 3—Definition of "agriculturist"—Change in the definition—Effect of a change of status on the rights of parties to litigation.*

A change in the law does not generally affect any proceeding begun when it comes into force. But a change of *status* or legal capacity generally operates at once to extinguish, diminish, or vary the extent to which a party may claim the aid or protection of a Court.

The plaintiff, who was earning his livelihood partially by agriculture within the districts to which the Dekkhan Agriculturists' Relief Act (XVII of 1879) applied, brought a suit for redemption. At the time of the institution of the suit he was

\* Second Appeal, No. 163 of 1885.