share of the estate." Nanchand died soon after this order was passed, and his estate vested in his brother Amichand. The Collector of Sholapur then applied to the Court to attach a share of a house which, he alleged, had formed a part of Nanchand's estate. The attachment was resisted by Amichand, but was allowed by the Subordinate Judge. The proceedings have now come before this Court on the application of Amichand for a revision of the order as to costs. We think that the order is clearly illegal. Neither s. 441 nor 442 of the Code gives any authority to a Court to make a minor's estate liable for costs. On the contrary, under s. 442, a Court can only order costs to be paid by the pleader or other person by whom a plaint is presented by, or on behalf of, a minor, without a next friend. Section 444 shows that no order by which a minor is in any way concerned or affected can legally be made without such minor being represented by a next friend or guardian for the suit. Again, Government can only be awarded costs in certain cases where an enquiry has been held under chap. XXVI. In the present case, no inquiry under that chapter has been held, and no order has been passed such as is contemplated in ss. 409 or 412. The order made, does not even purport to be made under chap. XXVI. It was, therefore, clearly made without jurisdiction; and, in the exercise of our extraordinary jurisdiction, we annul it, and with it all the proceedings in execution which followed it. All costs in the execution proceedings in the lower Court and in this application to be paid by the Collector.

Order reversed.

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[237] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

PANDARINATH BAPUJI (*Original Defendant*), *Appellant v.* LILACHAND HATIBHAI (*Original Plaintiff*), *Respondent.* *
[13th June, 1888.]

Limitation Act (XV of 1877), art. 179, cl. (4)—Execution of decree—Application for execution—Application for a relief outside the decree—" Step in aid of execution."

The application for execution contemplated in cl. (4) of art. 179 of sch. II of the Limitation Act (XV of 1877) must be one made in accordance with law, and asking to obtain some relief given by the decree, and to obtain it in the mode that the law permits.

A decree provided that the defendant should pay the plaintiff Rs. 156 within one month, and that on receipt of this sum the plaintiff should execute a deed of sale to the defendant. The decree was dated 26th January, 1881.

The first application for execution was made on the 24th January, 1884, but dismissed for plaintiff's default.

The plaintiff made a second application dated 22nd January, 1887, praying to be put in possession of a certain house which was not awarded by the decree. This application was rejected.

On the 23rd June, 1887, the plaintiff made a third application for execution of the decree.

Held, that this application was barred by limitation, having been made more than three years after the date of the first application. The intermediate application was not an application for execution, nor a step in aid of execution, of the decree,

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inasmuch as it asked for what the decree did not give. It could not, therefore, keep the decree alive under art. 179, sch. II of the Limitation Act (XV of 1877).

[F., 1 N.L.R. 61 (63); 125 P.L.R. 1908=95 P.W.R. 1908; R., 34 B. 189=12 Bom. L.R. 13=5 Ind. Cas. 601; 37 B. 42=14 Bom. L.R. 861; 9 C.L.J. 443 (448) =13 C.W.N. 533; 4 Ind. Cas. 1154=3 S.L.R. 171 (173); 7 Ind. Cas. 11; 116 P.R. 1907=143 P.W.R. 1907.]

SECOND appeal from the decision of J. W. Walker, District Judge of Ahmednagar, reversing the order of Rav Bahadur Nuro Mahadev Thosar, First Class Subordinate Judge of Ahmednagar, in *darkhast* No. 1716 of 1887.

In original suit No. 1239 of 1880, a consent-decree was passed, providing that "the defendant should pay the plaintiff Rs. 156 within one month, and the plaintiff on receipt of the money should execute a deed of sale to defendant." This decree was dated 26th January, 1881.

[238] The first application for execution was made by the plaintiff on the 25th January, 1884, but it was dismissed for plaintiff's default.

The next application for execution was dated the 22nd January, 1887. In that application the plaintiff's prayer was that he should be put in possession of a certain house. This application was rejected, on the ground that the decree did not provide for delivery of possession of any house to the plaintiff.

On the 23rd June the plaintiff made the present *darkhast*, praying that the sum of Rs. 156 awarded to him by the decree should be recovered by attachment and sale of the defendant's moveable property.

The Court of first instance rejected this *darkhast*, on the ground that the plaintiff was not entitled to execute the decree after the expiration of the time fixed in the decree.

On appeal the District Judge held that the plaintiff could not have claimed the money, and, therefore, could not have sought execution of the decree within the time specified by it. He, therefore, reversed the order of the Court of first instance, and remanded the case for disposal on the merits.

Against this decision the defendant appealed to the High Court.

Ghanasham Nilkhant, for the appellant.—The present *darkhast* is barred by limitation. The next preceding *darkhast* was not one in accordance with law. It was not a step in aid of execution, such as the law contemplates. It asked for something completely outside the decree—for restoration of a house—which the decree does not provide for. It should, therefore, be treated as a mere nullity. If so, the present *darkhast* is clearly time-barred—*Jibhai Mahipati* v. *Parbhu Bapu* (1); *Kifayat Ali* v. *Ram Singh* (2); *Shib Lal* v. *Radha Kishen* (3); *Shankar Bisto Nadgir* v. *Narsinghrao Ramchandra* (4).

Gangaram Bapsoba Rele, for the respondent.—Our prayer in the second *darkhast* was, no doubt, in excess of what we were **[239]** entitled to get under the decree. But this does not make it a nullity. It was substantially a step in aid of execution. Refers to *Ramasami Ayyan* v. *Seshayyangar* (5); *Ramanandan Chetti* v. *Periatambi Shervai* (6); *Ali Muhammad Khan* v. *Gur Prasad* (7); *Kewal Ram* v. *Khadim Husain* (8); *Manohar* v. *Gebiapa* (9).

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(1) 1 B. 59. (2) 7 A. 359. (3) 7 A. 898.
(4) 11 B. 467. (5) 6 M. 181. (6) 6 M. 250.
(7) 5 A. 344. (8) 5 A. 576. (9) 6 B. 31.

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JUDGMENT.

BIRDWOOD, J.—The consent decree made in this case provided that the defendant should pay the plaintiff Rs. 156 within one month, and that the plaintiff should execute a deed of sale to the defendant. The District Judge rightly held that the plaintiff could not have claimed the money, and could not, therefore, have made any application for execution till the end of the month. The decree in such a case must be held as speaking, not from the date on which it was made, but from the date on which the plaintiff could demand fulfilment—*Narayan Chitko Juvekar* v. *Vithal Purshotam* (1). But even though that is so, the present application for execution must, we think, be held to be barred by limitation. It will only be within time if the last preceding application, dated the 22nd January, 1887, was an application, within the meaning of cl. (4) of art. 179 of sch. II of Act XV of 1877, made in accordance with law to the Court for the execution, or to take some step in aid of the execution, of the decree. We are unable to regard it as such, for it does not ask for the recovery of the Rs. 156 decreed to the plaintiff, or state that the plaintiff is willing to execute the deed of sale which by the decree he was required to execute; but it asks for the absolute delivery to him of a house, which is nowhere in the decree given to him; that is, it asks for a relief outside and beyond the decree altogether. Such an application could not have been considered as an application to execute or further the execution of the decree in any way; and it was indeed rejected by the Court on this very ground. The application for execution contemplated in cl. (4) of art. 179 must clearly be one made in accordance with law, and asking to obtain some relief given by the decree and to obtain it in the mode that the law permits. An application might be incorrect in some respects, as in the case [240] of *Ramanandan Chetti* v. *Periatambi Shervai*(2), where there was a wrong calculation of interest and costs. But such an application would be one furthering execution, since it asks for what the decree gives, and so could be accepted, and, when the mistake has been corrected, acted upon; whereas, in the present case, the application of the 22nd January, 1887, asks for what the decree nowhere gives, and unless it had been substantially amended by substituting an entirely new prayer, no relief whatever provided by the decree could have been granted on it. It could not be contended that if a decree gave plaintiff Survey No. 1, an application to obtain Survey No. 2 would be an application to execute the decree. No more can it be contended that where a decree gives the plaintiff the right to recover Rs. 156, an application to be placed in possession of a house would be an application for execution of that decree, merely because it is styled so. We must, therefore, hold that the present application is barred by time, having been presented more than there years after the only other application in the case made according to law. We reverse the District Judge's order, and restore that of the Subordinate Judge, rejecting the application for execution; but we do so without costs in this and the lower appellate Court, as the objection taken in this Court to the application of the 22nd January, 1887, was not taken in the lower Courts.

Decree reversed.

(1) 12 B. 23.

(2) 6 M. 250.