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APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and  
Mr. Justice Nanabhai Haridas.

HATHIBHAI NAHANSA (Plaintiff) v. PATEL BECHAR PRAGJI AND  
OTHERS (Defendants).\* [2nd May, 1888.]

Civil Procedure Code (Act XIV of 1882), s. 224, cl. (c)—Meaning of the words "a copy of any order for the execution of the decree."

The words "a copy of any order for the execution of the decree" in s. 224, cl. (c), of the Code of Civil Procedure (Act XIV of 1882) mean a copy of any *subsisting* order.

THIS was a reference by Khan Bahadur Navroji Dorabji, Judge of the Court of Small Causes at Ahmedabad, under s. 617 of the Code of Civil Procedure (Act XIV of 1882).

The reference was as follows:—

"Plaintiff Hathibhai Nahansa, having obtained in this Court a decree in suit No. 3905 of 1885, made an application to this Court, under s. 223 of the Civil Procedure Code, to have the decree sent for execution to Surat. Thereupon the papers mentioned in s. 224, cl. (a), (b) and (c), were forwarded to the District Court of Surat.

"According to s. 224, cl. (c), a copy of any order that may have been passed for the execution of the decree is required to be sent to the Court to which the decree may be forwarded for execution; and in the present case, a copy of the last order for execution was, according to the usual practice of this Court sent to the Surat District Court. The District Judge, however, asked that as the decree had previously been executed not only once, but several times, and as in cl. (c) the word [372] 'any' occurred, copies of all the previous orders, should be forwarded.

"It was replied that the word 'any' was not equivalent to 'all,' and that as the practice in this Court for many years was to send only a copy of the last order, and no objection had hitherto been taken by any Court, it was not necessary to send copies of all the previous orders for execution, as such copies would unnecessarily add to the costs of the execution of the decree. The Judge, however, wrote back to say that he adhered to his previous opinion, that it was the uniform practice of his Court to get all the copies, and that as copies of all the previous orders for execution had not been sent, he had returned all the papers without executing the decree (*vide* Gujarati correspondence).

"It may be mentioned here that during the years 1884 to 1887, fifteen different decrees were sent for execution from this Court to the District Court of Surat, in none of which copies of all the previous orders were forwarded, but only copies of the last orders, and no objection was, at any time, taken.

"The long-standing practice of this Court, as also that of the Subordinate Judges at Ahmedabad and Nadiad, is to send a copy of the order for execution passed on the last *darkhast* presented by the plaintiff for execution of his decree. I am, however, of opinion, that neither this practice of sending a copy of the order passed on the last *darkhast* for execution, nor the practice of the District Court of Surat to ask for copies

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of all the previous orders for execution passed on the several *darkhasts* presented by the plaintiff, is in accordance with the provisions of the law as stated in s. 224, cl. (c), of the Civil Procedure Code. I have, therefore, thought it proper to make the following reference on a question of practice to the Honourable the High Court in its function of supervision of all the inferior Courts.

“The point for decision is :—

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“What is meant by the words ‘a copy of any order for the execution of the decree’ as used in s. 224, cl. (c), of the Civil Procedure Code? Whether copies of all the orders [373] passed in previous executions of a decree are, according to the wording of this clause, to be forwarded to the Court to which the decree may be sent for execution?”

“My finding on the point is, that the ‘order’ referred to in the above-mentioned clause means an order that is to be executed, and not an order that has already been executed.”

There was no appearance for either party.

#### OPINION.

PER CURIAM :—The words “a copy of any order for the execution of the decree” in s. 224, cl. (c), of the Civil Procedure Code (Act XIV of 1882), mean a copy of any subsisting order.

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#### APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.*

VINAYAK MORESHWAR (*Original Plaintiff*), *Appellant v. BABA SHABUDIN AND OTHERS (Original Defendants), Respondents.\**  
[15th November, 1888.]

*Lease containing words of inheritance not inalienable—Construction—Landlord and tenant—Khoti Act (Bom.) I of 1880, s. 9.*

“The *khots* of the village of A. in 1854 leased certain land to B. by a lease which declared that “you (B.) are to enjoy, you and your sons, grandsons, from generation to generation.” The rent fixed by the lease was eleven maunds and six and a half *pails* of *bhat* per year. B. having died, his widow in 1878 transferred the lease to the plaintiff, who entered into possession and offered to pay to the defendants, who were *khots* of the village and the successors of the grantors of the lease in 1854, the annual rent fixed by the lease. The defendant refused to accept it, and contended that the plaintiff was liable to pay the rent paid by other occupying tenants in the village. The plaintiff thereupon sued to have it declared that he was entitled under the lease to hold the lands permanently at the rent thereby fixed.

Held by the High Court, that he was entitled to the declaration. The lease was one to hold in perpetuity at the fixed rent, but there were no words making the lease inalienable. There was no evidence of any custom of the village; nor anything in the Khoti Act I (Bombay) of 1880 which could be construed as a declaration of the existing custom of *khoti* villages when the Act was passed.

THIS was a second appeal from a decision of R. Courtenay, Assistant Judge of Ratnagiri.

\* Second Appeal, No. 529 of 1886.