

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1893,
December 19.

SHA' KARAMCHAND GOKALDA'S AND ANOTHER (ORIGINAL OPPONENTS),
APPELLANTS, v. GHELA'BHA'I CHAKALDA'S AND ANOTHER (ORIGINAL
APPLICANTS), RESPONDENTS.*

*Civil Procedure Code (Act XIV of 1882), Sec. 235, Cl. (j), and Sec. 260—Decree—
Execution—Application for execution—Form of application—Practice—Procedure.*

In a suit brought under section 539 of the Code of Civil Procedure (Act XIV of 1882) a decree was passed appointing the defendants managing trustees of a Hindu temple, and laying down certain rules for their guidance in future. The plaintiffs applied for execution of the decree and filed a *darkhást* praying that the defendants be ordered to act as directed by the decree, and that, if they failed to do so, steps be taken according to law.

Held, that the *darkhást* was not in accordance with section 235, clause (j), or section 260 of the Code of Civil Procedure (Act XIV of 1882), as it did not specify the mode in which the assistance of the Court was sought.

APPEAL from the decision of G. McCorkell, Esquire, District Judge of Ahmedabad, in *darkhást* No. 8 of 1893.

The applicants Ghelábhái Chakaldás and Bálábhái Chaganlál filed a suit under section 539 of the Code of Civil Procedure (Act XIV of 1882) against Shá Karamchand Gokaldás and his brother Chhotálál Gokaldás as trustees of a public temple called the *derásar* of the Sodá Somji, praying for the removal of the trustees, and for an account of the trust funds in their hands.

The suit was referred to arbitration, and an award was made by which the arbitrators settled a scheme for the future management of the temple, and appointed six trustees to manage the temple property. One of these trustees was the defendant Karamchand.

The award was filed in Court and a decree passed in terms of the award on the 29th October, 1891.

On the 9th January, 1893, the applicants filed a *darkhást* for the execution of the decree. It set forth certain specific directions contained in the various clauses of the decree, and prayed that the defendants (opponents) should be ordered to obey them, and it concluded as follows:—

*Appeal No. 130 of 1893.

"We pray that the defendants Karamchand and Chhotalál Gokaldás be ordered to act in the manner above stated, and, if they fail to act as above directed, steps be taken according to law."

The defendants raised several objections to this *darkhást*, but they were all overruled, and the Court passed an order directing execution to proceed.

Against this order the defendants appealed to the High Court.

Ganpat Sadáshiv Ráo for appellants :—The *darkhást* is not in accordance with section 235 of the Code of Civil Procedure (Act XIV of 1882). The applicant is bound to state the mode in which the assistance of the Court is required, whether by arrest of the person of the judgment-debtor, or by attachment of his property, or otherwise. The plaintiffs do not seek either to arrest the person, or attach the property, of the judgment-debtor. They merely ask that the defendant be ordered to act in accordance with the decree. This is not a compliance with clause (j) of section 235. The *darkhást* is, therefore, not according to law. The plaintiffs ought to have sought the assistance of the Court as provided by section 260 of the Code—*Protap Chunder Doss v. Peary Chowdhraín*⁽¹⁾ and *Váman v. Lakshman*⁽²⁾.

Goverdhan M. Tripáthi for respondents :—The present objection to the form of the *darkhást* was not taken in the Court below. If it had been taken in time, we would have got the *darkhást* amended. The objection is a technical one, and the Court will not reject the *darkhást* on a purely technical ground. The case of *Protap Chunder Doss* (1) cited for the appellant shows that in a case like this the Court, rather than dismiss the *darkhást*, will give the decree-holder an opportunity to amend it. apply for an amendment of the *darkhást*.

JARDINE, J. :—The respondents in their application for execution of the decree have ignored the requirements of sections 235 (j) and 260 of the Code of Civil Procedure. Following *Váman v. Lakshman* (2), we are of opinion that the District Judge ought to have refused the application in its present form. We now reverse his order and reject the application. Costs on the respondents in both Courts.

(1) I. L. R., 8 Calc., 174.

(2) P. J. for 1890, p., 22.

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SHA' KARAM-
CHAND
v.
GHELA'BHA'I.