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under section 29B, he will be entitled to receive a certificate from that officer. If, however, he does not receive it we direct the Subordinate Judge, after the expiry of one month from the date of the application for certificate, to proceed with the execution of the decree.

We reverse the order of the lower Court and send back the case for disposal in accordance with this judgment.

We think there ought to be no costs of this appeal as the appellant has not produced the certificate and the respondent has failed in his contentions.

The other costs will be costs in the execution.

*Order reversed.*

G. B. R.

## APPELLATE CIVIL.

*Before Mr. Justice Chandavarkar and Mr. Justice Heaton.*

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September 14.

CHHAGANLAL BHAGWANDAS (ORIGINAL OPPONENT No. 2), APPELLANT,  
v. PRANJIVAN SHIVLAL AND OTHERS (ORIGINAL PETITIONERS AND  
HEIRS OF ORIGINAL PLAINTIFF), RESPONDENTS.\*

THE COLLECTOR OF SURAT (ORIGINAL OPPONENT No. 1), APPELLANT, v.  
PRANJIVANDAS SHIVLAL AND OTHERS (ORIGINAL PETITIONERS),  
RESPONDENTS.\*

*Pensions Act (XXIII of 1871), sections 6, 8, 11—Toda giras allowance—  
Purchase of the rights to receive allowance at a Court sale—The allowance  
entered in the name of the purchaser—Application by heirs of the purchaser  
to receive arrears of allowance—Certificate of Collector.*

It was directed by a decree that the purchaser at a Court sale of a Toda Giras allowance should recover from the Collector the amount due for arrears of the allowance from the date of his purchase. An application to execute this decree was made in 1864, in consequence of which the decree-holder's name was entered in the Collector's books as the person entitled to the allowance in question, and the arrears up to 1864 were paid. In 1903, the decree-holder's heirs applied to the Court to recover the arrears of allowance that had remained unpaid since 1896. The Collector contended that the application could not be entertained in the absence of a certificate from the Collector under the provisions of section 6 of the Pensions Act, 1871.

\* Joint Appeals Nos. 70 and 107 of 1906.

*Held*, overruling the contention, that the power of the Collector under the Act had been exhausted and there was no discretion for that officer to exercise either under the Act or the rules, so far as the applicant's right to recover the arrears that had become due in the life-time of the last holder, was concerned.

*Held*, further, that if those amounts remained unpaid, the Collector held them for and on behalf of the last holder, as moneys due to him, and as moneys therefore recoverable on his death by his heirs independently of any question which might arise under the Pensions Act 1871, or the rules framed thereunder.

APPEAL from the decision of Dayaram Gidumal, District Judge of Surat.

Execution proceedings.

The decree sought to be executed was passed on the 22nd February 1860 by the Judicial Committee of the Privy Council. The judgment is reported in 8 Moore's I. A., p. 1.

A money decree was passed against one Utodia Bharmalingji Kooversingjee, who was entitled to two annual Toda Giras allowances. In execution of this decree the allowances were put up to sale at a Court auction and purchased by Shambhulal Girdharlal on the 24th December 1839. Under the deeds of sale, the purchaser was to receive every year the amounts of the said Giras from the Government Treasury and no one was to object thereto.

Shambhulal Girdharlal then tried to get the payments made to himself, but failed. Eventually he filed a suit in 1843 against the Collector of Surat, whereby he prayed (*inter alia*) that the Collector might be ordered to enter the said Giras allowance in the plaintiff's name and pay over to him the arrears thereof. The case was finally decided in the Privy Council. The decree directed, among other things, that—

“All the moneys which have been paid into the Zillah Court of Surat, or the Sudder Dewanee Adalat by the respondent, the Collector of Surat, or by the Government on his behalf on account of the Toda Giras payable from Purgunna Olpad, together with all accumulations thereof ought to be paid or transferred to the appellant and in case no such payments shall have been made into the Zillah Court of Surat or the Sudder Dewanee Adalat on such account, then that the Collector of Surat ought to be ordered to pay forthwith to the said appellant the amount due for arrears of the said Toda Giras

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from the time of the purchase thereof by him, together with simple interest thereon according to the usual rate allowed by the said Court."

Shambhulal having died, his son Lalbhai, the manager of his firm, applied in 1864 to recover the arrears of the Toda Giras allowance. The arrears up to 1864 were paid to him and Lalbhai's name was entered as the person entitled to the Toda Giras.

To recover further arrears, Lalbhai applied again and recovered them up to 1895.

Lalbhai died in 1895. At his death, the Collector entered the name of his son Bhagwandas; but the latter also died and further arrears remained unpaid.

In 1903, the surviving members of Shambhulal's firm applied to the Court to recover the arrears of the allowance from 1896 to 1902. They also prayed that their names should be entered as the persons entitled to the allowance.

This application was resisted by the Collector of Surat who contended *inter alia* that the applicants were not entitled to prefer the application in the absence of a certificate under the Pensions Act 1871.

The District Judge overruled the contentions set up by the Collector and ordered payment into Court as follows:—

(1) of Rs. 2,429 plus  $\frac{1}{2}$  of 791-3-10 (arrears of the allowance from 1896—1902);

(2) of the amounts due for the Hak after 1902 with interest up to the date of the order; and

(3) of the amounts that might become annually payable after the date of the order.

The opponents appealed to the High Court.

G. S. Rao, Acting Government Pleader, for the appellants (opponents).

Branson (with M. N. Mehta) for the respondents (applicants).

CHANDAVARKAR, J.—The first point argued in support of these appeals is that the order of the District Judge, directing the Collector to pay the amount mentioned in the *darkhast* into Court is not sustainable, having regard to the Pensions Act and

the rules framed under it. This argument rests upon a misapprehension of the nature of the liability of the Collector, which is in dispute, and of the payment into Court which he has been directed to make. It is admitted before us, and, indeed, the Court below has found upon unchallenged evidence, that the amount, which is named by the applicants in the present *darkhast*, had become payable to the deceased Bhagvandas during his life-time, because he had been recognized as holder of the Hak by the Collector under the Pensions Act. The power of the Collector under the rules framed under the Act had been exhausted, and there was no discretion for that officer to exercise, either under the Act or the rules, so far as Bhagvandas' right to receive the allowance for the years in dispute was concerned. If the amounts somehow remained unpaid, the Collector held them for him and on his behalf, as monies due to him, and as monies therefore recoverable on his death by his heirs, independently of any question arising under the Pensions Act or the rules under it.

The District Judge has gone beyond the *darkhast* in making an order in his decree as regards the amounts that may become annually payable after the date of his order. The question was not raised, and indeed could not be raised, by the present *darkhast*, with reference to these amounts. They stand upon a footing different from that of the arrears claimed in the *darkhast*. Presumably and indeed probably these amounts payable *in future* would be recoverable on Bhagvandas' death by the person recognized by the Collector according to law. Whether that is so or not we do not decide, but that is a question which cannot be decided unless it arises actually for adjudication. This direction in the decree ought to be struck out.

The order as to interest cannot be interfered with, because there can be no doubt that the amount was wrongly withheld. As to the rate of interest, that is entirely a matter of discretion.

The learned Government Pleader also addressed us on a question as regards the rights of the co-sharers *inter se* with reference to the amount which the District Judge has directed to be paid into Court. The District Judge has merely directed the payment of the amount into Court without deciding the rights of the

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claimants and their co-sharers *inter se*. The question as to what is to become of that amount after payment into Court has been made, that is, to what particular person it is, to be paid, has yet to be decided. Therefore we say nothing upon that point. The decree will be modified by striking out the portion relating to amounts that may become annually payable. In other respects it is confirmed. Each party will bear his own costs of this appeal.

The same order governs First Appeal No. 107 of 1906.

*Decree modified.*

R. R.

## APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.*

1909.

September 27.

NAVLAJI SARDARMAL (ORIGINAL DEFENDANT), APPELLANT, v. RAMA DHONDI (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Dekhan Agriculturists' Relief Act (XVII of 1879), section 15D, clause (3) (1) — Suit by mortgagor for account — Application for redemption decree in appeal — Redemption decree passed by Court in appeal — Decree in the suit — Interpretation.*

In a suit for an account brought by a mortgagor under the provisions of the Dekhan Agriculturists' Relief Act (XVII of 1879) the Court found that a

\* Second Appeal No. 38 of 1909.

(1) Section 15D, clauses (1), (2) and (3) of the Dekhan Agriculturists' Relief Act (XVII of 1879) run as follow :—

15 D. (1) Any agriculturist whose property is mortgaged may sue for an account of the amount of principal and interest remaining unpaid on the mortgage and for a decree declaring that amount.

(2) When any such suit is brought the amount (if any) remaining unpaid shall be determined under the same rules as would be applicable under this Act if the mortgagee had sued for the recovery of the debt.

(3) At any time before the decree in the suit is signed, the plaintiff may apply to the Court to pass a decree for the redemption of the mortgage, or the mortgagee, if he would then have been entitled to sue for foreclosure or sale, may apply to the Court to pass a decree for foreclosure or sale (as the case may be), instead of a decree merely declaring the amount remaining unpaid, and the Court may, if it thinks fit, grant the application.