

BOMBAY HIGH COURT

Pandu Joti Kadam

Vs

Savla Piraji Kate

(N Macleod and Coyajee, JJ.)

24.06.1925

JUDGMENT

N Macleod, J.

1. We think that the decision of the Subordinate Judge was right, and that the authority relied upon by the Assistant Judge has no application. The applicant at the time he presented the darkhast had no title to the decree which he sought to execute. He had only a right under his own decree to obtain an assignment from the decree-holder of the other decree. The applicant was given time by the Subordinate Judge to cite any authority to support his proposition. He failed to do so. There is no authority that we know of which lays down that a darkhastdar, who has no title whatever to execute the decree at the time of the darkhast, can remedy the defect by completing the title after the date of the darkhast, and then try to execute the decree by virtue of that title.

2. We allow the appeal and restore the decree of the Subordinate Judge with costs throughout.