

(1930) 12 BOM CK 0021**Bombay High Court****Case No:** Second Appeal No. 1020 of 1928

Hari Mahadev Vadekar

APPELLANT

Vs

Vishnu Balkrishna Risbud

RESPONDENT

Date of Decision: Dec. 10, 1930**Citation:** (1931) 33 BOMLR 622**Hon'ble Judges:** Madgavkar, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Madgavkar, J.

The question in this appeal is whether the present darkhast is in time. That depends upon the question whether the darkhast of April 15, 1920, was a step-in-aid of execution, as both the lower Courts have held.

2. In that darkhast, the judgment-debtor Devki died leaving minor children and her husband. Instead of presenting the darkhast against the children by their guardian the father as the legal representative, the darkhast of 1920, was against the husband of Devki as such. That mistake was subsequently corrected. But it is nevertheless a bona fide mistake as the decree-holder had nothing to gain by omitting the children by their guardian the father and putting forward the father alone. In this view, the case falls within the class of cases where all bona fide applications against a wrong person as the legal representative save limitation: Balkishen Das v. Bedmati Koer ILR (1892) Cal. 388, Hari v. Narayan ILR (1887) 12 Bom. 427, and Ramaswami Chettiar v. Oppilamani Chetti ILR (1909) Mad. 6. The appeal is dismissed with costs.