

Court acted on such application by allowing such execution to issue. Moreover, the section speaks of "certified" or "recorded." We are, therefore, of opinion that Order XXI, rule 2, does not stand in the way.

As regards the other point, it has been found that Rs. 10 was in fact paid by the judgment-debtor himself by way of interest. That finding is sufficient.

The fact of the endorsement and the question as to who made it and the authority by which it is made are immaterial. The appeal fails and is dismissed with costs.

O. M.

Appeal dismissed.

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 EUSUFFZEMAN
 SARKAR
 v.
 SANCHIA LAL
 NAHATA.

APPELLATE CIVIL.

Before Fletcher and Richardson JJ.

RASHBEHARY LAL MANDAR

v.

ANAND RAM.*

1915
 June 15.

Limitation—Court of Wards, competency of, to acknowledge debt—Effect of acknowledgment of pre-existing debt by the Court as regards limitation—Court of Wards Act (Beng. IX of 1879), s. 18—Limitation Act (IX of 1908), s. 19.

The Court of Wards Act, 1879, does not contain any express power authorizing the Court to execute promissory notes. But there can be no doubt on the authorities that the Court has power to give an acknowledgment so as to give a new period of limitation under s. 19 of the Limitation Act.

Beti Maharani v. Collector of Etawah (1), *Ram Charan Das v. Gaya Prasad* (2), and *Kondamolalu Linga Reddi v. Alluri Sarvarayudu* (3) applied.

*Appeal from Original Decree, No. 450 of 1912, against the decree of Dina Nath Dey, Subordinate Judge of Bhagalpore, dated Sep. 30, 1912.

(1) (1894) I. L. R. 17 All. 198. (2) (1908) I. L. R. 30 All. 422.

(3) (1910) I. L. R. 34 Mad. 221.

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APPEAL by Rashbehary Lal Mandar, the defendant, through the manager under the Court of Wards.

The plaintiffs sued the defendant on the basis of a promissory note executed by the Court of Wards on the 31st March, 1909. At the date of the execution of the promissory note, the defendant's estate was under the Court of Wards, who had taken charge in November, 1908, the defendant having been declared a disqualified proprietor under s. 6, cl. (e) of the Court of Wards Act. The estate was released before the hearing of the suit. In November, 1909, the plaintiffs submitted their claims against the defendant's estate to the Court of Wards, and it being found that a sum of about Rs. 3,000 was due on a promissory note previously executed by the defendant and a sum of about Rs. 6,000 on account of dealings in cloth with the plaintiffs' firms, the Manager of the Court of Wards, under directions from the Board of Revenue and the Collector, executed the promissory note in suit for Rs. 9,132-6-9. The plaintiffs sued on the 6th March, 1912, claiming Rs. 11,541-2.

The suit was at first decreed *ex parte* on the 26th March, 1912. The manager of the defendant's estate under the Court of Wards then applied to have the *ex parte* decree set aside and it was set aside and the suit was restored to the file on the 25th June. On successive applications of the manager for time to file his defence, the suit was ultimately adjourned to the 22nd August. In the meantime, on the 15th August, the defendant's estate was released from the Court of Wards, and on the 22nd August the defendant himself filed his defence, wherein he contended that the promissory note was executed without his consent and in spite of his objection, that the plaintiffs got it executed by misrepresenting facts to the Court of Wards and were, therefore, entitled to bind the defendant,

that nothing was due to the plaintiffs on account of the transactions with the Calcutta firm of the plaintiffs, and that as regards the transactions with the Bhagalpur firm, the defendant had executed a promissory note in plaintiffs' favour and made payments on account thereof from time to time, but that he was unable to say then how much was still due to the plaintiffs on that account, as the defendant had not yet got back all his documents from the Court of Wards. Limitation was also pleaded in general terms and any agreement to pay interest was denied.

On the 19th September, the defendant filed an additional written statement in which he contended, *inter alia*, that the manager under the Court of Wards had no authority to execute the handnote and was not legally binding upon the defendant. He also pleaded a payment of Rs. 900 in respect of transactions with the Bhagalpur firm after the execution of the promissory note thereof.

The Court of first instance disbelieved payments and decreed the suit in its entirety. Thereupon, the defendant appealed to the High Court.

Dr. Dwarkanath Mitra (with him *Babu Naresh-chandra Singha*), for the appellant. The Court of Wards had no power to execute the handnote, at least in respect of the sum found due on account of the dealings in cloth. The test is benefit to the estate. The execution of the promissory note did not benefit the estate: see sections 18 and 10 D of the Court of Wards Act, 1879, and Board's Rule No. 45 in Bengal Wards Manual at p. 46.

Part of the claim was already barred by limitation when the promissory note was executed. The plaintiffs cannot have a decree for this portion of the claim. The Court of Wards had no power to execute promissory notes for barred debts: *Annapagauda v.*

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Sangaligyapa (1), *Beti Maharani v. Collector of Etawah* (2), *Kondamodulu Linga Reddi v. Alluri Sarvarayudu* (3), *Jadu Lal Sahu v. Janki Koer* (4).

Babu Umakali Mukerji (with him *Babu Gurudas Singha*), for the respondents. The Court of Wards can acknowledge liability. Such acknowledgment will bind the ward. The promissory note can be considered as an acknowledgment. The Court of Wards made an enquiry under s. 10D of the Court of Wards Act and admitted the claim within the period of limitation. Limitation is saved by acknowledgment. *Beti Maharani v. Collector of Etawah* (2), *Kondamodulu Linga Reddi v. Alluri Sarvarayudu* (3) and *Ram Charan Das v. Gaya Prasad* (5).

Dr. Dwarkanath Mitra, in reply.

Cur. adv. vult.

FLETCHER J. This is an appeal by the defendant from the judgment of the learned Subordinate Judge of Bhagalpur dated the 30th of September, 1912. The plaintiffs brought the suit to recover from the defendant the sum of Rs. 11,541-2 for principal and interest due on a promissory note dated the 2nd of December, 1909.

The plaintiffs have two firms, one at Bhagalpur and the other at Calcutta. Admittedly, the defendant had dealings with both these firms.

The transactions with the Bhagalpur firm of the plaintiffs were adjusted and on the 30th of Bhadra, 1314 F.S. corresponding with the 21st of September, 1907, the defendant executed in favour of the plaintiffs a promissory note payable on demand for Rs. 2,542 with interest at 12 annas per cent per mensem.

(1) (1901) I. L. R. 26 Bom. 221.

(3) (1910) I. L. R. 34 Mad. 221.

(2) (1894) I. L. R. 17 All. 193.

(4) (1908) I. L. R. 35 Calc. 575.

(5) (1908) I. L. R. 30 All. 422, 437.

The defendant states that after the execution of this promissory note he made a payment of Rs. 900. There seems to be no truth in this statement.

The goods taken from the Calcutta shop of the plaintiffs were as follows:—On the 10th of September, 1906, goods of the value of Rs. 5,213-6-6. On the 12th of September, 1906, goods of the value of Rs. 1,202-9-5. On the 30th of January, 1907, goods of the value of Rs. 1,685-14-6, and on the 3rd of February, 1907, goods of the value of Rs. 1,114-7. The plaintiffs also prove that there was an agreement to pay interest on the balance due to the Calcutta shop at the rate of 12 annas per cent. per mensem. I reject the defendant's story as to his dealings with the Calcutta shop of the plaintiffs and also as to his having paid their account in full. The payments made by the defendant on account of the moneys due to the Calcutta shop are as follows:—On the 14th November, 1906, the sum of Rs. 1,000; on the 26th January, 1907, the sum of Rs. 1,950; on the 2nd of February, 1907, Rs. 600; on the 30th of April, 1907, Rs. 600 and on the 2nd of May, 1907, the sum of Rs. 400. On the 11th November, 1908, the Court of Wards took charge of the plaintiffs' estate. The Court then issued the usual notice calling on persons claiming to be creditors of the disqualified proprietor (the defendant) to prove their debts. The plaintiffs duly appeared and produced their accounts and satisfied the Court as to the amount due to them. Accordingly, under the directions of the Court of Wards, the manager on the 2nd of December, 1909, executed the promissory note that is now sued upon.

The defendant has contended on this appeal that the Court had no power to execute a promissory note in respect of any of his debts and that the promissory note so far as it relates to a portion of the defendant's

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due to the Calcutta shop was in respect of debts that were barred by limitation.

The Court of Wards Act (Beng. IX of 1879) does not contain any express power authorising the Court to execute promissory notes. Section 18 provides that the Court "may direct the doing of all such other acts as it may judge to be most for the benefit of the property and the advantage of the ward."

It may be doubted whether the Court had under the terms of section 18 power to direct the execution of a promissory note. But there can be no doubt on the authorities that the Court has power to give an acknowledgment, so as to give a new period of limitation under section 19 of the Indian Limitation Act.

In the case of *Beti Maharani v. Collector of Etawah* (1), the Privy Council observed with reference to such an acknowledgment, "It must be taken that the Court's act would bind the ward."

In the course of his judgment in the case of *Ram Charan Das v. Gaya Prasad* (2), Banerji J. remarked, "This Court has held in *Kamla Kuar v. Har Sahai* (3), that an acknowledgment by the Court of Wards gives a fresh start for the computation of limitation." The same view was adopted by the Madras High Court in the case of *Kondamodalu Linga Reddi v. Alluri Sarvarayudu* (4). The report of the Deputy Collector of the 20th July, 1909 (Ex. 10), the letter from the Board of Revenue of the 24th of August, 1909 (Ex. 20), the letter from the Collector of the 18th of September, 1909 (Ex. 14), and the promissory note sued on (Ex. 6) are all clear acknowledgments of the debts due to the plaintiffs. At the date of those acknowledgments the promissory note of the 21st September, 1907, with respect to dealings with

(1) (1894) I. L. R. 17 All 198.

(3) (1888) All. W. N. 187.

(2) (1908) I. L. R. 30 All. 422, 437.

(4) (1910) I. L. R. 34 Mad. 221.

the Bhagalpur firm, was clearly not barred by limitation. The earliest dealing with the Calcutta shop was the 10th September, 1906. The acknowledgment by the Board of Revenue in their letter (Ex. 20) of the 24th of August, 1909, was within 3 years from the date of the debts. This suit was therefore, in my opinion, brought within time. The present appeal, therefore, fails and must be dismissed with costs. Let the record be sent down at once.

RICHARDSON J. I agree.

S. M.

Appeal dismissed.

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APPELLATE CIVIL.

Before Jenkins C.J., and Holmwood J.

KUSODHAJ BHUKTA

v.

BRAJA MOHAN BHUKTA.*

1915
 July 21.

Mistake—Suit to set aside previous decree on ground of mistake—Competence of compromise and decree thereon—Rectification—Fraud.

A decree can be set aside by suit on the ground of fraud if of the required character.

But a suit does not lie to set aside a decree in a previous suit on the ground that the Judge in passing that decree made a mistake.

Jogeswar Atha v. Ganga Bishnu Ghattack (1) dissented from.

Mahomed Golab v. Mahomed Sulliman (2), *Sadho Misser v. Golab Singh* (3), and *Bhandi Singh v. Dowlat Ray* (4) referred to.

Appeal from Appellate Decree, No. 1933 of 1914, against the decree of Benode Behari Mitter, Subordinate Judge of Midnapur, dated April 7, 1914, affirming the decree of Phanindra Mohan Chatterjee, Munsif of Tamluk, dated Feb. 22, 1913.

(1) (1904) 8 C. W. N. 473.

(4) (1912) 17 C. W. N. 82 ;

(2) (1894) I. L. R. 21 Calc. 612.

15 C. I. J. 675.

(3) (1897) 3 C. W. N. 375.