

## APPELLATE CIVIL.

Before Walmsley and Suhrawardy JJ.

BILWAR BIBI

v.

MAHAMED HABIBAR RAHAMAN.\*

*Limitation—Limitation Act (IX of 1908), s. 7—Joint decree-holders (minors)  
—Succession certificate taken by all the decree-holders—Whether adult  
decree-holders alone competent to give valid discharge without the con-  
currence of the minor decree-holders.*

Where a decree was passed in the name of the adult son and the widow of a deceased person and his three minor sons represented by their adult brother as their guardian and a question arose in execution proceedings as to whether the adult decree-holders could alone give a valid discharge to the judgment-debtor though the certificate under Act (VII of 1889) was issued in the name of all the decree-holders :

*Held (SUHRAWARDY J. dissentiente)*--That under the circumstances of the case the two adult certificate-holders were competent to give a valid discharge to the judgment-debtor without the concurrence of the minor decree-holders.

SECOND APPEAL by Bilwar Bibi, the judgment-debtor.

This appeal arose out of proceedings in execution of a decree passed in February 1913 and confirmed on appeal in January 1914; the application for execution was made in March 1920, and objection to execution was taken by the judgment-debtor on the ground that the application was barred by limitation, the Courts below overruled the objection and allowed

\* Appeal from order No. 97 of 1923, against the order of Nalini Kanta Bose, Subordinate Judge of the 24-Parganas, dated June 19, affirming the order of Nikunja Behary Ghosh, Munsif of Diamond Harbour, dated Sep 23, 1921

execution holding that limitation was saved under the provisions of section 7 of the Indian Limitation Act (IX of 1908), as some of the decree-holders were minors. The judgment-debtor thereupon preferred this appeal to the High Court.

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*Maulvi Syad Mohamad Sandulla*, for the appellant. On the death of the original plaintiff, his adult son obtained the guardianship certificate as regards his minor brothers, he also took a succession certificate under Act (VII of 1889); he could therefore give a valid discharge to the debtors under sections 14 and 16 of that Act; section 7 of the Limitation Act does not apply and execution is barred under article 182: *Bhola Nanda Jha v. Padma Nanda Singh* (1), *Ex parte Mahadeb Gangadhar Deshpande* (2).

None appeared for the respondents.

*Cur. adv. vult.*

WALMSLEY J. This appeal is preferred by the judgment-debtors. The respondents obtained a decree against the appellants in a contribution suit on February 25, 1913, and that decree was confirmed on January 17, 1914. They presented an application for execution on January 8, 1917, but withdrew it on March 24, 1917. On March 12, 1920, they made another application, the application from which the present appeal arises. *Primâ facie*, the application is barred by limitation, but the Courts below have held that limitation was saved by the fact that some of the decree-holders were minors and that the adult decree-holders could not give a discharge without their concurrence. It is urged for the judgment-debtors that this finding is erroneous.

(1) (1901) 6 C. W. N. 348.

(2) (1924) I. L. R. 28 Bom. 344.

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It appears that the original plaintiff in the contribution suit died during the hearing of the suit, and that the present decree-holders were brought on the record as his representatives. On February 21, 1913, a certificate was issued under Act VII of 1889 and it was by virtue of that certificate that the decree-holders obtained their decree four days later [see section 4 (1) (iii)]. We have called for the record of the application under Act VII of 1889. It purported to be made by five persons, the adult son Habibar Rahman and the widow of the deceased and the three minor sons represented by their adult brother as their guardian. The certificate was granted to all five, with the remark that three of them were minors represented by their guardian Habibar Rahman; it also appears that a bond was taken from Habibar Rahman to secure the interests of the minors. Some time later in October 1917, Habibar Rahman was appointed guardian of two of his minor brothers under Act VIII of 1890, but I do not think that that fact affects the situation. The question is whether Habibar Rahman and the other adult holder could by that certificate give a valid discharge to the judgment-debtors. It is clear that the object of the certificate was that they should be able to do so; the debt had to be specified in the application under section 6, and again it was specified in the certificate that was issued; and under section 15 of the Act the certificate is conclusive against persons owing the debts specified in it, and notwithstanding any contravention of section 1 (4) *or other defect*, affords full indemnity to all such persons as regards all payments made in respect of such debts to the person to whom the certificate was granted.

It appears to me that the certificate as described by the learned Judge was in effect granted to the two

adults, with the addition that Habibar Rahman had three minor brothers, entitled to share with him in any assets recovered under the certificate. This addition was a superfluity, for the rights of other persons to share in the moneys recovered are safeguarded by section 9 and the Court that grants the certificate has to satisfy itself only on the points that notice has been given to such other persons and that the applicant is a suitable person to receive the certificate. In this view I think that the two adults were competent to give a valid discharge to the judgment-debtors without the concurrence of the minors. Any other estimate of the meaning of the certificate would involve a finding that its only use was to show the Court before which the suit was pending that certain fees had been paid. That I think would be a grotesque construction of a certificate granted under an Act to facilitate the collection of debts on successions and to afford protection to parties paying debts to the representatives of the deceased persons.

Our attention was drawn to the case of *Bholanand Jha v. Padmanand Singh* (1) in support of the proposition that the adults could give a valid discharge, quite apart from their powers under the certificate. In the view I take it is not necessary to consider that decision. It is equally unnecessary to deal with the rights of the decree-holders under their personal law.

On the dates given I hold that the application was barred by limitation and I therefore allow the appeal with costs in all Courts. I assess the hearing fee at two gold mohurs in this Court.

My learned brother unfortunately takes a different view. We dealt with the effect of such a difference in another case (M. A. Nos. 19 and 20 of 1923) and it is not necessary to repeat here what we said in

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that case. Unfortunately, we differ also in regard to the results of a difference. To avoid an endless succession of differences, my learned brother assents to an order being passed that my judgment as that of the senior Judge shall prevail.

SUHWARWADY J. The only point that demands consideration is whether in the circumstances of this case, the adult decree-holders could give a valid discharge in respect of the decretal debt without the concurrence of the minor decree-holders. The facts have been fully set out in my learned brother's judgment and in the judgment of the Court of Appeal below and I need not set them out here.

*Ex facie* under section 7 of the Limitation Act, 1908, the application for execution is not barred unless it is established that the adult decree-holders could legally give a discharge for the debt without the minor decree-holders joining them in giving such discharge. The succession certificate under Act VII of 1889 was granted to all the heirs of the deceased decree-holder, who were five in number including three minors. In those proceedings Habibar Rahman, their adult brother, represented them, I take it as their guardian *ad litem*.

Now under the law of contract as obtaining in India one of joint creditors cannot give a valid discharge without the concurrence of his co-creditors. If any authority is required for this well-settled proposition, so far as this Court is concerned, reference may be made to section 45 of the Contract Act and to the cases of *Surja Kumar v. Arun Chunder* (1), *Annada Kishore Das v. Annada Kishore Bose* (2), *Harihar Prosad v. Bholi Prosad* (3), *Jagan Tarini*

(1) (1901) I. L. R. 28 Calc. 465.      (2) (1886) I. L. R. 14 Calc. 50.

(3) (1907) 6 C. L. J. 383.

*Dasi v. Nabagopal Chaki* (1), *Hussainara v. Rahimannessa* (2). To remove the doubt once entertained as to whether a decree-holder also is governed by the provision of section 7 of the Limitation Act of 1877, the Legislature has expressly extended it to his case in the new Act.

That being so, it is to be seen if there is any peculiar circumstance in this case which will take it out of the operation of the law as enunciated above. I have tried and failed to discover any. The record of the certificate case has been brought up and I have carefully examined it. It appears that five persons, who, as is clear from an inspection of the record, gave themselves out as the only heirs of Abdul Kadir, the deceased decree-holder, applied for a certificate under Act VII of 1889 in respect of two debts of which the decree under consideration was one. Three of the applicants, viz. 2, 3 and 4, were minors and were represented in the proceedings by the first applicant as their guardian. It is worded thus: "To 1, 2, 3, 4 and 5. 2, 3 and 4 are minors by their guardian brother Habibar Rahaman (No. 1) of . . . . . whereas you applied on the 2nd day of August 1912 for a certificate under the Succession Certificate Act, 1889, in the matter of the estate of Munshi Muhammad Abdul Kadir deceased in respect of the following debts and securities, namely, . . . . . This certificate is accordingly granted to you and empowers you to collect those debts." This is clearly an authority to all the five persons to collect the debts jointly. Habibar Rahman was made guardian of the minors to secure their proper representation in the proceedings, under Order 32, Civil Procedure Code. The Succession Certificate Act as its heading shows is intended to

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(1) (1907) I. L. R. 34 Calc 305, (2) (1910) I. L. R. 38 Calc. 342-320.



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facilitate collection of debts and to afford protection to the debtor from claims of unknown claimants if he makes payment to the known legal representatives of the deceased creditor. The Court has no jurisdiction, acting under the Act, to authorize an applicant to collect a debt on behalf of another applicant. No doubt the Court granting certificate took a bond from Habibar Rahman, the first applicant, to the effect that if he realised any money on behalf of the minors and misspent it, he would be liable in the amount of the bond. It may be argued that by taking such a bond from Habibar Rahman the Court authorized him to collect the decretal amount in this case on behalf of the minor decree-holders. To this two cogent answers are available: first, the Court had no jurisdiction under the Act, as I have observed, to empower an applicant to collect the debt on behalf of another applicant. If a Court is so minded, it can grant the certificate to one person or the major applicants only who would take subject to the liability to indemnify other heirs. Secondly, the bond given in this case is not such a bond which the Court is authorized and directed to take from the grantee of a certificate. The only section relating to taking bonds in a case under Act VII of 1889 is section 9 of the Act under which the Court shall take a bond by way of indemnity to persons other than the certificate-holder, who may be interested in the money. The bond, therefore, in this case does not and cannot empower Habibar Rahman to realize the decretal sum from the judgment-debtor on behalf of the minors.

Section 7 of the Limitation Act contemplates a case where a decree-holder holds such a legal character as to be able in law to give discharge on behalf of his co-decree-holders: [*Ratiram v. Niadar* (1) per

Walsh J.]. One of the tests may be that had the judgment-debtor paid the debt to one of the decree-holders amicably and out of Court, could he have successfully pleaded payment to all the decree-holders as full satisfaction of the decree? In my opinion in this case he could not.

In my judgment, this appeal fails and ought to be dismissed with costs.

As to the result of this difference of opinion, I have dealt with this question at length in my judgment in M. A. 19 and 20 of 1923 and I need not repeat the reasons here for the conclusion that my judgment agreeing with that of the lower Court should prevail. I am of opinion that the appeal should be dismissed.

A. S. M. A.

*Appeal allowed.*

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## APPELLATE CRIMINAL.

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*Before Greaves and Panton JJ.*

BISHAN SINGH

*v.*

EMPEROR.\*

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*"Arms"—Knife sharp throughout one edge and at the point of the other, and attached to a cross guard and handle—Arms Act (XI of 1878) s. 4.*

A knife with a tapering blade, sharp throughout one edge and only towards the point of the other, which is attached to a cross-guard and handle, and which can be used for stabbing and cutting is "arms" within s. 4 of the Arms Act (1).

(1) S. 4.—"Arms" includes firearms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms and machinery for manufacturing arms.

\* Criminal Appeal, No. 552 of 1923, against the order of K. B. Das Gupta, officiating Second Presidency Magistrate, Calcutta, dated Aug. 11, 1923.