APPELLATE CIVIL.

Before Mitter and Khundkar JJ.

GUMTI DEBI

v.

JUGAL KISHORE BAISHYA*.

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Feb. 21, 22; *Mar.* 6, 13.

Limitation—*Execution of decree—Acknowledgment of liability—Guardian for minor—Capacity of natural guardian to acknowledge a liability on behalf of the minor—Indian Limitation Act (IX of 1908), ss. 19, 21 ; Art. 182*(5).

A statement made by the natural guardian of a minor, in a written statement on behalf of the minor in a suit brought against him, on a fact relevant to suit and amounting to an acknowledgment of liability, is binding against the minor; and, a fresh period of limitation will run against the minor from the date of such acknowledgment under s. 19 of the Indian Limitation Act.

If a person is indicated as a guardian of the minor by the personal law of the minor, such person is his lawful guardian within the meaning of s. 21 of the Limitation Act.

Annapagauda Tammangauda v. *Sangadigyapa* (1); *Ram Charan Das* v. *Gaya Prasad* (2) and *Wajibun* v. *Kadir Buksh* (3) distinguished.

Per MITTER J. *Obiter.* The meaning of the word "application" in Art. 179(*4*) of the Limitation Act of 1877 (XV of 1877), which corresponds to Art. 182(*5*) of the present Limitation Act (IX of 1908), as given in *Raghunandun Pershad* v. *Bhugoo Lall* (4), approved.

Chidambaram Pillai v. *Veerappa Chettiar* (5) dissented from.

APPEAL FROM ORIGINAL ORDER preferred by the judgment-debtor.

The facts of the case and arguments in the appeal are sufficiently stated in the judgment.

Atul Chandra Gupta, with him *Upendra Kumar Ray*, *Nanigopal Das* and *Ajit Kumar Dutt*, for the appellant.

Jatindra Mohan Ghose for the respondent.

Cur. adv. vult.

*Appeal from Original Order, No. 205 of 1937, against the order of Surendra Nath Sen, First Subordinate Judge of Tipperah, dated Mar. 30, 1937.

(1) (1901) I. L. R. 26 Bom. 221.
(2) (1908) I. L. R. 30 All. 422.
(3) (1886) I. L. R. 13 Cal. 292.
(4) (1889) I. L. R. 17 Cal. 268.
(5) (1917) 43 Ind. Cas. 865.

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MITTER J. This appeal is on behalf of the judgment-debtor and the principal point raised is one of limitation. The facts bearing upon the said point are as follows :—One Kampta Prasad, a person governed by the *Mitâkshará* school of Hindu law, mortgaged 12 annas share of some properties situated at Unao in the United Provinces of Agra and Oudh to the respondent on August 12, 1920, for Rs. 60,000. He had at that time two sons of the names of Sheo Gobind and Tribhut Nath. Sheo Gobind had separated from him. Two more sons were born later, Bishwambhar and Bishweshwar, the latter being a posthumous one. In 1923 the mortgagee instituted his suit in the Court of Subordinate Judge at Unao to enforce the mortgage. Tribhut Nath was then dead, and Bishweshwar was not then born. The defendants were Kampta Prasad and Bishwambhar, a minor, represented by his mother Gumti Debi as guardian *ad litem*. The preliminary decree was passed on April 12, 1924, and the final decree on January 17, 1925. The mortgaged properties were eventually sold for Rs. 59,354 leaving Rs. 31,234 odd as unsatisfied. For this amount together with subsequent interest a decree under O. XXXIV, r. 6 of the Code of Civil Procedure was passed on November 21, 1925, for Rs. 31,727 odd. This is the decree which is now under execution. Before obtaining this personal decree the decree-holder applied for and obtained on September 12, 1925, an order for attachment before judgment of some properties including the Tipperah properties, which are the subject-matter of this appeal. Before, however, the attachment could be effected, Kampta Prasad executed two deeds. The first was a deed executed on September 15, 1925, by which he dedicated to an idol some of the Tipperah properties. The second was a lease for fifty years which he executed on October 26, 1925, in favour of his brother-in-law Uday Bham by which he reserved to himself, it is said, a small rent. Later on, Kampta Prasad died on January 16, 1926, and shortly after his death his third son Bishweshwar was

born. In 1928, the decree-holder instituted a suit in the Court of the Subordinate Judge at Unao, Suit No. 9 of 1928, for a declaration that the aforesaid two deeds, namely, the deed of endowment and the indenture of lease represented fictitious transactions, intended to defeat him and other creditors of Kampta Prasad. The two surviving minor sons of Kampta Prasad, namely, Bishwambhar and Bishweshwar, represented by their mother Gumti Debi as guardian, and the adult and separated son of Kampta Prasad, named Sheo Gobind, were made defendants. In that suit Gumti Debi filed on February 22, 1928, a written statement (Ex. C2) on behalf of her minor sons. This is a very important document in the case. This suit terminated in a decree on September 21, 1928, passed against the minor sons of Kampta Prasad. The said two deeds were declared invalid and the properties covered by them were declared to be liable to attachment under the respondent's decree passed under O. XXXIV, r. 6. Sheo Gobind was discharged, as he disclaimed all interest in the litigation. Later, on November 24, 1929, the personal decree passed under O. XXXIV, r. 6, was adjusted, but nothing turns upon this adjustment. The mortgagee decree-holder reduced his claim subject to certain conditions. The first application was made by the decree-holder in the Unao Court on August 1, 1929. It was for transfer of the decree to the Court at Comilla. It is admitted by the appellant's advocate that that application is to be taken as a step in aid of execution. An order was passed by the Unao Court for transfer of the decree to the Comilla Court, but nothing further was done by the decree-holder. He again applied for transfer of the decree on October 27, 1933, within three years of the order passed on his first application for transfer and obtained the necessary order on November 4, 1933. Nothing further was also done this time. He again applied for transfer in 1935 and, after obtaining the order prayed for, and the certificate of non-satisfaction from the Unao Court,

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applied in the Comilla Court for execution on May 9, 1935. As Bishwambhar had died in the meantime the application for execution was filed against Bishweshwar represented by his mother Gumti Debi as guardian, who filed an objection under s. 47 of the Civil Procedure Code. Many objections were raised to the execution, but all were negatived by the Subordinate Judge by his order dated May 5, 1937. The appellant's advocate has given up all the points, save two. Those two points are :—

(*i*) that the decree was incapable of execution, as it was already barred where the first application by the decree-holder to take a step in aid of execution was made (August 1, 1929), that application being after more than three years of the decree under execution;

(*ii*) that the Subordinate Judge ought to have kept the question as to the validity of the deed of endowment open in these proceedings.

The first point was overruled by the Subordinate Judge on two grounds, namely,—

(*a*) that the plaint and decree passed in Suit No. 9 of 1928 saved the decree-holder's application, dated August 1, 1929;

(*b*) that the written statement (Ex. C2) filed by Gumti Debi on behalf of the minor judgment-debtor in Suit No. 9 of 1928, which was within three years of the decree under execution, amounted to an acknowledgment of liability within the meaning of s. 19 of the Limitation Act and the first application of the decree-holder (dated August 1, 1929) being within three years of that date was in time.

Both these reasons given by the learned Subordinate Judge are challenged as unsound by Mr. Gupta, the learned advocate for the appellant.

It is admitted by him that if the application of the decree-holder dated August 1, 1929, was in time, the present application for execution cannot be thrown out as not maintainable, for within three years of the order made on that application the decree-holder again took steps in aid of execution. Mr. Gupta does not challenge before us the correctness of the decision of Mukerji and Mitter JJ. in *Sreenath Chakravarti* v. *Priyanath Bandopadhyay* (1), so far as it held that an application for transfer of a decree to a *mofussil* Court which had passed the same is a step in aid of execution within the meaning of Art. 182 (*5*) of the Limitation Act.

Mr. Gupta, however, submits that Art. 182(*5*) speaks of an *application* to take some step in aid of execution made to the proper Court, that is the Court whose duty it is to execute the decree [Expl. (*ii*) to Art. 182]. He submits that the plaint filed in the Unao Court cannot be regarded as an application within the meaning of that Article. The contention of Mr. Gupta is supported by the observation made by a Division Bench of this Court in the case of *Raghunandun Pershad* v. *Bhugoo Lall* (2). That was a case decided under the Limitation Act of 1877, but so far as this question is concerned there is no difference between Art. 179(*4*) of the former Act and Art. 182(*5*) of the Act of 1908 as finally amended. In other High Courts, however, a wider meaning has been assigned to the word "application" used in Art. 182(*5*). The word has been construed to mean "request to a Court" and that Court need not be the Court of execution. It would in that sense include a plaint in a suit for declaration that certain properties are liable to be attached in execution of the plaintiff's decree against the judgment-debtor, the defendant, an act or deed of the latter, which had the effect of impeding execution, being challenged and sought to be nullified in the suit. We do not propose to examine the cases in detail bearing upon this point, as we are basing our judgment on another

(1) (1930) I. L. R. 58 Cal. 832. (2) (1889) I. L. R. 17 Cal. 268, 271.

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ground. We may, however, say that we prefer to follow the view expressed in *Raghunandun Pershad's* case (*supra*), as it gives the natural meaning to the word "application" and the other Courts have not given proper consideration to the phrase "proper "Court" used in Art. 182(*5*) and defined in Expl. (*ii*) to Art. 182.

Mr. Gupta's next argument is that Ex. C(2), the written statement filed by Gumti Debi on behalf of her minor son in Suit No. 9 of 1928, is not an acknowledgment of liability within the meaning of s. 19 of the Limitation Act. He subdivides his argument into three parts. He says :—

(*i*) there was in it in fact no acknowledgment of an existing liability to the respondent;

(*ii*) even if there was an admission in it by Gumti Debi, that the amount was due to the respondent under the decree passed in his favour under O. XXXIV, r. 6, such an admission cannot *in law* amount to an acknowledgment of liability by the judgment-debtor Bishweshwar as—

(*a*) Gumti Debi being only guardian *ad litem* cannot bind him by any statement which goes beyond the scope of the suit in which she was his guardian *ad litem*;

(*b*) even if Gumti Debi be regarded as the natural guardian of Bishweshwar, she cannot bind her ward by her acknowledgment of liability unless it can be shown by the decree-holder that the said acknowledgment was made for the benefit of her ward.

We cannot give effect to any of these contentions of Mr. Gupta.

The respondent in his plaint of Suit No. 9 of 1928 made the statement that he had obtained against Kampta Prasad a decree for Rs. 31,727-12 on

November 21, 1925. He further stated that Kampta Prasad had notice of the order for attachment before judgment of the properties at the time when he executed the deed of endowment and the indenture of lease and that he had executed them with the fraudulent object of depriving him and his other creditors, and that the remaining properties which Kampta Prasad had were not sufficient to meet his claim under the said decree. He, accordingly, prayed for the declaration that those two deeds were null and void. Gumti Debi, as guardian of her minor sons Bishwambhar and Bishweshwar, filed the written statement on February 22, 1928. In paras. 17 and 19 she made the clear statement that the decree of the respondent was still unsatisfied. The plea she took can be summarised thus. True, the respondent's decree was still unsatisfied, but Kampta left considerable properties outside the deed of endowment and the lease which were more than sufficient to satisfy the respondent's decree and that he, the respondent, was not intentionally proceeding against those properties. There was in the written statement not only an acknowledgment of liability by Gumti Debi, but that her statements regarding respondent's claim on his decree were relevant to the suit, being her defence to the charge of fraudulent alienation by Kampta Prasad made in the plaint. If she could have substantiated the fact that Kampta Prasad left properties outside the lease to his brother-in-law and the deed of endowment, which were sufficient to satisfy the respondent's claim on his decree, these two transfers would probably have been saved from the respondent's attack. Grounds Nos. (*i*) and (*ii*)(*a*) as urged by Mr. Gupta stated above are accordingly without substance and must be overruled.

In support of his ground (*ii*)(*b*) Mr. Gupta submits that an acknowledgment of liability by a guardian to be effective against the minor must be by his *lawful* guardian and for his benefit. *Lawful* guardian means a person who in law represents

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the minor. The phrase does not mean a *de facto* guardian. But the person need not be appointed by the Court under the Guardians and Wards Act. If by the personal law of the minor a person is indicated as his guardian, then that person is his lawful guardian. Here, as the father was dead, the mother, Gumti Debi, was the lawful guardian of her minor sons at the time she filed the written statement in Suit No. 9 of 1928. She cannot be taken to have momentarily ceased to be the legal guardian of her minor sons because she was appointed their guardian *ad litem*. The acknowledgment of liability made by her in paras. 17 and 19 of the said written statement must be taken to have been made by her as lawful guardian of her minor sons. The period of limitation for execution against them accordingly started from the date of the written statement, namely, February 22, 1928, and the application of the decree-holder to the Unao Court dated August 1, 1929, was accordingly in time. This is the plain effect of s. 19 read with the first para. of s. 21 of the Limitation Act of 1908.

In support of his contention that the acknowledgment of liability by a lawful guardian to have effect against a minor must be for his benefit, Mr. Gupta cites a number of cases. The relevant statements in the written statement (Ex. C2) being relevant to the suit were certainly made for the benefit of the minor. But apart from the said fact we cannot accept Mr. Gupta's contention on the point of law. The cases he cites are *Annapagauda Tammangauda* v. *Sangadigyapa* (1); *Ram Charan Das* v. *Gaya Prasad* (2); *Wajibun* v. *Kadir Buksh* (3) and *Chidambaram Pillai* v. *Veerappa Chettiar* (4). The first three cases were decided under the Limitation Act of 1877. In that Act there was no provision corresponding to s. 21(*1*) of the Act of 1908. An acknowledgment of liability to be effective had to be signed by the debtor or by his authorised agent. The question raised in

(1) (1901) I. L. R. 26 Bom. 221.
(2) (1908) I. L. R. 30 All. 422.
(3) (1886) I. L. R. 13 Cal. 292.
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those cases was whether a lawful guardian of a minor was his authorised agent. It was held in those cases that he was not but would be so regarded only if he had acted for the benefit of the minor in making the acknowledgment of liability. The addition of the first paragraph to s. 21 in the Limitation Act of 1908 has in our judgment made away with the said distinction. A lawful guardian is now under the statutory definition an authorised agent of the minor within the meaning of s. 19 of the Limitation Act. The new provisions of s. 21 of the Limitation Act of 1908 was made to make the law clear and to place a lawful guardian in the same position as an authorised agent of an adult debtor. In the last case (1) cited by Mr. Gupta the change in the law by the legislature was not considered and s. 21(*1*) was not even noticed in the judgment.

With regard to the last contention raised by Mr. Gupta that the finding on the deed of endowment, arrived at by the learned Subordinate Judge ought to be set aside, we are of opinion that his contention is sound. The idol has not preferred any claim in the execution proceedings and we are of opinion that, in the absence of the idol, the question as to whether the deed of endowment creates a valid *debutter* or not, ought to be left open in these proceedings. With this modification the appeal is dismissed with costs, hearing fee two gold mohurs.

KHUNDKAR J. I agree.

Decree modified.

A. A.

(1) (1917) 43 Ind. Cas. 865.