

[4 Mad. 149.]

APPELLATE CIVIL.

The 22nd July, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE
MUTTUSAMI AYYAR.

Anantharama Ayyan.....Appellant
and

Karuppanan Kalingarayan and others.....Respondents.*

Execution of decree—Interim application by guardian of minor does not prejudice minor's right to execute within three years from date of majority.

The fact that a minor is for a time represented by a guardian does not remove the disability of the minor.

[120] THIS was an application made in the year 1878 to execute a decree dated 19th April 1873. The petitioner originally sued by his guardian, his grandmother, and, having obtained a decree, his natural father, who was then his guardian, took certain steps in execution on 2nd October 1875 and died. Having attained his majority in 1878, the petitioner applied for execution on 29th November.

The District Munsif considered that the Limitation Act did not recognize the act of the guardian so as to prejudice the minor's interests, and ordered execution to issue.

On appeal the District Judge set aside the District Munsif's order on the ground that time began to run from 2nd October 1875, and the death of the guardian and petitioner's subsequent inability to execute the decree could not extend the time—Indian Limitation Act, 1877, Section 9.

The petitioner appealed to the High Court on the ground that the District Court had misconstrued Sections 7 and 9 of the Indian Limitation Act, 1877.

R. Balaji Rau, for the petitioner, referred to Section 249 of the Civil Procedure Code and Section 7 of the Indian Limitation Act, 1877, and the following authorities : Phoolbas Koonwur v. Lall & Jogeshur Sahoy (I. L. R., 1 Cal., 242) ; Huro Soonduree Chowdhraïn v. Anundnath Roy Chowdry (3 W. R., 8) ; Thompson's Limitation Act, p. 77 ; Shephard's Limitation Act, p. 96 ; Vira Pillai v. Muruga Muttayan (2 M. H. C. R., 340) ; and Mohabal Ali v. Ail Mahomed Kulal (3 B. L. R. App. 80),

The Respondent was not represented.

The Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) delivered the following

Judgment :—In this case the person to whom the right accrued was, at the time of its accrual, a minor, and, although for a season he was represented by a guardian, who made the first application on his behalf, this circumstance did not remove the disability of the minor.

* Civil Miscellaneous Second Appeal No. 49 of 1881 against the order of G. A. Parker, Acting District Judge of South Tanjore, reversing the order of W. Gopala Charlu, Additional District Munsif of Tanjore, dated 22nd December 1880.

The application was saved from limitation by the provisions of Section 7, Limitation Act, if the applicant did not attain his majority more than three years before the application was made, which is apparently not denied. We set aside the Judge's order and restore that of the Court of First Instance with costs.

[121] APPELLATE CRIMINAL.

The 3rd August, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE INNES.

In the matter of Alfred Lindsay (Petitioner).*

Right of way—Obstruction—Procedure under Section 532, Criminal Procedure Code.

Where a complaint was made to a Magistrate that an obstruction had been raised and existed on land reserved by Government and dedicated as a public road:

Held that an *ex parte* order, purporting to be made under Section 532 of the Code of Criminal Procedure, directing the party in possession not to retain possession of the land until he should obtain the decision of a competent Civil Court adjudging him to be entitled to exclusive possession, with a further direction to remove the obstruction, was bad in law.

THE facts and arguments in this case appear in the Judgment of the Court (TURNER, C.J., and INNES, J.), which was delivered by TURNER, C.J.

W. Morgan for the Petitioner.

The Acting Government Pleader (*Mr. Powell*) appeared in support of the order.

Judgment.—On the 7th July Mr. James O'Shaughnessy, the Local Fund Engineer of the Nilgiri District, made a complaint to the Joint Magistrate, Colonel Clementson, that a public road from the Chengal Estate to Coonoor had been obstructed by the petitioner, who was described as the agent and partner of Mr. Mullaly. Mr. O'Shaughnessy, who was examined on oath, deposed that the road was on Government reserve land; that it had originally been obstructed in February; that on the 14th June he had, with the permission of Mr. Lindsay, removed the obstruction, but that after the land had been used as a road for four or five days, Mr. Lindsay renewed the obstruction by erecting a wire-fence in two places, cutting a trench, and building a wall. Mr. O'Shaughnessy prayed that an order might be issued for the removal of the obstruction. In support of the application Captain Reade, the proprietor of an estate in the neighbourhood of the alleged road, [122] was examined and confirmed the statements of Mr. O'Shaughnessy. A letter from Mr. Lindsay was also filed in proof of his alleged consent to the removal of the obstruction. The letter was in the following terms: "In reference to our conversation to-day on the subject of disputed right of way towards Ibez Lodge and Chengal, I regret to say that I have no authority to enter into a negotiation in regard to it. All I can say is

* Petition 303 of 1881 against the order of Colonel Clementson, Joint Magistrate of Ootacamund, dated 7th July 1881.