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Nor can any reserve rent which the landlord may arbitrarily demand be taken to represent the standard value. If such demand is far in excess of the special convenience or benefit which the hypothetical tenant can expect to derive from the occupation, the tenant would prefer to rent less suitable buildings and adapt them to his requirements, though at some expense, or to forego the special convenience if it is not indispensable.

The standard value is then what a tenant requiring the building for use as a hospital would consider it reasonable to pay from year to year rather than resort to renting a less suitable building and adapting it to his requirements at his expense. In this sense, the standard value is the higher reserve rent which the owner of the property offering it in the open market would reasonably demand and below which sum he would not be willing to let.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

1886. April 13, 15.

KRISHNA AND ANOTHER (DEFENDANTS NOS. 2 AND 3), APPELLANTS IN APPEAL NO. 127,

THE COLLECTOR OF SALEM (DEFENDANT NO. 1), APPELLANT IN APPEAL NO. 130,

and

MEKAMPERUMA AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Regulation X of 1831, *ss.* 1, 2, 3—*Regulation V of* 1804, *s.* 14 (4), *s.* 20—*Sale for arrears of revenue of mitta held by tenants in common during minority of some of the owners—Minority no bar to sale—Civil Procedure Code, s.* 32.

A mitta held by tenants in common was sold for arrears of revenue at a time when the owners of a moiety thereof were minors.

In a suit brought by the mother of these minors on their behalf against the Collector to set aside the sale, the District Court held that Regulation X of 1831, s. 2, absolutely debarred the Collector from selling the estate of the minors during their minority and set aside the sale so far as their interests were concerned:

Held, on appeal, that, the minors not being sole proprietors, their estate was not one of which the Court of Wards could assume the management and, therefore, s. 2, of Regulation X of 1831, did not affect the sale.

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* Appeals 127 and 130 of 1885.

In the above-mentioned suit the plaintiffs impleaded also the other previous owners of whom one was the purchaser at the sale. Two others in their written statement pleaded that the purchase had been made in fraud of their rights, and claimed to be still entitled to their shares in the mitta on the ground that the purchaser must be held to have purchased for their benefit (Indian Trusts Act, 1882, s. 90) They further claimed that should the sale be set aside so far as the plaintiffs' interests were concerned, the sale of their interests also should be held to be null and void.

Before the suit came on for hearing the District Judge *suo motu* ordered that these two defendants should be made plaintiffs in the suit under s. 32 of the Code of Civil Procedure.

At the date when this order was made, the claim of these defendants, had they sued to set aside the sale in their own interest, was barred by limitation:

Held that the order was illegal.

APPEALS from the decree of C. W. W. Martin, District Judge of Salem, in suit No. 9 of 1884.

The facts appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Parker, J.).

Bháshyam Ayyangár and *Kaliánarámayyar* for appellants.

The Acting Advocate-General (Mr. *Shephard*) and *Rámasámi Ayyangár* for respondents.

JUDGMENT:—The plaintiffs' father, Mekaperuma Udayan was the owner of half the Senthamangalam mitta. He died in 1876, and the plaintiffs, Mekaperuma and Rámasámi, were then registered as the owners of his moiety. The other sharers were Krishna Chetti, defendant No. 2, who owned $\frac{1}{12}$ (which he purchased in 1880); Solamuttu, Karuppa and Varada Udayan, defendants Nos. 4—6, who jointly owned another $\frac{1}{12}$; Vela Gounden, defendant No. 7, who owned $\frac{1}{4}$; and Malayandi Pillai, defendant No. 8, who owned the remaining $\frac{1}{12}$.

On the death of plaintiffs' father, one Varadaperuma Udayan was appointed their guardian by the District Court under s. 20, of Regulation V of 1804. The kists due to Government were allowed to fall into arrears for faslis 1290 and 1291, in consequence of which the whole mitta was attached, and was sold on 9th March 1882 by revenue auction. It was purchased by plaintiffs' guardian, Varadaperuma Udayan, for Rs. 65,000 on behalf of plaintiffs, but as he did not pay the balance of the purchase money, the sale was ultimately cancelled.

The plaintiffs' guardian died on 1st December 1882 and shortly afterwards a fresh attachment of the mitta was made for arrears which had accrued subsequent to the first attachment. At the

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date of this attachment no new guardian had been appointed by the Court for the minor plaintiffs under s. 20 of Regulation V of 1804. The Collector did write to the Judge on 2nd March 1883, suggesting that a fresh appointment should be made (exhibit IX); but this letter appears to have been despatched subsequent to the attachment which was made in January. From the endorsement made by the District Judge upon this letter (dated 16th July 1883), it would appear that he proposed to consult the Collector as to the fitness of Subbaraya Udayan (plaintiffs' brother-in-law) to be appointed guardian, but there is nothing to show whether any further steps were taken. At any rate when the mitta was brought to sale a second time on 14th September 1883, no fresh guardian had been appointed by the Court.

At that sale the mitta was knocked down to defendant No. 2 for Rs. 1,50,800. Plaintiffs' mother and Subbaraya Udayan above mentioned attended the sale and bid for plaintiffs, but their last bid was Rs. 50 less than that of defendant No. 2. It would appear that they had in hand at that time some Rs. 15,000, which was nearly double the amount of the arrears of kist due on the mitta but plaintiffs' mother and defendant No. 2 would appear to have been equally desirous that the mitta should be sold, each hoping to become the successful purchaser of the whole estate.

The plaintiffs' mother, Sellammal (the unsuccessful bidder), now sues on their behalf to set aside the sale, on the ground that the whole proceedings were illegal and not binding on the plaintiffs. The plaint was filed on 12th March 1884, and alleged, among other things, that the Collector (defendant No. 1) was bound to have attached the movable property of the registered holders in the first instance; that the demand notice was not served upon any properly constituted guardian to the minor plaintiffs, nor was it legally served; that the sale of the whole of this valuable mitta for so small an arrear was unnecessary and illegal, and that the minors' interests were not liable to be sold at all. The plaint impleaded the Collector as defendant No. 1 and the other joint owners (before the sale) as defendants Nos. 2—8.

Defendant No. 2 and his undivided nephew, Rámasámi Chetti, defendant No. 3, upheld the validity of the sale.

Defendants Nos. 4 and 7 put in written statements, in which they alleged that they were still entitled as co-owners to their respective shares, and that defendant No. 2, having purchased in

fraud of their rights, must be held to hold the estate for their benefit as co-owners (s. 90, Indian Trusts Act II of 1882). They contended, however, that should the plaintiffs succeed in the suit, the sale of the interest of themselves also should be held null and void.

The other defendants were *ex parte*. It will be seen from this that defendants Nos. 4 and 7 claimed to be still entitled to their shares on grounds utterly inconsistent, and whether the sale itself was valid or invalid as regards the plaintiffs. They did not ask to be made plaintiffs and throw in their lot with plaintiffs to set aside the sale, but they asked for the benefit of the decree should laintiffs succeed, and, if plaintiffs failed, they claimed a relief on totally different cause of action on which they had never sued.

The only issue framed was the general one, whether the sale was valid and binding on plaintiffs and defendants Nos. 4 and 7. Some time after this issue was settled, and before the suit came on for hearing, the District Judge *suo motu* ordered that defendants Nos. 4 and 7 should be made plaintiffs in the suit instead of defendants, and directed them to pay stamp duty upon the relief which they apparently wished to obtain should they be considered as not being in the same interest with plaintiffs. Defendant No. 4 was willing to pay the stamp duty, but defendant No. 7 was not, and ultimately the Judge ordered them to be entered plaintiffs Nos. 3 and 4 under s. 32 of the Code of Civil Procedure without the payment of any stamp duty.

At the trial the District Judge held that the provisions of Regulation X of 1831 absolutely debarred the Collector from selling the plaintiffs' estate during their minority, and therefore set aside the sale as far as their share was concerned. He held, however, that it was valid as regards the shares of the other co-owners so far as the Collector was concerned, but that it was not binding on plaintiffs Nos. 3 and 4 as regards the relations between them and defendant No. 2. The decree after setting aside the sale of plaintiffs' share, directed defendant No. 2 to execute reconveyances to plaintiffs Nos. 3 and 4.

Against this decree defendants Nos. 2 and 3 in Appeal Suit No. 127 and the defendant No. 1 (the Collector) in Appeal Suit No. 130 have appealed. In the former appeal we are constrained to hold that the procedure of the District Judge in transforming defendants Nos. 4 and 7 into plaintiffs Nos. 3 and 4 was, under

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the circumstances, irregular. It does not appear that either of them desired to become a plaintiff, nor could they in this suit have been granted relief on the same cause of action as that set forth by plaintiffs Nos. 1 and 2. Their position as plaintiffs could only date from 14th March 1885, which was the date of the Judge's order. On that date a suit by them to set aside a sale for arrears of Government revenue would have been barred (art. 12-C, sch. II of the Limitation Act); while a suit based on s. 90 of the Trusts Act would set forth a totally different cause of action in which plaintiffs Nos. 1 and 2 were not interested, and which was altogether foreign to their claim. Defendants Nos. 2 and 3 can under s. 591, of the Code of Civil Procedure, dispute the validity of the order passed on 14th March 1885, and we must set aside the order passed under s. 32 and restore plaintiffs Nos. 3 and 4 to their original positions on the record.

The sole ground on which the District Judge has allowed the claim of plaintiffs 1 and 2 is the legal one that Regulation X of 1831 debars the Collector from selling for arrears of revenue the estates of minors which are not subject to the Court of Wards. Defendant No. 1 and the auction purchasers (defendants Nos. 2 and 3) appeal against this decision, and it is contended that the prohibition enacted in Regulation X of 1831 only applies to estates which have been, or which legally might have been, taken under the charge of the Court of Wards.

If the minor plaintiffs were the sole proprietors of the Senthamangalum mitta, there could be no doubt that their estate was one of which it was competent to the Court of Wards to assume the management. Had such management been assumed, it could not be sold for arrears of revenue (s. 14, cl. 4, Regulation V of 1804); nor could it be so sold even if the Court of Wards had not chosen to assume the management—(s. 2, Regulation X of 1831).

But the minor plaintiffs are not the sole proprietors, but are joint proprietors with others, who are not incapacitated from the management of their inheritance. Their case is therefore governed by s. 20, Regulation V of 1804; and the duty of appointing a guardain for them devolves not upon the Court of Wards, but upon the Zila (now the District) Court.

The law imposes upon the Collector the duty of reporting the case to the District Court, but having done that, the Collector

would appear to be *functus officio*. It was held in *Subramânyan, in re* (1) that a District Court had no jurisdiction, under s. 20, Regulation V of 1804, to appoint a guardian to the estate of a minor when the estate pays revenue to Government. In that case the minor was the sole proprietor. The converse of the proposition would appear also to be true, that where the law imposes upon the District Judge, as in the case of a minor co-owner under s. 20, the duty of appointing a guardian, the right of the Court of Wards to appoint a guardian is *ipso facto* excluded. The words of s. 20 are imperative as to the procedure to be followed.

The estate of the plaintiffs is not therefore one of which the Court of Wards could assume the management, and we have to consider whether the Government is debarred from selling it for arrears of revenue under Regulation X of 1831.

The preamble (s. 1) of that Regulation shows that the enactment was passed for two distinct purposes—(1) to remove doubts as to the liability of the estate of a minor, not taken under the management of the Court of Wards, to be sold for arrears of revenue; (2) to extend, for the protection of minors and other incapacitated persons, the provisions of s. 20, Regulation V of 1804, to property of every description not subject to the Court of Wards.

Section 2 is the enacting section for the first of these purposes and s. 3 for the second.

It is quite clear that s. 14, cl. 4, Regulation V of 1804, had previously forbidden the sale of minors' estates which had been taken under the Court of Wards, and the second clause of s. 2, Regulation X of 1831, shows that it was with reference to such estates (which might have, but had not, been taken under the Court of Wards) that the doubts had arisen which are set forth in the preamble. The estate of the minor plaintiffs is not such an estate. The 3rd section of Regulation X of 1831 deals with the second object set forth in the preamble and extends the powers of the Zila Courts to appoint guardians to cases in which incapacitated persons are possessed of property of every description not subject to the jurisdiction of the Court of Wards, *i.e.*, that does not pay revenue to Government. Section 20, Regulation V of 1804, had limited the Zila Judges' power to act to

(1) I.L.R., 6 Mad., 187.

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cases in which the estate was held by joint possessors and subject to an undivided assessment of the public revenue, but it was then extended to the heirs of single as well as of joint possessors of all kinds of estates, provided only they were not subject to the jurisdiction of the Court of Wards.

It appears to us that the District Judge has confused together the two separate purposes for which Regulation X of 1831 was passed. It is intelligible that the Government should legislate so as to forbid the sale of the property of minors whose estates were under the management and control of their own officers, but to forbid the sale of property not subject to such control and guarantee would be to place the State, alone of all legal creditors, in position of inability to exact its dues. It is no doubt true as urged by the Acting Advocate-General that the words "The property of a minor not under the charge of the Court of Wards" in s. 2 cl. 1 of Regulation X, are wide enough of themselves to include estates of every description, but the term "such estates" in the 2nd clause of the same section makes it clear that the Legislature only intended to refer to estates of which the Court of Wards might have originally assumed the management. We must therefore set aside the decree of the District Judge in plaintiffs' favour, which is based upon this preliminary point. There are however other points arising in the suit, on which plaintiffs have based their claim, and these must now be remitted for the consideration of the Court of First Instance. The points raised are several and cannot conveniently be met by an issue so general in its terms as that on which the suit has been tried. We observe that, under clauses 5 and 6 of the sanad-i-milkeut istimrár, under which this mitta is held, the personal property of the holder is liable in the first instance to attachment for arrears of revenue, and under s. 6, Act II of 1864, the procedure against the defaulters should be in accordance with the terms of this sanad. The plaintiffs complain that this has not been done, and they further complain that s. 44 of the same Act would prevent the sale of the whole of so valuable a mitta for a comparatively small arrear.

Another point raised is that the demand notices were not served upon any one legally competent to represent the minors, and it is argued that the plaintiffs' mother, though their natural and personal guardian under Hindú Law, could not take for such purposes the position of a person duly appointed by the Court

under s. 20, Regulation V of 1804. Further objections are raised as to the publication and conduct of the sale.

We merely indicate these as some of the points which will require the attention of the Judge in framing fresh issues. The appeals of the Collector (No. 130) and of defendants Nos. 2 and 3 (No. 127) must be allowed and the decree of the Lower Court reversed. The names of plaintiffs Nos. 3 and 4 must be restored to their original positions in the suit, which must be retried on the merits after framing fresh issues. The respondents must pay the costs of these appeals, but the costs in the Lower Court will abide and follow the result.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

1886. Sept. 24.

JIVRÁJI (JUDGMENT-DEBTOR), PETITIONER,

and

PRAGJI (DECREE-HOLDER), RESPONDENT. *

Civil Procedure Code, ss. 206, 622—Error of law—Application to bring decree into conformity with judgment—Limitation Act not applicable.

Applications to the Court under s. 206 of the Code of Civil Procedure are not governed by the Limitation Act.

A Small Cause Court rejected an application made under s. 206 of the Code of Civil Procedure to bring a decree into conformity with the judgment, on the ground that a former application had been dismissed for default and the petitioner was bound to apply within one month from the date of dismissal and was now too late. On an application to the High Court under s. 622 of the Code to set aside this order:

Held that the High Court could not interfere.

APPLICATION under s. 622 of the Code of Civil Procedure to set aside an order of the Subordinate Judge of North Malabar, made in Small Cause suit 722 of 1885.

Khimji Jivráji Shett, defendant No. 1 in the suit, applied under s. 206 of the Code of Civil Procedure to have the decree amended and brought into conformity with the judgment by reducing the amount of the decree from Rs. 446-7-3 to Rs. 239-7-0.

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*Civil Revision Petition 29 of 1886.