

For these reasons we are of opinion that the judgment of the Munsif upon the point of limitation is correct, and that the plaintiff's claim is not barred.

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Referring to the petition of appeal before the lower Appellate Court, we do not find that there was any other substantial question raised by the defendant before that Court. It is, therefore, unnecessary to remand this case. The decree of the lower Appellate Court is, accordingly, reversed, and that of the Munsif, restored with costs.

*Appeal allowed.*

*Before Mr. Justice Mitter and Mr. Justice Tottenham.*

GOURAH KOERI (PETITIONER) v. GUJADHUR PURSHAD  
 (OPPOSITE PARTY).\*

1879 \*  
 April 25.

*Minor, Rights of, in a Family governed by the Mitakshara Law—Certificate under Act XXVII of 1860—Certificate under Act XL of 1858.*

*K. B.*, a Hindu governed by the Mitakshara law, died, leaving two sons, *G. P.* and *K. P.*, a minor, and a widow *G. K.*, the mother of *K. P.* *Held*, on applications by *G. P.* and *G. K.* respectively to obtain certificates under Act XXVII of 1860, to collect the debts due to the estate of *K. B.*, that *G. P.* alone was entitled to obtain such a certificate, and on the application of *G. K.* for a certificate to take charge of the estate of her minor son *K. P.* under Act XL of 1858, that as there was no evidence that *K. P.* was entitled to any separate estate she was not entitled to such a certificate. *Held also*, that if occasion should arise, a suit might be filed in the name of the minor by his mother as his next friend, without her having first obtained a certificate under Act XL of 1858, and without her having previously obtained permission from any Court.

*Mr. Branson* and *Baboo Cally Mohun Ghose* for the appellants.

*Baboo Mohesh Chunder Chowdhry* and *Baboo Troylonath Dutt* for the respondent.

THE facts of this case sufficiently appear from the judgment, which was delivered by

MITTER, J.—One Khoonjo Behary died on the 7th June

\* Appeals from Original Orders, Nos. 29, 30, and 31 of 1879, against the orders of J. M. Lewis, Esq., Judge of Bhargulpore, dated respectively the 30th of December 1878 and 1st of February 1879.

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1878, leaving him surviving two sons, Gujadhur and Kanny, and his widow Musst. Gourah Koeri. Gujadhur and Kanny are step-brothers, Kanny's mother being Gourah Koeri, and Gujadhur's mother had predeceased her husband. Gujadhur had attained majority before his father's death, and Kanny is still a minor. These three appeals arise out of three applications made to the lower Court. Two of these, by Gujadhur and Musst. Gourah Koeri, respectively, were made for obtaining certificates under Act XXVII of 1860 to collect the debts due to the estate of the deceased Koonjo Behary. The third application was made by Gourah Koeri to obtain a certificate under Act XL of 1858 for the administration of her minor son's property.

The District Judge has granted to Gujadhur a certificate under Act XXVII of 1860 to collect the debts due to his father's estate, and has rejected both the applications of Musst. Gourah Koeri.

Upon the evidence it appears to us clear, that Koonjo Behary and his two sons formed a joint Mitakshara Hindu family, and no partition has taken place since the father's death. The two brothers, with the mother, therefore, constitute a joint Hindu family governed by the Mitakshara law. That being so, the interest of the minor brother in the joint family estate is not property of which one can take charge. This view is supported by the cases of *Sheo Nundun Singh v. Mussamut Ghunsam Kooree* (1), and *Mussamut Ajhola Kooree v. Baboo Digambur Singh* (2).

It is clear from the provisions of Act XL of 1858, that a certificate for the administration of a minor's property can only be granted, where it is of such a nature that it is capable of being taken charge of.

The minor in this case not being shown to possess any such property, the District Judge, we think, is right in refusing the application of Musst. Gourah Koeri under Act XL of 1858.

The learned counsel who appeared for her before us, relied

(1) 21 W. R., 143.

(2) 23 W. R., 206.

upon a decision of this Court—*Mussamut Etwari v. Ram Narayan Ram* (1). In this case, the question, whether the interest of a member of a joint family governed by the Mitakshara law in the joint family estate, is such property as can be taken charge of by a guardian, was not raised. This case seems to have been cited by the District Judge in the judgment which formed the subject of appeal in the decision already referred to, *Mussamut Ajhola Kooeree v. Baboo Digambur Singh* (2). We are, therefore, of opinion that the Judge was right in rejecting the appellant's petition to be appointed the administrator of the minor's property. We may observe here that, in the view taken by this Court in the case of *Sheo Nundun Singh v. Mussamut Ghunsam Kooeree* (3), and now adopted by ourselves, it is not necessary that the appellant should be furnished with a certificate under Act XL of 1858 to enable her to bring a suit for partition on behalf of her minor son, for the effect of our decision is, to hold that s. 3 of that Act has no application to the minor's undivided share of the family property. We think, too, that the District Judge is mistaken in supposing that even permission of the Court under chap. xxxi of the Code of Civil Procedure to represent the minor in such suit will be necessary. The suit may be brought in the minor's own name, his mother being made his next friend. For this, no permission is required.

We are also of opinion, that the family being joint, the District Judge has properly exercised his discretion in granting the certificate, to collect the debts due to the estate of the deceased father, to the eldest son, who is naturally the *kurta* of the family.

The result is, that all these appeals are dismissed with costs.

*Appeals dismissed.*

(1) 4 B. L. R., Ap., 71.

(2) 23 W. R., 206.

(3) 21 W. R., 149.