

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

KAILASA PADIACHI (PLAINTIFF), PETITIONER,

v.

PONNUKANNU ACHI AND ANOTHER (DEFENDANTS),
RESPONDENTS.*

1894.
Nov. 1, 2.

Limitation Act—Act XV of 1877, s. 20—Payment of interest on a debt—Authority of a previous guardian of a debtor remaining in management after the debtor's majority.

The mother and guardian of an infant borrowed money for his expenses and executed a bond in 1886 to secure the repayment. In a suit by the obligee in 1892 it appeared that the mother had remained in management of her son's affairs, and had paid interest on the debt, after he had attained majority and less than three years before the institution of the suit :

Held, that the suit was not barred by limitation.

PETITION under Provincial Small Cause Courts' Act, 1887, section 25, praying the High Court to revise the proceedings of V. Srinivasa Charlu, Subordinate Judge of Kumbakonam, in small cause suit No. 1086 of 1892.

Suit on a bond executed in 1886 by defendant No. 1, the mother and guardian of defendant No. 2, to secure a loan contracted for the expenses of defendant No. 2. In bar of limitation the plaintiff relied on payments made by defendant No. 1, which were evidenced by endorsements on the bond, which were signed by her. These payments were made by her after her son attained majority, but while she still continued in the control and management of his affairs.

The Subordinate Judge held that the claim is barred by limitation and dismissed the suit.

The plaintiff preferred this petition.

Krishnaswami Pillai for petitioner.

Sankarandrayana Sastri for respondent.

JUDGMENT.—It is conceded that but for the payment of Rs. 10 on account of interest made on the 22nd December 1889, the suit would be clearly barred; but it is contended that the Subordinate Judge is in error in holding that first counter-petitioner had no authority to make such payments. This contention, I consider, is well founded. The Subordinate Judge relies on the decision in

* Civil Revision Petition No. 928 of 1893.

Wajibun v. Kadir Buksh(1), but that decision was dissented from *Chinnaya v. Gurunatham*(2), *Sobhanadri Appa Rau v. Sriramulu*(3) and *Bhasker Tatya Shet v. Vijalal Nathu*(4). The principle laid down in these cases is that a guardian is legally competent, in the ordinary course of management, either to acknowledge a debt due by his or her ward, or to make a part-payment, or to pay interest. This being so, the only question that arises for decision is whether the first counter-petitioner can be treated upon the facts found as a person duly authorized to pay interest on behalf of the second within the meaning of section 20 of the Limitation Act. It is true that the second counter-petitioner had attained majority when the payment was made, but the Subordinate Judge finds that he allowed his mother to continue in management for sometime after he had become a major, and that the payment was made when she was so managing her son's affairs. The payment of interest accruing on an existing debt being an ordinary incident of management, I think it must be taken that the authority from the son to manage his affairs included an authority to make the payment. I may observe that section 20 of the Limitation Act only requires that the payment should be made by an agent duly authorized. It is therefore immaterial that no special authority was given to her. I set aside the decree of the Subordinate Judge and direct that the second defendant do pay the plaintiff the amount sued for with interest at 6 per cent. per annum from date of plaint till date of payment and with costs.

KAILASA
PADIACHI
v.
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ACHI.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

SUBBANNA AND OTHERS (COUNTER-PETITIONERS), APPELLANTS,

v.

MUNEKKA (PETITIONER), RESPONDENT *

*Succession Certificate Act—Act VII of 1889, s. 4, sub-s. (2)—Debt—
Unliquidated claim.*

X, a Hindu, left some sheep with Y, who failed to return them. X having died, his widow applied for a succession certificate to enable her to sue Y for damages for wrongful detention of the sheep :

1894.
October
29, 30.

(1) I.L.R., 13 Cal., 292, 295.

(2) I.L.R., 5 Mad., 169.

(3) I.L.R., 17 Mad., 221.

(4) I.L.R., 17 Bom., 512.

* Appeal against Order No. 86 of 1893.