

## APPELLATE CIVIL.

Before *Mr. Justice Shephard* and *Mr. Justice Best*.

SURYANARAYANA (PLAINTIFF), APPELLANT,

v.

NARENDRA THATRAZ (DEFENDANT), RESPONDENT.\*

1895.  
October 8, 14.

*Regulation V of 1804, s. 17—Powers of Agents to Court of Wards—Contract Act, s. 25, clause 3—Promise to pay a time-barred debt.*

A Collector, as Agent to the Court of Wards, has no authority to bind a ward of the Court of Wards by a promise under Contract Act, s. 25, clause 3, to pay a debt which is barred by limitation.

APPEAL against the decree of E. C. Rawson, Acting District Judge of Vizagapatam, in original suit No. 1 of 1893.

The plaintiff sued to recover a sum of money advanced in 1879 by his father to the deceased father of the defendant, who was a minor under the Court of Wards and was represented in the suit by the agent to the Court of Wards.

The District Judge dismissed the suit as barred by limitation.

The plaintiff preferred this appeal.

*Sankaran Nayar* and *Sundara Ayyar* for appellant.

*Mr. E. B. Powell* for respondent.

JUDGMENT.—The suit is to recover a sum of Rs. 6,583-13-6 as balance due under the document A, alleged to have been executed by the defendant's father to plaintiff's father on the 29th September 1879, for Rs. 7,000 repayable on 21st July 1880 with interest at 6 annas per cent. per mensem. The Judge has dismissed the suit, finding (1) that the genuineness of A is not proved; and (2) that the claim is barred by the law of limitation.

A number of letters were produced before the Judge as containing acknowledgments of the debt, and therefore saving the suit from the time bar. The Judge rejected these letters as inadmissible by reason of their not bearing a one-anna stamp under article 1 of schedule I of the Stamp Act. It is contended for appellant that, in thus holding, the Judge was in error—a contention that must be allowed to be good, see *Bishambar Nath v. Nand Kishore*(1),

\* Appeal No. 181 of 1894.

(1) I.L.R., 15 All., 56.

SURYA-  
NARAYANA  
v.  
NARENDRA  
THATRAZ.

*Fatechand Harchand v. Kisan*(1). It is, however, also found by the Judge that even if admitted, the letters would not help the plaintiff, as "there is no evidence worthy of the name" that the defendant's father authorized the writing of the letters. To be of use for saving from the bar of limitation, under section 19 of the Act (XV of 1877) the acknowledgment must be signed "either personally or by an agent duly authorized on this behalf." It is admitted that none of the letters produced are signed by defendant's father, and we agree with the Judge that the evidence is altogether insufficient to support a finding, that those who signed the letters were in fact authorized to do so.

Stress is laid on behalf of appellant on exhibits B to H, in which the debt in question is acknowledged by the Governor's Agent on the death of defendant's father. When the estate was taken charge of by the Court of Wards, and, as appears from exhibits C and G, a sum of Rs. 2,135 was actually paid to the Jeypore Estate "on account of debts due by Srinivasa Bakshi Patro (plaintiff) from Rs. 8,000," which the Bisamkatak Estate (*i.e.*, defendant's estate) owes to him (plaintiff)."

But neither can this payment nor the acknowledgments contained in these letters be of use to plaintiff under section 19 or section 20 of the Limitation Act, as they were not made till after the claim had become barred. It remains to consider whether they are sufficient to revive the plaintiff's claim (supposing it ever to have existed) under section 25 of the Contract Act (clause 3), which makes enforceable a "promise made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits." The question here is, can the Governor's Agent be held to have been the agent of the defendant "generally or specially authorized" to make promises to pay barred debts? Section 17 of Regulation V of 1804, no doubt, authorizes Collectors to liquidate debts due to private creditors from the estates of disqualified proprietors; but the same section contains a proviso "that the permission of the Court of Wards in writing shall have been had and obtained in every instance previously to the payment of any private debt." In the present case the Court

(1) I.L.R., 18 Bom., 612.

of Wards declined to admit the debt and told plaintiff to establish his claim by suit (see Exhibit I). It is clear, therefore, that the Governor's Agent, the officer in the Vizagapatam Agency, corresponding to Collector in the regulation districts, had not authority to bind the minor defendant by promise under clause 3 of section 25 of the Contract Act to pay the plaint debt.

The above findings make it unnecessary to consider whether A is genuine or not. Had it been necessary, we should agree with the Judge in holding that the evidence is altogether insufficient to justify a finding in favour of the plaintiff.

The appeal, therefore, fails and is dismissed with costs.

[REPORTER'S NOTE.—The defendant's estate, Bisankatak, is situated in the Jeypore Zamindari, which is a scheduled district—*vide* Act XIV of 1874, schedule I. By Act XV of 1874, Section 4 and the second schedule, it is enacted that Regulation V of 1804 is not applicable to the scheduled districts. See also the revised rules framed for the guidance of the Governor's Agents in Ganjam and Vizagapatam under the authority of Madras Act XXIV of 1839.]

SURYA-  
NARAYANA  
P.  
NARENDRA  
THATRAZ.

## APPELLATE CIVIL.

*Before Mr. Justice Shephard and Mr. Justice  
Subramania Ayyar.*

PALANI CHETTI (DEFENDANT No. 2), APPELLANT,

1896.  
March 25.

*v.*

SUBRAMANYAN CHETTI AND ANOTHER (PLAINTIFF AND  
DEFENDANT No. 1), RESPONDENTS.\*

*Mortgage—Effect of foreclosure decree passed by a foreign Court—“Lis pendens”—  
Transfer of Property Act—Act IV of 1882, s. 52.*

In 1887 K., who resided at Singapore, mortgaged certain lands in the Madurn district to S., who sued and obtained a conditional foreclosure decree on 13th June 1892 in the Supreme Court of Singapore. This decree became absolute on the 3rd October 1892. On 12th August 1892, K. hypothecated the said land to P. In a suit brought by S :

*Held*, that the decree of a foreign Court cannot directly affect land situated in British India; that at the date of the mortgage there was no decree purporting to operate upon the land; that the doctrine of *lis pendens* was inapplicable.

\* Appeal No. 154 of 1895.