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there is no authority either of texts or of decisions to contravene the obvious meaning.

The plaintiff would also, before he could succeed, have to show that a claim for maintenance, not founded on contract or decree, is an interest in or charge upon the property within the meaning of the Transfer of Property Act. The High Court think it is not. The point has been much discussed at the Bar, but no authority has been produced either way. As the principle on which their Lordships have expressed their concurrence with the High Court goes to the root of the plaintiff's title to maintain this suit, it is not necessary for them to decide the second point. They will humbly advise Her Majesty to dismiss the appeal. The appellant must pay the costs.

Solicitors for the appellant:—Messrs. *T. L. Wilson & Co.*

Solicitors for the respondent:—Messrs. *Pyke and Parrott.*

FULL BENCH.

1899
December 19.

Before Sir Arthur Strachey, Knight, Chief Justice, Mr. Justice Blair and Mr. Justice Burkitt.

ZAMIR HASAN AND ANOTHER (DECREE-HOLDERS) v. SUNDAR AND ANOTHER (JUDGMENT-DEBTORS).*

Execution of decree—Limitation.—Act No. XV of 1877 (Indian Limitation Act), Sections 7 and 8—Minority.

Section 8 of the Indian Limitation Act, 1877, applies only to those cases in which the act of the adult joint creditor is *per se* a valid discharge. *Seshan* v. *Rajagopala* (1) and *Govindram* v. *Tatia* (2) followed. *Hargobind* v. *Srikishen* (3) overruled.

A decree was passed in 1881 in favour of two decree-holders. Subsequently one of the decree-holders died, and the names of his widow and his two minor sons and one minor daughter were entered as his representatives. In 1888 an application was made for execution by the widow on behalf of the minor sons, which was dismissed. In February 1894 the two sons of the deceased decree-holder being still minors made another application for execution through one Aijaz Husain. *Held* that section 7 of the Limitation Act applied, and that this application was not time-barred. *Lolit Mohun Misser* v. *Janoky Nath Ray* (4) and *Pahari* v. *Bhupendra Narain Roy* (5) followed.

* Second Appeal No. 312 of 1897 from an order of C. Rustomjee, Esq., District Judge of Moradabad, dated the 30th January 1897 reversing the order of Pandit Rajnath Sahib, Subordinate Judge of Moradabad, dated the 28th July 1894.

(1) (1889) I. L. R., 13 Mad., 236. (3) Weekly Notes, 1884, p. 58.
(2) (1895) I. L. R., 20 Bom., 383. (4) (1893) I. L. R., 20 Calc., 714.
(5) (1895) I. R., 23 Calc., 374.

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This was an appeal from an order passed in execution of a decree. The original decree was passed on the 12th December, 1881. There were two decree-holders, Musammat Khatun Daulat and Amir Hasan. The latter died, and his widow Musammat Rukkaya and his two sons and one daughter, all three minors, had their names entered in lieu of Amir Hasan's. An application for execution was filed by Musammat Rukkaya on behalf of the minors on the 31st August, 1888, but that application was dismissed on the 25th September, 1888. The next application for execution was filed on the 19th of February, 1894, by one Aijaz Husain on behalf of the two sons of Amir Hasan who at that time were still minors. The judgment-debtors objected, but the Court of first instance (Subordinate Judge of Moradabad) disallowed their objections. On appeal to the District Judge that Court allowed the judgment-debtors' objections, holding that execution of the decree was barred by limitation. The applicants appealed to the High Court. The appeal was laid before a Full Bench in pursuance of a recommendation made by Blair and Burkitt, JJ., in view of the existence of various conflicting rulings on the point in issue, by their order of the 14th November 1899.

Pandit *Baldeo Ram Dave* (with Pandit *Sundar Lal*) for the appellant.

The decree is a joint one in favor of both the decree-holders. An application, if made by one of them or his representatives, will take effect in favor of both the decree-holder, [Article 179 of Act No. *XV of* 1879, Explanation I]. Applications for execution of the decree were, from time to time, made within the period of limitation prescribed by law by one of the decree-holders or by the legal representatives of the other decree-holder, who were of age at the time. The last of such applications was made by them on the 9th November 1888. This application kept the decree alive up to that date in favor of all the decree-holders. For this proposition, I rely upon *Shib Chunder Das* v. *Ram Chunder Poddar* (1); *Doya Moyee Dabee* v. *Nilmoney Chuckerbutty* (2); *Pounampilath* v. *Pounampilath* (3); *Nanda Rai* v. *Raghunandan Singh* (4) and *Wasi Imam* v. *Poonit Singh* (5).

(1) (1871) 16 W. R., 29.
(2) (1876) 25 W. R., 70.
(3) (1880) I. L. R., 3 Mad., 79.
(4) (1885) I. L. R., 7 All., 282.
(5) (1893) I. L. R., 20 Calc., 696.

Although the present application for execution of the decree was made over five years after the 9th November 1888, but as the appellants were minors at the time from which the period of limitation was to be reckoned, that is on the 9th November 1888, and are still minors, they can avail themselves of the provisions of section 7 of the Indian Limitation Act, 1877. There can be no doubt, that the appellants are persons "entitled to make an application" for execution of this decree within the meaning of that section [see section 231 of the Code of Civil Procedure, 1882]. Article 179 of the second schedule to the Indian Limitation Act provides several points of time from which the period of three years shall begin to run. I contend that for purposes of the Limitation Act, 1877, the period which begins from each point is a separate period, and if a person entitled is under a disability at the time when any one of such periods commences, the operation of the Act is suspended during the continuance of the disability by virtue of section 7 of the Act. In support of my contention I rely upon *Har Gobind* v. *Srikissen* (1); *Lachman Prasad* v. *Bhagwan Singh* (2); *Lolit Mohun Misser* v. *Janoky Nath Roy* (3) and *Norindra Nath Pahari* v. *Bhupendro Narain Roy* (4).

The judgment of this Court in *Har Gobind* v. *Srikissen* (1) was reconsidered upon review, and relying upon section 8 of the Indian Limitation Act, 1877, it was set aside by this Court. But section 8 of the Limitation Act applies to cases prior to the institution of a suit. The words in the section are "joint creditors or claimants." It does not apply to "decree-holders." Further, that section is applicable to cases where payment to one of the joint creditors or claimants *per se* discharges the debtor. In case of payment to one of the joint decree-holders it is not the act of the joint decree-holder, but the act of the Court executing the decree, that is intended to operate as a valid discharge. Though a joint decree-holder may accept payment out of Court and grant a receipt in acknowledgment of such payment, yet in the absence of a certificate of satisfaction, the creditor's acknowledgment does not of itself operate as a discharge

(1) Weekly Notes, 1883, p. 63: 1884, p. 58.
(2) Weekly Notes, 1886, p. 49.
(3) (1893) I. L. R., 20 Calc., 714.
(4) (1895) I. L. R., 23 Calc., 374.

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[see sections 231, 257 and 258 of the Code of Civil Procedure, 1882]. This was the view of the law taken by the Bombay High Court in *Govind Ram* v. *Tatia* (1) and by the Madras High Court in *Sheshan* v. *Raja Gopala* (2).

Munshi *Gokul Prasad* (with whom Pandit *Tej Bahadur Sapru*) for the respondents.

If the other decree-holders could take out execution and give a valid discharge, then the decree is certainly barred against the present appellants, *vide* section 8 of Act XV of 1877, which provides only for cases where *all* the decree-holders rest under disability, which is not the case here. The decree in this case having been passed jointly in favour of more persons than one, any one could take out execution and give a valid discharge. The decree was based apparently upon a contract, and a contract can be discharged by any one of the joint promisees without the consent of the others. *Hargobind* v. *Srikishen* (3), *Ramautar* v. *Ajudhia Singh* (4), *The Collector of Shahjahanpur* v. *Surjan Singh* (5), *Surju Prasad Singh* v. *Khwahish Ali* (6), *Banarsi Das* v. *Maharani Kuar* (7), and Act No. XV of 1877, Sch. II, Art. 179, Expl. (1). But the Madras case goes still further. It lays down that to a case like the present neither section 7 nor section 8 would apply. Section 8 of Act XV of 1877 would not apply, inasmuch as it does not contemplate the case of execution-creditors at all, and secondly because in view of section 258, Act XIV of 1882, it is the act of the Court that is intended to operate as a valid discharge. Section 7 does not apply, inasmuch as what is necessary under that section is that either there ought to be one single decree-holder who is a minor, or there ought to be more who are all of them minors, for, otherwise a decree may be barred against the major decree-holders and yet under section 231, Civil Procedure Code, a minor decree-holder may seek execution of the entire decree, thus indirectly benefiting the other decree-holders against whom the decree may have become barred. *Seshan* v. *Rajagopala* (8). See also Mitra on Limitation and *Vigneswara*

(1) (1895) I. L. R., 20 Bom., 383.
(2) (1889) I. L. R., 13 Mad., 236.
(3) Weekly Notes, 1884, p. 58.
(4) (1876) I. L. R., 1 All., 231.
(5) (1881) I. L. L., 4 All., 72.
(6) (1882) I. L. R., 4 All., 512.
(7) (1882) I. L. R., 5 All., 27.
(8) (1889) I. L. R., 13 Mad., 236.

v. *Bapayya* (1). So in this case section 8 does not apply any more than section 7. The case of *Govindram* v. *Tatia* (2), decides that section 8 of Act XV of 1877 does not apply to execution-creditors, but it differs from the Madras case in so far as it holds that section 7 does apply where one of several decree-holders is a minor. As to *Norendra Nath Pahari* v. *Bhupendra Narain Roy* (3), *Lolit Mohun Misser* v. *Janoky Nath Roy* (4) and *Mon Mohun Buksee* v. *Gunga Soondery Dabee* (5) it is submitted that these were cases in which there was only one decree-holder and he was a minor, so that these cases are quite distinguishable from the present.

STRACHEY, C. J.—The lower appellate Court has reversed the decision of the Court of first instance and held the application of these minors barred by limitation on the authority of *Hargobind* v. *Srikishen* (6). That decision applied the provisions of section 8 of the Limitation Act to a case of joint decree-holders. The application of section 8 to such a case has since been more fully considered by the Madras High Court in *Seshan* v. *Rajagopala* (7), and by the Bombay High Court in *Gobindram* v. *Tatia* (2). These Courts have held that section 8 of the Limitation Act applies only to those cases in which the act of the adult joint creditor is *per se* a valid discharge. The Madras High Court in the earlier case pointed out that the question whether one of several decree-holders can enter satisfaction on behalf of all is one of procedure, and a rule of decision must be looked for in the Code of Civil Procedure. They added :—"Having regard to sections 258 and 231, we are of opinion that it is not the act of the joint decree-holders, but the act of the Court executing the decree, that is intended to operate as a valid discharge." I agree with the views expressed in the Madras and Bombay cases, and I think that the decision in *Hargobind* v. *Srikishen* is based on a wrong view of section 8 and ought to be overruled.

The other questions which have been discussed on this appeal relate to the construction to be placed on section 7 of the Limitation Act. The applicants for execution in this case are still

(1) (1892) I. L. R., 16 Mad., 436.
(2) (1895) I. L. R., 20 Bom., 383.
(3) (1895) I. L. R., 23 Calc., 374.
(4) (1893) I. L. R., 20 Calc., 714.
(5) (1882) I. L. R., 9 Calc., 181.
(6) Weekly Notes, 1884, p. 58.
(7) (1889) I. L. R., 13 Mad., 286.

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minors. In 1888 an application was made for execution by their mother, the widow of one of the decree-holders. That application was within time under art. 179 of sch. ii of the Act. By reason of the first explanation to art. 179, that application being made by a representative of one of the joint decree-holders, took effect in favour of all. Under the fourth head of the third column of art. 179, that application became a fresh point for reckoning the period of limitation. At the time when that application was made these present applicants were minors. Their application now in question was not made till February, 1894. The question is, whether they are entitled to the benefit of section 7. There are still other persons jointly interested with them in the decree who are adults and who could not apply on their own behalf by reason of limitation. It has been contended on the authority of *Seshan* v. *Rajagopala* that section 7 would not apply where some only, and not all, of the judgment-creditors are effected by a legal disability. On this point I agree with the Bombay High Court in *Gobindram* v. *Tatia* that no such restriction can properly be placed on section 7. Apart from that I think that the present application is protected by the terms of the section. Two cases decided by the Calcutta High Court and precisely in point have been cited to us. The first of these is *Lolit Mohun Misser* v. *Janoky Nath Roy* (1); and the second is *Norendro Nath Pahari* v. *Bhupendra Narain Roy* (2), I see no reason to dissent from those decisions. The result is that this appeal must be allowed and the decision of the first Court be restored, and the execution will proceed. The appellant will have his costs, including fees on the higher scale.

BLAIR, J.—I entirely concur in the order proposed and for the reasons given by the learned Chief Justice.

BURKITT, J.—I am of the same opinion, and for the same reasons.

Appeal decreed.

(1) (1893) I. L. R., 20 Calc., 714. (2) (1895) I. L. R., 23 Calc., 374.