

terminus a quo is the time when the right to sue accrues. The right of the plaintiff to sue the present defendant could not have accrued until he had received the money from his father on his father's decease. Even if the right of suit were held to accrue on the date of receipt of the money by the father, the suit would still be within the period of six years allowed by Article 120. We, therefore, find the suit was within time, and dismiss the appeal with costs.

Appeal dismissed.

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BEHABI
v.
JAMUNA
KUNWAR.

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July 30.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Aikman.
MATHURA PRASAD AND OTHERS (DEFENDANTS) v. RAMCHANDRA RAO
(PLAINTIFF).*

Hindu law—Joint Hindu family—Money decree against father—Liability of sons who were not parties to decree—Suit for declaration of son's liability.

The plaintiff in a suit upon a bond executed by one Sarju Prasad, obtained a simple money decree against Sarju Prasad. In execution of the decree so obtained, the decree-holder attached certain property as that of his judgment-debtor; but the sons of the judgment-debtor raised objections, and the property was released from attachment. The decree-holder thereupon sued the objectors, seeking to obtain a declaration that the property in question was liable to attachment and sale in execution of his decree.

Held that the suit would lie, and that it was no bar thereto that the plaintiff had omitted to make the sons parties to his original suit. *Muhammad Askari v. Radhe Ram Singh* (1), *Dharam Singh v. Anggn Lal* (2) and *Nitayi Behari Saha Paramanick v. Hari Govinda Saha* (3) followed. *Nuthoo Lall Chowdhry v. Shoukee Lall* (4) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Gulzari Lal* (for whom *Munshi Kalindi Prasad*), for the appellants.

Pandit *Moti Lal Nehru* and *Maulvi Ghulam Mujtaba*, for the respondent.

STANLEY, C.J. and AIKMAN, J.—On the 23rd December, 1897, the plaintiff respondent got a simple money decree against one Sarju Prasad on a bond executed by Sarju Prasad on the 2nd June, 1894. In execution of that decree he attached certain property. On the objection of the appellants, who are alleged

* First Appeal No. 139 of 1901 from an order of H. E. L. P. Dupernex, Esq., District Judge of Cawnpore, dated the 31st of August, 1901.

(1) (1900) I. L. R., 22 All., 307.

(2) (1899) I. L. R., 21 All., 301.

(3) (1899) I. L. R., 26 Calc., 877.

(4) (1872) 10 B. L. R., 200

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by the plaintiff to be members of a joint Hindu family, of which Sarju Prasad was the head and manager, the property was released from attachment. The plaintiff thereupon brought the suit out of which this appeal arises, for a declaration that the defendants appellants, as members of a joint family, are liable to pay the amount due under the decree of the 23rd December, 1897, and that the property specified in the plaint is liable to attachment and sale in execution of the decree.

The defendants pleaded that Sarju Prasad was not the head or manager of the family; that he had been separate from them for twenty years, and that the debt had not been incurred for their benefit.

It may be mentioned that there is nothing in the bond to show that it was executed by Sarju Prasad as manager of a joint Hindu family, and the decree does not purport to have been passed against him in that capacity.

The Court of first instance, without entering into the merits of the case, dismissed the suit as not maintainable, sustaining a preliminary objection to the effect that the plaintiff ought to have made the defendants parties to his original suit if he wished to bind them.

On appeal the learned District Judge held that the suit was maintainable, and remanded the case under the provisions of section 562 of the Code of Civil Procedure for determination on the merits.

The present appeal has been instituted against this order of remand.

The question we have to decide is, whether or not this second suit by the plaintiff is maintainable.

A large number of authorities was cited in argument, which we think it unnecessary to go into in detail. Some of these, for instance, *Nuthoo Lall Chowdhry v. Shoukee Lall* (1) are in favour of the appellants' contention. Others, e.g., *Nitayi Behari Saha Paramanick v. Hari Govinda Saha* (2), are as clearly in favour of the view taken by the lower appellate Court. In this last case Hill, J., at page 684, speaks of "the principle, which indeed has often been recognised before, that a

(1) (1872) 10 B. L. R., 200.

(2) (1899) I. L. R., 26 Cal., 377.

decree-holder may sue to have it declared that the interests of third persons may be made liable for the satisfaction of a decree made in a suit to which they were not parties, although the decree was one in execution of which ordinarily the rights and interests of the judgment-debtor alone could be disposed of." This last-mentioned case is in accordance with decisions of this Court—*vide Muhammad Askari v. Radhe Ram Singh* (1) and *Dharam Singh v. Angan Lal* (2). In this conflict of authority we think we ought to abide by the decisions of our own Court.

The result is that we dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Blair and Mr. Justice Aikman.

TEJPAL (PLAINTIFF), v. GANGA AND OTHERS (DEFENDANTS).*

Act No. VIII of 1890 (Guardians and Wards Act, sections 29 and 30—Guardian and minor—Mortgage by guardian of minor's property—Previous permission of the Court of Wards not obtained—Effect of mortgage.

A mortgage, purporting to bind the estate of a minor, was executed on behalf of the minor by his mother, who was not only the natural guardian of the minor, but a certificated guardian under the provisions of the Guardians and Wards Act, 1890. The guardian, however, had not obtained the permission required by section 29 of the above-mentioned Act.

Held that the mortgage was not void, but if the minor had in fact benefited by the money borrowed, to that extent the minor's estate ought to be held liable before he was entitled to be relieved against the mortgage. *Girraj Bakhsh v. Kazi Hamid Ali* (3) and *Sinaya Pillai v. Munisami Ayyan* (4) followed. *Nizam-ud-din Shah v. Anandi Prasad* (5) distinguished.

THE plaintiff in this case brought a suit for sale upon a mortgage executed in favour of one Hari Ram, deceased, agent of the plaintiff, and Bhawani Ram, the plaintiff's late father, by one Musammatt Ganga on her own behalf and as guardian of her minor son, Charat Singh. Besides being the natural guardian of the minor under the Hindu law, Musammatt Ganga was also a certificated guardian under the provisions of the Guardians and Wards Act, 1890. The mortgage had been made without the permission of the District Judge, as required by the Guardian

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* Second Appeal No. 1241 of 1900 from a decree of W. F. Wells, Esq., District Judge of Agra, dated the 12th of June 1900, confirming a decree of Mursi Rajnath Prasad, Subordinate Judge of Agra, dated the 31st of March 1900.

(1) (1900) I. L. R., 22 All., 307.

(3) (1888) I. L. R., 9 All., 340.

(2) (1899) I. L. R., 21 All., 301.

(4) (1899) I. L. R., 22 Mad., 289.

(5) (1896) I. L. R., 18 All., 378.