

upon payment of the amount secured by the original mortgage.
We dismiss the appeal with costs.

Appeal dismissed.

1915
KESAR
KUNWAR
v.
KASHI RAM.

1915
July, 2.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Piggott.
PREM NATH TIWARI AND ANOTHER (DECREE-HOLDERS), v. CHATARPAL
MAN TIWARI AND ANOTHER (JUDGEMENT-DEBTORS) *

Civil Procedure Code (1908), section 48—Decree in favour of minors—Application for execution 12 years after date of decree—Limitation—Act No. IX of 1908 (Indian Limitation Act), section 6.

Section 6 of the Indian Limitation Act, 1908, only refers to periods of limitation prescribed by the Act itself and has no application to a case where the decree is barred by the provisions of section 48 of the Code of Civil Procedure, 1908. Minority, therefore, is not a ground of exemption from the operation of limitation provided for by section 48 of the Code of Civil Procedure. *Moro Sadashiv v. Visaji Raghunath* (1) dissented from. *Jhandu v. Mohan Lal* (2) and *Ramana Reddi v. Babu Reddi* (3) followed.

THE facts of this case were as follows :—

A decree was obtained by the appellants on the 22nd of May, 1901. They were minors at that time as well as at the time of this application. There were several applications for execution leading up to one on the 6th of February, 1912, which was dismissed on the 3rd of December, 1912. The present application for execution was made on the 27th of May, 1913. The present application was thus a few days beyond twelve years from the date of the decree. The application was contested on the ground that it was barred by limitation. The first court gave effect to the plea, but the lower appellate court allowed the execution. The minor decree-holders appealed to the High Court.

Babu Sarat Chandra Chaudhri and Munshi Iswar Saran for the appellants.

Babu Girdhari Lal Agarwala, for the respondents.

RICHARDS, C.J., and PIGGOTT, J. :—This is an execution appeal. It appears that a decree was obtained by minors on the 22nd of May, 1901. There were several applications for execution leading up to one on the 6th of February, 1912, which was dismissed on the 3rd of December, 1912. The present application for execution was made on the 27th of May, 1913. It thus appears that the last

* Appeal No. 87 of 1915, under section 10 of the Letters Patent.

(1) (1891) I. L. R., 16 Bom., 536. (2) Punj. Rec., 1894, C.J., 489.

(3) (1912) I. L. R., 37 Mad., 186.

application for execution was more than 12 years from the date of the decree. The judgement-debtors resisted execution relying on section 48 of the Code of Civil Procedure. This section provides that "where an application to execute a decree, not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of 12 years" from the various dates specified in the section. It is admitted that had the decree-holders been persons of full age the present application would be clearly barred. It is, however, contended that being minors they are still entitled to execute the decree. The first court allowed the objection of the judgement-debtors. The lower appellate court reversed the order of the court of first instance. The learned Judge of this Court reversed the order of the lower appellate court and restored the order of the court of first instance.

Section 6 of the Indian Limitation Act, No. IX of 1908, provides as follows :—“Where a person entitled to institute a suit, or make an application for the execution of a decree, is at the time from which the period of limitation is to be reckoned, a minor or insane or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed *from the time prescribed therefor in the third column of the first schedule.*” It is admitted that the provisions of this section do not help the present decree-holders. It might have given them a right to execute their decree notwithstanding the expiration of the three years limit laid down in article 182 of the schedule I, but it does not give them any exemption from the provisions of section 48 of the Code of Civil Procedure. In the case of *Moro Sadashiv v. Visaji* (1) SERGEANT, C. J., held in a case similar to the present that section 7 of the former Limitation Act (which corresponds to section 6 of the present Limitation Act), only applied to cases dealt with by the statute itself.

He, however, goes on to say :—“The question referred to us must be decided by the general principles of law as to the disability of minors, to which the provisions of the Code of Civil

1915

 PREM NATH
 TIWARI
 v.
 CHATARPAL
 MAN TIWARI.

(1) (1891) I. L. R., 16 Bom., 536.

1915

PREM NATH
TIWARI

v.

CHATARPAL
MAN TIWARI.

Procedure must, in the absence of anything to the contrary, be deemed to be subject. The general principle is that time does not run against a minor; and the circumstance that he has been represented by a guardian does not affect the question." If we were to accept this statement of the law it would mean that a minor party to a suit through his guardian, whether as plaintiff or as defendant, is not bound to take any of the steps provided by the Code of Civil Procedure within the periods therein limited. For example it would be open to a minor judgement-debtor to reopen by way of appeal a question which had been finally decided years before. Just in the same way if a suit had been decided against a minor he might delay presenting his appeal for many years. The learned Judge of this Court has referred to the judgement of Sir MEREDITH PLOWDEN in *Jhandu v. Mohan Lal* (1), and also to the decision *Ramana Reddi v. Babu Reddi* (2). In our opinion the judgement of the learned Judge of this Court was correct and ought to be affirmed. We dismiss the appeal with costs.

Appeal dismissed.

1915
July, 8.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Piggott.

QASIM BEG (PLAINTIFF) v. MUHAMMAD ZIA BEG (DEFENDANT).*

Act No. IX of 1908 (Indian Limitation Act), schedule I, articles 91, 120—Suit to set aside a mortgage—Mortgage deed executed without consideration and not intended to be operative—Cause of action.

A suit to set aside a mortgage-deed was brought nine years after its execution on the ground that the defendant only recently threatened to bring a suit on the basis of it, though when it was executed it was never intended to be acted upon, no consideration having passed for it. *Held* that the suit was barred by limitation no matter whether article 91 or article 120 of the first schedule to the Limitation Act applied to the suit, the facts entitling the plaintiff to have the document set aside having been known to him from the very outset. *Singarappa v. Talari Sanjivappa* (3) and *Vilhat v. Havi* (4) referred to.

THE facts of this case were as follows :—

The plaintiff brought this suit for a declaration that a mortgage-deed executed by him in favour of the defendant is null and void. He alleged that he and the defendant are relations, and that with

* Second Appeal No. 941 of 1914, from a decree of C. E. Guiterman, Additional Judge of Moradabad, dated the 28th of March, 1914, reversing a decree of Haribar Prasad, Munsif of Haveli, dated the 28th of November, 1913.

(1) *Punj. R.*, 1894 C. J., 489. (3) (1904) I. L. R., 28 Mad., 349.
(2) (1912) I. L. R., 37 Mad., 186. (4) (1900) I. L. R., 25 Bom., 78.