

of the Divorce Court came to the conclusion that legal cruelty had been proved and judicial separation was granted with costs. In our opinion the circumstances of this case show that the petitioner-appellant is entitled to the protection of the court in view of the evidence adduced by her in this case.

For the reasons given above, while we dismiss the appeal of the petitioner for the grant of a decree for divorce, we grant the petitioner-appellant a decree for judicial separation with costs of both the courts.

Appeal dismissed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith*

PANDIT SUKHNANDAN PRASAD SHUKLA (PLAINTIFF-
APPELLANT) *v.* RAJA AHMAD ALI KHAN (DEFENDANT-
RESPONDENT)*

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*Limitation Act (IX of 1908), section 19—United Provinces
Court of Wards Act (IV of 1912), section 52—Acknowledg-
ment—Estate under management of Court of Wards—
Letter signed by Special Manager, Court of Wards, to
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Wards officials communicating Board's acceptance of his
claim to creditor—Letter and post card, whether sufficient
acknowledgment under section 19—Notice under section 17,
Court of Wards Act—Claim put in and admitted by Court
of Wards—Estate subsequently released without discharging
creditor's claim—Limitation—Time from publication of
notice under section 17 up to release of estate, whether to be
excluded under section 52, Court of Wards Act.*

Where a letter to the creditor of the estate under the manage-
ment of the Court Wards, intimating that his claim has been
admitted subject to the confirmation of the Board of Revenue,
is signed by the officer acting under the Deputy Commissioner

*Second Civil Appeal No. 375 of 1934, against the decree of M. Moham-
mad Abdul Haq, Additional District Judge of Lucknow, dated the 20th of
October, 1934, reversing the decree of Babu Mahabir Prasad Varma, Civil
Judge of Lucknow, dated the 30th of May, 1933.

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as Special Manager of the Court of Wards, and it is followed by a post card, by which it is communicated to the creditor that the Board of Revenue has admitted his claim, which is sent under the orders of the Special Manager and is initialed by the head clerk and signed by an ahmad, *held*, that the letter and the post card taken together constitute an acknowledgment of the creditor's claim by the duly authorised agents of the debtor within the meaning of section 19 of the Limitation Act. *Kondanodalu Linga Reddi, minor v. Alluri Saravayudu* (1), *Rashbehari Lal Mandar v. Anand Ram* (2), and *Shivajirao Narayanrao Thorat v. Hari Narayan Tagore* (3), referred to.

Where after the publication of the notice under section 17 of the Court of Wards Act a creditor produces his promissory note and receipt which are admitted by the officer investigating the claims of the creditors and after some time the estate is released from the management of the Court of Wards without the creditor's claim being discharged, he is entitled under section 52 of the Court of Wards Act, to exclude, for the purposes of limitation, the period from the publication of the notice under section 17, Court of Wards Act, to the date of the release of the estate.

Mr. *Manohar Lal*, for the appellant.

Mr. *Ali Zaheer*, for the respondent.

SRIVASTAVA, C.J. and SMITH, J.:—This is a second appeal from a decision dated the 20th of October, 1934, of the learned Additional District Judge of Lucknow by which he allowed an appeal from a decision dated the 30th of May, 1933, of the learned Subordinate Judge of Lucknow.

The facts briefly stated are that on the 19th of September, 1928, Raja Mohammad Mehdi Ali Khan executed a promissory note for Rs.1,200 in favour of one Sukhnandan Prasad. On the 3rd of October, 1928, he executed another promissory note in favour of Sukhnandan Prasad for Rs.300. Each of the promissory notes carried interest at 2 per cent. per mensem. The estate of Raja Mohammad Mehdi Ali Khan was afterwards taken under the management of the Court of Wards with effect from

(1) (1910) I.L.R., 34 Mad., 221.

(2) (1915) I.L.R., 43 Cal., 211.

(3) (1920) 58 I.C., 319.

the 25th of April, 1931. Raja Mohammad Mehdi Ali Khan died on the 6th of August, 1931, but the estate remained under the management of the Court of Wards until the 21st of March, 1932. It was then released, but was again taken under Court of Wards' management with effect from the 2nd of April, 1932, and was finally released on the 1st of October, 1932. The present suit was brought on the 12th of January, 1933, against Raja Mohammad Ahmad Ali Khan, the son of Raja Mohammad Mehdi Ali Khan, on the basis of the two promissory notes referred to above. It was, of course, *prima facie* barred by time, but it was sought to extend limitation in two ways:

- (1) by the operation of the provisions of section 52 of the U. P. Court of Wards Act (IV of 1912),
- (2) by an acknowledgment of the plaintiff's claims which is said to have been made by the Deputy Commissioner as Special Manager of the Court of Wards during the first period of the Court of Wards management.

The suit was resisted in the trial court also on the ground that Raja Mohammad Mehdi Ali Khan did not execute the promissory notes, and did not receive any consideration under them. Those pleas were found against the defendant by the trial court. That court held that under the provisions of section 52 of the Court of Wards Act the plaintiff was only entitled to the benefit of the first period during which the estate was under the management of the Court of Wards, and it accordingly held that limitation was not saved by the provisions of that section. It found, however, that there had been an acknowledgment of the debts by the Deputy Commissioner on the 3rd of February, 1932, and that that acknowledgment operated under section 19 of the Limitation Act to start a fresh period of three years from that date. The result therefore was that the learned Subordinate Judge decreed the plaintiff's suit in full. The defendant appealed. A preliminary point

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arose as to whether the appeal was properly presented within time. That point was decided in favour of the defendant-appellant before the learned District Judge by a separate order dated the 2nd of June, 1934. On the appeal coming up for hearing before the learned Additional District Judge the plea of want of consideration was again raised, but was not strongly pressed, and was rejected by the learned Additional District Judge. On the point of limitation, however, he took the view that limitation was saved neither under the provisions of section 52 of the Court of Wards Act, nor by any valid acknowledgment of the debts by the authorities of the Court of Wards. He accordingly allowed the appeal and dismissed the plaintiff's suit. The plaintiff has now preferred this second appeal.

Before us the question has again been raised whether the defendant's appeal in the court below was within time. The plaintiff-appellant contends that it was not. As regards the suit, the contention on behalf of the appellant is that limitation for it was saved both by the provisions of section 52 of the Court of Wards Act and by the alleged acknowledgment of the debts by the authorities of the Court of Wards during the first period when the estate was under management.

As regards the question whether the defendant's appeal in the court below was within time, there seems to us to be little or no difficulty. The judgment of the first court was dated the 30th of May, 1933, and we are told that the vacation that year in the subordinate civil courts began on the 3rd June and ended on the 2nd July. The appeal could therefore have been presented on the first opening day, the 3rd July, 1933. An appeal was, in fact, put in on that day, but it was not accompanied by copies of the judgment and of the decree, and it was accordingly returned for proper presentation by an order of the District Judge dated the 7th of July, 1933. The copies were applied for on the 3rd of July, 1933, that is to say they were applied for on the last day of limitation. The copies were ready on the 12th July

and delivery of them was taken on the 13th July. The appeal was presented again on that date and was admitted on the 17th of July, 1933. It appears, though no mention of this fact was made to us at the hearing of the appeal, that there was a deficiency in the court fee. This was ordered on the 17th of July, 1933, to be made good within a week, and the record shows that the deficiency was made good within the time allowed.

As we have said, the copies of the judgment and decree were applied for just within limitation, and the appeal was filed on the day after the copies were ready. We think that the appellant (the defendant) before the court below was clearly entitled, for the purpose of saving limitation, to the period from the 3rd to the 12th of July, 1933, inclusive, and that as the appeal was presented again on the 13th of July, 1933, it was within time.

The question whether the present suit was within time presents greater difficulties. As we have said, the two promissory notes were executed respectively on the 19th of September, 1928, and the 3rd October, 1928. A suit on the earlier promissory note, in the absence of any circumstances extending limitation, would therefore have had to be instituted at the latest on the 19th of September, 1931, and a suit on the second promissory note would have had to be instituted at the latest on the 3rd of October, 1931, but the present suit, which combines both the promissory notes, was instituted on the 12th of January, 1933. We have already set forth the two modes by which it is sought on behalf of the plaintiff-appellant to bring the suit within time. We shall deal first with the question whether there was any acknowledgment of the plaintiff's claim within the meaning of section 19 of the Limitation Act.

On the 27th of October, 1931, a letter (exhibit 19), in the following terms, purporting to be from the Deputy Commissioner of Sultanpur, was sent to the plaintiff:

"The claim has been admitted and awaits confirmation by the Board of Revenue. Under section 19 of the Court of

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Wards Act of 1912, the rate of interest has been reduced to 6 per cent. per annum and two years have been fixed under the same section for its liquidation."

This letter was signed for the Deputy Commissioner by Saiyid Ali Zamin, who was performing the functions of Special Manager of the Court of Wards (vide the evidence of the plaintiff's first witness, Tirbeni Sahai, the head clerk of the Sultanpur Court of Wards). This letter was followed up by a post card (exhibit 18), which is dated the 3rd February, 1932, but which appears to have been posted on the 3rd of March, 1932. Possibly the post card was dated the 3rd February instead of the 3rd March by mistake. In any case this is not a matter of material importance. This post card, which is in the vernacular, runs as follows:

"Bahukm janab Special Manager Sahib Bahadur Court of Wards, Sultanpur. Mashmule misil numbari 4 36/40 darbare manzuri claim Sukhnandan Prasad Shukul, Narhai, Lucknow.

Mundarje muqadma numbari 4 36/40 men apko qalimi hai ki apka claim babat pronote pandrah sau mai sud manzur hua hai lekin sharah sud hash dafa 19(3) Court of Wards Act 9 October, sanh 31 Tswi se chhe fisadi par kar diya gaya hai adaigi ander do sal hi jaegi."

Beneath this appear the words:

"Dastkhat janab Special Manager Sahib Bahadur."

Below this appear some initials and below the initials the words:

"Baqalam Dildar Ali."

The initials, it appears from the evidence of Tirbeni Sahai, are Tirbeni Sahai's. He says that the post card was written under the orders of the Special Manager.

The contention for the defendant-respondent is that the letter of the 27th of October, 1931, cannot be regarded as an unequivocal acknowledgment of the plaintiff's claims inasmuch as the confirmation of the Board of Revenue was awaited. As regards the post card, exhibit 18, it is contended that as it bears only the initials of the head clerk, Tirbeni Sahai, and the signature of Dildar Ali, who it appears from the evidence of Tirbeni Sahai,

was only an ahlmad of the Court of Wards, it cannot operate as an acknowledgment duly signed by an agent of the defendant. In our opinion, the letter, exhibit 19, and the post card, exhibit 18, taken together operate as an acknowledgment signed by duly authorised agents of the defendant of the plaintiff's claims. It is in evidence, as we have said, that the letter, exhibit 19, was signed by the officer acting under the Deputy Commissioner as Special Manager of the Court of Wards, and it is also in evidence that the post card, exhibit 18, by which it was communicated to the plaintiff that the Board of Revenue had admitted his claims, was sent under the orders of the Special Manager and was initialed by the head clerk and signed by an ahlmad. We, therefore, think that these two documents taken together constitute an acknowledgment of the plaintiff's claims by the duly authorised agents of the defendant within the meaning of section 19 of the Limitation Act. As to the power of the Court of Wards to make acknowledgments operative under section 19 of the Limitation Act, we were referred to the following cases :

Kondamodalu Linga Reddi, minor, under the protection of the Court of Wards represented by *the Collector of Godavari v. Alluri Sarvarayudu* (1); *Rashbehari Lal Mandar v. Anand Ram* (2); and *Shivaji-rao Narayanrao Thorat v. Hari Narayan Tagare* (3).

Both the documents in question, however, were written after the expiration of three years from the date of both the promissory notes in question. They would, therefore, not operate as an acknowledgment "before the expiration of the period prescribed for a suit" on the promissory notes, unless it can be shown that the period of limitation had been in some way extended quite apart from the question of acknowledgment. To this extent the question of extension by acknowledgment is interwoven with the question of extension by the provisions of section 52 of the Court of Wards Act. That section runs as follows :

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"When the Court of Wards after assuming the superintendence of the property of a ward releases the same without discharging the liabilities thereof in the manner provided in Chapter IV, the time from the publication of notice under section 17 to the date of such release shall be excluded in computing the period of limitation applicable to suits or applications for the recovery of all claims outstanding against the ward at the date of such notice."

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The publication of the notice under section 17 of the Act when the estate was first taken under the management of the Court of Wards was made on the 25th of April, 1931. It is clear from the evidence of Tirbeni Sahai that the plaintiff's promissory notes and receipts were produced, and were signed by B. Sri Nivas, a Deputy Collector, who was appointed by the Deputy Commissioner to investigate the claims of the creditors. The defendant's estate was released on the first occasion on the 21st of March, 1932, without the plaintiff's claims being discharged, and there can be no doubt that for the purposes of limitation the plaintiff was entitled to exclude the period from the 25th of April, 1931, to the 21st of March, 1932, a total period of 10 months and 27 days. In this way a suit on the basis of the earlier promissory note would have been in time up to the 16th of August, 1932, and a suit on the second promissory note would have been in time up till the 30th of August, 1932. The letter (exhibit 19) and the post card (exhibit 18) were therefore written before the period of limitation for a suit on the promissory notes had expired.

Taking the view we do that limitation for the suit was saved under the provisions of section 19 of the Limitation Act, it is not really necessary for us to go into the question whether the plaintiff was entitled to exclude the second period, as well as the first, during which the estate was under the management of the Court of Wards. On the second occasion the period was from the 2nd of April, 1932, to the 1st of October, 1932, a period of 5 months and 28 days. It is admitted that during that period the plaintiff did not again make any claim under section 17 of the Act, but it was pointed out on his behalf

that under section 17(1) of the Act he had six months in which to make his claim, and that the estate was finally released just before the period of six months had expired from the date of the second assumption of charge by the Court of Wards. In these circumstances, it was contended, the plaintiff cannot be saddled with any disability on the ground that he did not make a second claim under section 17. This argument has some force, though, as the learned Additional District Judge has pointed out, the notification under section 51 of the Act relating to the second release of the property was not published until the 29th of October, 1932, though the actual date of the release was notified as the 1st October. In these circumstances it is clear, as the learned Additional District Judge pointed out, that the plaintiff did not intend to make any second claim within six months from the date of the second assumption of charge by the Court of Wards, since he was apparently unaware until some time after the expiration of that period that the estate was going to be finally released.

Another argument on behalf of the plaintiff is that section 52 is quite general in its terms and relates to all claims outstanding against the ward at the date of the publication of the notice under section 17, and is not limited to claims which have been notified under that section. It is argued therefore that although he did not again notify his claims when the Court of Wards took over the estate on the second occasion, the plaintiff was nevertheless entitled to the benefit of the second period of 5 months and 28 days. Adding 5 months and 28 days to 10 months and 27 days, we get a total of 16 months and 25 days, and if the whole of that period be excluded under the provisions of section 52 of the Act, a suit based on either or both of these promissory notes would have been within time on the date of the present suit (12-1-1933).

It seems to us that reading the provisions of section 52 strictly, there is a good deal to be said for the contention that for the purposes of limitation the plaintiff was

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entitled to exclude both the periods during which the estate was under the management of the Court of Wards, but we do not think it necessary definitely to decide that point since in our view limitation for the suit was saved under section 19 of the Limitation Act by the acknowledgment of the plaintiff's claims by the Court of Wards.

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In the result we allow this appeal, set aside the decision of the learned Additional District Judge, and restore the decree that was passed in the plaintiff's favour by the learned Subordinate Judge. The plaintiff is awarded his costs throughout.

Appeal allowed.

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*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith*

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RANI KANIZ ABID, TALUQDARIA (PLAINTIFF-APPELLANT) v.
MURTAZA HUSAIN KHAN AND OTHERS (DEFENDANTS-
RESPONDENTS)*

Vendor and purchaser—Sale of property subject to mortgage—Mortgage subsequently declared invalid—Purchaser entitled to the benefit of property being exonerated from mortgage charge—Vendor, whether entitled to participate in the benefit accruing—Civil Procedure Code (Act V of 1908), order XLI, rule 22—Cross-objections—Suit wholly dismissed—Cross-objections, if necessary—Transfer of Property Act (IV of 1882), section 82—Lis pendens—Applicability of rule of lis pendens to auction sales—Res judicata, rule of.

Where property has been sold subject to a mortgage which after the completion of the sale is declared invalid, the purchaser is entitled to the benefit accruing to the property from its having been exonerated from the mortgage liability. The vendor has no claim, in such a case, to participate in any benefit which the purchaser may derive from his purchase. *Izzat-un-nissa Begam v. Kunwar Partab Singh (1)*, followed.

*First Civil Appeal No. 8 of 1934, against the decree of Dr. Chaudhari Abul Majd Mohammad Abdul Azim Siddiqi, Civil Judge of Bara Banki, dated the 23rd of December, 1932.