

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice  
Nánabhái Haridas.*

YEKNA'TH RA'MCHANDRA, (ORIGINAL PLAINTIFF), APPELLANT, v.  
WA'MAN BRAHMA'DEV, (ORIGINAL DEFENDANT), RESPONDENT.\*

1885.  
December 21.

*Limitation Act XV of 1877, Sec. 8—Cause of action, accrual of, during minority—  
Minor's right to sue after attaining majority.*

The plaintiff having attained majority on the 11th March, 1882, sued the defendant, within three years from that date, upon a bond obtained in 1872 by his mother and guardian in the plaintiff's name alone. The defendant contended that the plaintiff's brother, who was capable of giving a valid discharge to his debtors, having failed to sue within proper time, the suit was barred. On reference to the High Court,

*Held*, that the suit was not barred. The plaintiff's brother not being a party to the bond, section 8 of the Limitation Act XV of 1877 would not apply. The bond was passed to the plaintiff alone, and the right of action accrued to him on the 8th July, 1873. Being then a minor, time did not begin to run until he attained his majority.

THIS was a reference by S. Tagore, District Judge of Sholápur-Bijápur, under section 617 of the Civil Procedure Code (Act XIV of 1882). The plaintiff sought to recover the sum of Rs. 115-10-0, being balance of principal and interest due on a bond passed by the defendant on the 8th July, 1872. The plaintiff alleged that, at the time the bond was passed, he was a minor; that the bond had been taken in his name by his mother, Yamunábái, the administratrix of his property; that he did not attain his majority until the 11th March, 1882, and that, therefore, the claim was not barred. Defendant contended that the bond had been taken by the plaintiff's mother in her own name as guardian; that the plaintiff had an undivided brother named Keshav, then living, who was undivided in interest from him; that the said Keshav was then of age, and could have given a valid discharge to the debtors; and that neither the plaintiff's mother nor brother having sued in proper time, the plaintiff's claim was barred by limitation.

The question referred for decision was :—Whether, under the circumstances stated above, the claim was time-barred ?

The District Judge of Sholápur-Bijápur was of opinion that the claim was barred, holding that a discharge could have law-

\*Civil Reference, No. 9 of 1885.

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fully been given by Keshav, notwithstanding anything in the certificate.

*Náráyan Ganesh Chandávarkar* for the plaintiff:—The bond was obtained in the plaintiff's name alone, and his elder brother was not a party to it. The right to sue on the bond, therefore, belonged to the minor plaintiff: see *Khodabux v. Budree Narain*<sup>(1)</sup>. The fact that a minor is for a time represented by a guardian does not remove his disability: see *Anantharámá Ayyan v. Karuppanan*<sup>(2)</sup>. This suit is within time, being brought within three years from the date of the plaintiff's attaining his majority.

There was no appearance for the defendant.

SARGENT, C. J.:—As Keshav (plaintiff's brother) was not a party to the bond, section 8 of the Limitation Act XV of 1877 has no application. The bond was passed to the plaintiff alone by his mother as guardian; and the right of action accrued to him on the 8th July, 1873. Being then a minor, time did not begin to run until he attained his majority on the 11th March, 1882. The suit is, in our opinion, therefore, not barred.

(1) L. L. R., 7 Cal., 137.

(2) L. L. R., 4 Mad., 119.

## ORIGINAL CIVIL.

*Before Mr. Justice Scott.*

1886.  
February 12.

SHA'PURJI NOWROJI POCHA'JI, PLAINTIFF, v. BHIKA'IJI,  
DEFENDANT.\*

*Limitation Act XV of 1877, Sec. 10—Express trust—Administration suit—Executor—Suit for an account against an executor or his representative.*

R. died in 1865, leaving a will of which his nephews P. and S. were the executors. His will provided that after payment of all debts, &c., the residue of his property should remain in the hands of the executors, who were "to maintain the family in the same manner as I used to maintain the family in my house." After the death of both the executors the residue was to be apportioned among the children of his nephews in equal shares. On the death of the testator, P. took possession of the estate, and died on the 10th January, 1876. S. remained passive until the 27th August, 1884, when he took out probate of R.'s will. On the 23rd January, 1885, he filed the present suit against the defendant as widow and administratrix of P., praying for an account of the estate of R. that had come to

\*Suit, No. 22 of 1885.