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MORO SADÁSHIV v. VISÁJI RAGHUNÁTH.

"The applicant made the present application on the 17th December, 1890, within three years after he attained majority."

The point submitted for the opinion of the High Court was whether the application of the 13th December, 1890, (being made after the expiration of twelve years from the date of the decree) was time-barred.

The District Judge's opinion was that it was time-barred under section 230 of the Civil Procedure Code (Act XIV of 1882).

There was no appearance for the parties in the High Court.

SARGENT, C. J.:—Section 7 of the Statute of Limitations, strictly speaking, only applies to the cases dealt with by the statute itself. The question referred to us must be decided by the general principle of law as to the disability of minors, to which the provisions of the Civil Procedure Code 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—*Mon Mohun Buksee* v. *Gunga Soondery Dabee*[1], *Jagjivan Amirchand* v. *Hasan Abraham*[2].

Order accordingly.

(1) I. L. R., 9 Calc., 181. (2) I. L. R., 7 Bom., 179.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Parsons.

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September 21.

VYA'NKA'JI, (ORIGINAL PLAINTIFF), APPELLANT, *v.* SARJA'RA'O APA'JI-RA'O, (ORIGINAL DEFENDANT), RESPONDENT.*

Pensions Act (*XXIII of* 1871), *Secs.* 3, 4 *and* 6—*Meaning of the word "pension"*—*Suit for a cash allowance payable by an inámdár*—*Necessity of Collector's certificate.*

Plaintiff sued, as the trustee of a *devasthán*, to recover the amount of a cash allowance attached to the worship of certain idols in the village of Aukli. The plaintiff alleged that the defendant, who was the *inámdár* of the village, received its revenues subject to the payment of the allowance in question, and that he had wrongfully appropriated the latter for the three years preceding suit.

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Held, that the allowance in question was "a grant of money" within the meaning of section 4 of the Pensions Act (XXIII of 1871), and that the suit would not lie in the absence of the Collector's certificate, though Government was not a party to the suit.

SECOND appeal from the decision of T. Hamilton, Acting District Judge of Belgaum, in Appeal No. 233 of 1889.

The plaintiff sued, as the manager of a *devasthán* (or religious endowment), to recover the sum of Rs. 135-7, being the amount of a cash allowance attached to the worship of certain idols in the village of Ankli. He alleged that the defendant, who was the *inámdár* of the village, received its revenues subject to the payment of the allowance in question, and that he had wrongfully appropriated the latter for the years 1885 to 1888.

The Court of first instance awarded the plaintiff's claim.

On appeal, the District Court raised, of its own motion, the following issue:—Whether the suit would lie in the absence of a certificate from the Collector, as required by section 6 of the Pensions Act (XXIII of 1871)?

The District Court found this issue in the negative, and rejected the plaintiff's claim.

Against this decision the plaintiff appealed to the High Court. At the hearing of the appeal the plaintiff produced the certificate required by the Pensions Act.

Ganesh Rámchandra Kirloskar for the appellant.

Mánekshán Jehángirshán for the respondent.

The following authorities were cited in argument:—*Rávji* v. *Dádáji*[1]; *Bábáji* v. *Rájárám*[2]; *Vásudev* v. *The Collector of Ratnágiri*[3]; *Mahárával Mohansingji* v. *The Government of Bombay*[4]; *Gurushidgavda* v. *Rudragavdati*[5].

JARDINE, J.:—This suit was brought by the plaintiff, as manager of the shrines of two deities, to recover from the defendant, the *inámdár* of the village of Ankli, the amount of a cash allowance for certain years, which, it is pleaded, is due to the shrines. The cash allowance, or *nemnuk*, appears to be a charge on the village

(1) I. L. R., 1 Bom., 523.
(2) I. L. R., 1 Bom., 75.
(3) I. L. R., 2 Bom., 99.
(4) L. R., 8 I. A., 77.
(5) I. L. R., 1 Bom., 533

lands, and to have existed before the date of the grant of *inâm* to the defendant's family. The defendant now holds the village on a *sanad* from the British Government, which contains a condition that the *inámdár* "shall have no claim to any alienations of land or cash more ancient than the grant of the village, all of which shall be permitted to be enjoyed, under such rules as Government may frame from time to time, till such time as they may finally escheat to the British Government." It is not clear from the judgments how the title of the shrines to the *nemnuks* originated; but it has been admitted by Mr. Kirloskar, for the plaintiff-appellant, that it must have been by grant of a former Government.

The plaintiff obtained a decree, in the original Court, on the merits. But, in appeal, the District Judge rejected the claim on the ground that the suit would not lie without a certificate from the Collector, under the Pensions Act XXIII of 1871. This issue, raised by the District Judge of his own motion, is the only question argued before us in second appeal.

Mr. Kirloskar has admitted that the claim comes within the words of section 4 of the Act, but argues that it is really excluded from the subject-matter. It is settled that this enactment is to be construed strictly—*Rávji* v. *Dádáji*[1]; *Gurushidgavda* v. *Rudragavdati*[2]. Mr. Kirloskar points out that, as the cash allowance is payable by the *inámdár*, it is not, as he contends, within the inclusive section 3. But the inconclusive verb "includes" is not exhaustive—*Balvantráv* v. *Purshotam*[3]; and in the Pensions Act, section 3 is an extension of the ordinary meaning of the expression "grant of money or land revenue," as said in *Rávji* v. *Dádáji* and is so treated by the Privy Council in *Maháraval Mohansingji* v. *The Government of Bombay*[4], not as limiting the meaning of section 4. That section in unmistakeable terms is more comprehensive than the preamble; and in *Panchanada* v. *Nilakanda*[5], Turner, C.J., remarks that the Pensions Act contemplates money payments

(1) I. L. R., 1 Bom., at p. 529.
(2) *Ibid.*, at p. 533.
(3) 9 Bom. H. C. Rep., 106.
(4) L. R., 8 I. A., at p. 86.
(5) I. L. R., 7 Mad., at p. 195.

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to be received through the Collector, or recovered from persons bound to pay revenue; adding that the decision in *Vásudev* v. *The Collector of Ratnágiri*(1) is in accordance with this view. In *Bábáji* v. *Rájárám*(2), this Court, in construing section 4, did not narrow the ordinary grammatical meaning of that section so as to exclude suits between private persons.

We are of opinion that the present claim comes within the Pensions Act, 1871; but as the plaintiff succeeded in the original Court, where the objection of the want of the certificate was not taken, and as the certificate has been produced here, we reverse the decree of the District Court and remand the appeal for trial on the merits. The appellant to pay the costs in this Court; other costs to be costs in the cause.

Decree reversed.

(1) I. L. R., 2 Bom., 99 : S. C. L. R., 4 I. A., 119.

(2) I. L. R., 1 Bom., 75, at p. 79.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1891. *September* 28.

BA'BU MÁDHAV SHÁNBHOG, (ORIGINAL DEFENDANT No. 4), APPELLANT, *v.* VENKATESH MANJÁYA AND OTHERS, (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 1 AND 2), RESPONDENTS.*

Practice—Finding of the Court of first instance—Contrary conclusion by the District Judge without discussion of the grounds—Reversal of the decree—Rehearing.

The District Judge having expressed an opinion, and recorded a finding, without discussing the several grounds on which the Subordinate Judge came to a contrary conclusion,

Held, that the finding of the District Judge ought not to be accepted.

THIS was a second appeal from the decision of Gilmour McCorkell, District Judge of Kánara.

Suit for partition.

The plaintiff, Venkátesh Manjáya, alleged in the plaint that he and defendants Nos. 1 and 2, Náráyan Manjáya and Upendra Manjáya, were brothers, defendant No. 1 being the step-brother

*Second Appeal, No. 576 of 1890.