APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

ACHUT • RAMCHANDRA PAI (ORIGINAL DEFENDANT), APPELLANT, *v.* MANJUNATH VENKATNARNAPPA AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS; MANJUNATH VENKATNARNAPPA AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* ACHUT RAMCHANDRA PAI (ORIGINAL DEFENDANT), RESPONDENT.*

1896. *January* 20.

Execution—Decree—Death of the judgment-debtor leaving minor sons—Widow in possession—Sons not parties to execution proceedings—Sale in execution after judgment-debtor's death—Minor sons represented by their mother and guardian on record—Minor—Guardian—Purchase of judgment-debtor's interest by decree-holder—Subsequent suit by sons to recover the property—Civil Procedure Code (Act VIII of 1859), Sec. 210.

Under section 210 of the Civil Procedure Code (Act VIII of 1859), an execution sale of the property of a deceased judgment-debtor was binding, if the estate of the deceased was sufficiently represented *quoad* such property.

A Hindu judgment-debtor died, leaving a widow and two sons, who were minors. His widow was placed on the record as his heir, and not his sons. Certain property of the deceased was sold in execution. The sale certificate issued to the purchaser stated that he had purchased the right, title and interest of the judgment-debtor in the property. In a suit subsequently brought by the sons,

Held, that they were bound by the sale. The widow of the deceased judgment-debtor, who as natural guardian of the minor sons was in possession of the property, was upon the record, and it was clear that it was the interest of the judgment-debtor, and not that of the widow, that was intended to be sold.

CROSS second appeals from the decision of E. H. Moscardi, District Judge of Kánara, reversing the decree of Ráo Sáhob H. S. Phadnis, Subordinate Judge of Kumta.

On 21st February, 1866, Venkatesh Pai obtained a decree against Venkat for Rs. 951 with interest and costs. Subsequently Venkat died, leaving a widow and two sons (the plaintiffs), who were then minors. Venkatesh had made several ineffectual attempts to execute the decree during the lifetime of Venkat. In the year 1876 he again applied for execution, placing Venkat's widow, and not his sons, on the record. In his application for execution, the judgment-debtor was described as "Venkat, deceased, by his heiress and widow Sundrabai." The application was granted, and the property now in dispute was

* Cross Second Appeals, Nos. 5 and 6 of 1895.

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put up to auction sale. It was purchased by the decree-holder Venkatesh Pai on the 19th September, 1876, and he was put in possession on the 22nd June, 1879.

The certificate of sale granted to him as purchaser ran as follows:—"In the sale of 19th September, 1876, the plaintiff Venkatesh having paid Rs. 1,075 has purchased the right, title and interest in the above-mentioned property of the original defendant Venkat."

After the purchase a partition took place between Venkatesh and his nephew the defendant, and the property in dispute fell to the latter's share.

On the 21st June, 1891, the plaintiffs, who were minors at the time of their father's death and of whom the younger attained majority within three years, brought the present suit against the defendant to recover possession with mesne profits for twelve years.

The defendant pleaded that the sale was binding on the plaintiffs, and that the suit was barred by limitation.

The Subordinate Judge rejected the claim, holding that the sale was binding on the plaintiffs, and that the claim was time-barred.

On appeal by the plaintiffs, the Judge reversed the decree, holding that the claim was not time-barred, and that the plaintiffs were not bound by the sale, not having been parties to the execution proceedings. He, however, directed that the plaintiffs should pay to the defendant Rs. 1,075 principal, *plus* Rs. 1,075 interest, within six months before delivery of the property to them.

Ghanasham N. Nadkarni, with *Ganpat S. Mulgaumkar*, for the appellant (defendant):—We say the Court-sale is binding on the plaintiffs. It took place under the Civil Procedure Code (Act VIII of 1859), section 210. The plaintiffs were then minors, but they were sufficiently represented by their mother and guardian, who was on the record. The certificate of sale clearly shows that what was sold was the estate of the deceased Venkat and not of his widow. The plaintiffs, therefore, cannot impeach the sale

—*Chathakelan* v. *Govinda Karumiar*[1]; *Suryanna* v. *Durgi*[2]; *Haji* v. *Atharaman*[3]. The suit is barred under article 12 of Schedule II of the Limitation Act (XV of 1877).

Narayan G. Chandavarkar, for respondents (plaintiffs) :—The plaintiffs were not parties to the sale. The decree-holder was aware of the existence of the plaintiffs, who were minors at the time of the sale, and yet he omitted to join them as parties. Even supposing that article 12 is applicable, still the suit cannot be held to be barred in the case of the plaintiffs, who attained majority within three years of the institution of the suit.

Section 210 of the Code (Act VIII of 1859) is not materially different from section 234 of the present Civil Procedure Code (Act XIV of 1882). The widow of the deceased judgment-debtor was brought on the record as the heir of the deceased and not as the guardian of the plaintiffs. We submit that the plaintiffs were not represented by the widow, and the sale as against her in her capacity as heir cannot bind the plaintiffs. We submit that the sale is null and void, because the minors were not parties to the proceedings—*Shaik Abdulla Saiba* v. *Haji Abdulla*[4].

FARRAN, C. J.:—On the 21st February, 1866, Venkatesh Pai obtained a money decree for Rs. 951 with interest and costs against Venkat, the father of the plaintiffs. That decree Venkatesh Pai made several attempts to execute during the lifetime of the plaintiffs' father. The last application, which was made in the lifetime of the father of the plaintiffs, was made and granted in 1874.

After the death of the plaintiffs' father, Venkatesh Pai not having then obtained satisfaction again applied, in 1876, to execute his decree. His darkhást mentioned Sundrabai, the mother of the plaintiffs, as the widow and heir of the plaintiffs' deceased father Venkat. The plaintiffs were then minors, but as they were the sons of Venkat, the judgment-debtor, they, and not his widow, were his heirs. The property in suit was put up for sale by the Court and was sold on the 19th of September,

(1) I. L. R., 17 Mad., 186.
(2) I. L. R., 7 Mad., 258.
(3) I. L. R., 7 Mad, 512.
(4) I. L. R., 5 Bom., 8.

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1876. Venkatesh Pai, the decree-holder, purchased it for Rs. 1,075, and a sale-certificate was granted to him as follows:—"In the sale of the 19th September, 1876, the plaintiff Venkatesh having paid Rs. 1,075 has purchased the right, title and interest in the abovementioned property of the original defendant Venkat." Venkatesh Pai was put in possession of the property which he had thus purchased on the 22nd June, 1879. The defendant and appellant Achut Ramchandra Pai, his nephew, now represents him.

The plaintiffs as the heirs of Venkat filed the present suit to recover possession of the property from the defendant on the 22nd June, 1891, just twelve years after Venkatesh Pai had been put in possession. It is not found when the plaintiffs respectively attained their majority, but their ages as given in the plaint are not challenged. According to that statement the younger plaintiff became of age within three years of the date of suit. It is not denied that the decree in execution of which the sale took place is binding on the plaintiffs as the sons of Venkat.

The Subordinate Judge upon these facts dismissed the suit, holding that the sale was binding, as the provisions of the old Code of Procedure (VIII of 1859) had been sufficiently observed. The District Judge upon review reversed that decision. He was of opinion that there was an irregularity in the execution proceedings arising from the plaintiffs not being made parties to them, and that that irregularity had prejudiced the plaintiffs' interest. It is somewhat difficult to agree with the District Judge's view upon the latter point having regard to the mortgage to which the premises were at the date of the sale supposed to be subject, but it is unnecessary for us to consider that question, or whether it is open to us, as we are of opinion that the sale is binding on the plaintiffs.

The sale having taken place under the old law, its validity must, of course, be determined by the provisions of that law. Execution under section 210 of Act VIII of 1859 could be taken out, either against the estate of the deceased judgment-debtor or against his legal representatives, and the authoritative rulings under that Act show that a sale of property of a deceased judgment-debtor was binding if the estate was sufficiently repre-

sented *quoad* such property. Here the widow of the deceased, who would be as the natural guardian of his infant sons in possession of the property, was upon the record; and it is clear beyond doubt that it was the interest of the judgment-debtor, and not of the widow, which was intended to be sold. We refer to the cases of *Ishan Chunder Mitter* v. *Bakhsh Ali Soudagar*(1); *General Manager of the Raj Durbhunga* v. *Maharaja Coomar Ramaput Sing*(2); *Bissessur Lall Sahoo* v. *Maharajah Luchmessur Singh*(3); *Sotish Chunder Lahiry* v. *Nil Comul Lahiry*(4); *Dunput Sing Bahadoor* v. *Ranee Rajessuree*(5); and *Chathakelan* v. *Govinda Karumiar*(6). In this view of the law, it is unnecessary to consider whether, assuming that the infant sons of Venkat ought to have been represented upon the execution proceedings, and that the sale was, therefore, invalid, the sale could be treated as a nullity, or whether proceedings were not necessary to set it aside, and, if so, within what period such proceedings should be taken. We must reverse the decree of the District Judge, and restore that of the Subordinate Judge with costs of the appeals in this and the lower appellate Court on the plaintiffs. The cross appeal falls within this judgment. It must be dismissed with costs.

PARSONS, J.:—I concur in dismissing the suit. The estate of the father of the plaintiffs having been sold in execution of a decree in proceedings taken under Act VIII of 1859, the utmost right that the plaintiffs could now have in order to set aside the sale would be to show that the decree was not binding on the estate in their hands by reason of the debt not being one for which that estate was liable. This they have failed to show. No ground, therefore, exists for setting aside the sale, and the plaintiffs have no title to the property in suit.

Decree reversed.

(1) Marsh., p. 614.
(2) 14 M. I. A., 605.
(3) L. R., 6 I. A., 233.
(4) I. L. R., 11 Cal., 45.
(5) 15 Cal. W. R., 476.
(6) I. L. R., 17 Mad., 186.