1892.

BHUKHANDA'S VIJBHUKANDA'S v. LALLUBHAI KA'SHIDA'S.

The sections of the Civil Procedure Code quoted by the District Judge have, in our opinion, no application.

We, therefore, reverse the decree of the District Judge and restore that of the Subordinate Judge. All costs on defendants.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Telang.

1892.
September 27.

VALLABDA'S HIRA'CHAND (ORIGINAL OPPONENT), APPLICANT, *v.* KRISHNA'BA'I, (ORIGINAL APPLICANT), OPPONENT.*

Guardian and Wards Act (VIII of 1890), *Sec.* 41, *Cl.* 3, *and Sec.* 51—*Its applicability to guardians who had ceased to be such before the Act came into force—Guardian and ward.*

The Guardians and Wards Act (VIII of 1890) does not apply to guardians whose powers had ceased by reason of their wards having attained majority, or otherwise, prior to the passing of the Act.

The word 'guardian' in section 51 of the Act means a guardian who was such at the time the Act came into force.

A was appointed a guardian of *B*'s property under the Bombay Minors Act, XX of 1864. *B* attained majority in 1886. In 1892 *B* applied to the District Judge for an order directing *A* to deliver to *B* his property together with the accounts relating thereto. The District Judge made the order, as asked for, under section 41, clause 3 of Act VIII of 1890.

Held, that the District Judge had no jurisdiction under Act VIII of 1890 to make the order in question, as *A* had ceased to be a guardian before the Act came into force.

THIS was an application under section 622 of the Code of Civil Procedure (Act XIV of 1882).

On the 30th January, 1879, the applicant was appointed administrator of the estate of the opponent Krishnábái, then a minor, under section 6 of the Bombay Minors Act, XX of 1864.

Krishnábái attained majority in 1886.

Krishnábái adopted a son, and an arrangement was made between her and the administrator of the estate, under which she was to be paid Rs. 50,000 in cash, and the rest of her estate was to be held by the administrator in trust for the benefit of the adopted son.

* Application No. 108 of 1892 under Extraordinary Jurisdiction.

1892.

VALLABDA'S HIRA'CHAND v. KRISHNÁBA'I.

On 25th March, 1892, she applied to the District Judge under Act VIII of 1890, praying that the applicant should be ordered to deliver up all the property in his hands belonging to her, together with the accounts and other papers relating thereto.

The District Judge granted this application under section 41, clause 3 of Act VIII of 1890, holding that, by section 51, the present Act was applicable to guardians appointed under Bombay Act XX of 1864.

Against this decision the present application was made to the High Court under its Revisional Jurisdiction.

Branson (with him Ráo Sáheb *Vásudev J. Kirtikar*) showed cause:—The applicant was appointed guardian under Bombay Act XX of 1864. He is still in possession of his wards' property. Act VIII of 1890, therefore, governs the present case —*Shri Umabái* v. *Shri Vásudev Pandit* (1); *Rámchandra* v. *Yamunabái* (2); *Chimáji* v. *The Názir of the District Court of Poona* (3).

Inverarity (with him *Mahádev Chimnáji Apté*), *contra*:—Section 51 of Act VIII of 1890 should be read with section 4. Section 4 defines a guardian to be one who was acting as such at the time the Act came into force. Section 51, therefore, does not apply to a guardian who had become *functus officio* before the date of the new Act. In the present case the ward attained majority in 1886, and thereupon the guardian's powers ceased. That being the case, the lower Court had no jurisdiction to make an order under section 41, clause (3) of the new Act for the restoration of the property to the opponent. The present case is governed by Act XX of 1864. And under that Act the Court had no power to pass such an order—*Shri Umábái* v. *Shri Vásudev Pandit* (1); *Ram Dyal* v. *Amrit Lall* (4); *Doolun Singh* v. *Torul Narain Singh* (5).

TELANG, J.:—The Judge in the Court below has expressed an opinion that, under the provisions of Act XX of 1864, it would not have been competent to him to make any such order as he

(1) P. J. for 1885, p. 139.
(2) *Ibid.*, 1879, p. 15.
(3) P. J. for 1880, p. 104.
(4) 9 W. R., 555.
(5) 4 W. R. 3 (Mis. App.).

1892.

VALLABDÁS HIRÁCHAND v. KRISHNA'BÁI.

has made in this case, but that it was open to him to make such order under the Guardians and Wards Act, 1890, section 41, clause (3). Having regard to such cases as those of *Rámchandra* v. *Yamunábái*[1] and *Chimáji* v. *The Názir of the District Court of Poona*[2], and also on general grounds, I am not prepared to say that the Judge's opinion as regards Act XX of 1864 is right. And the decision he refers to, of *Shri Umábái* v. *Shri Vásudev*[3], does not seem to be necessarily applicable to this case. On the other hand, it must be admitted to be at least open to doubt, whether the new Act applies, and I am inclined to hold that Mr. Inverarity is right in his argument, that section 51, when compared with the definition of guardian in the Act, cannot have the force which the District Judge has given to it. But I do not think it necessary to consider either of these points further. It appears from the judgment of the District Judge, that the applicant before us relied upon a "specific arrangement" come to between him and the opponent after the latter came of age, in pursuance of which a sum of Rs. 50,000 was paid by the applicant to the opponent, and the applicant undertook to hold the residue of the property in his hands for the benefit of the son adopted by the opponent. The District Judge declined to go into this point altogether. But I am of opinion that whether the guardian could under ordinary circumstances have set up a *jus tertii* or not, as to which see *Stone* v. *Godfrey*[4] and *Newsome* v. *Flowers*[5], it was the duty of the Court, before making an order for the restoration of property, to inquire into such allegations as were made in this case relating to a "specific arrangement" between the guardian and his quondam ward, whereby the old trust was, to all intents and purposes, satisfied, and a fresh trust created for the adopted son. The order made by the Judge is quite incompatible with the alleged "arrangement," and yet even the factum of that "arrangement" has not been inquired into at all. On this ground I agree to reverse the order of the District Court, leaving the parties to take such steps as they may be advised for enforcing their rights, whatever they may be.

(1) P. J. for 1879, p. 15.
(2) P. J. for 1880, p. 104.
(3) P. J. for 1885, p. 189.
(4) 5 De Gex M. and G., 76.
(5) 30 Beav., 461.

1892.

VALLABDÁS HIRÁCHAND v. KRISHNA'BÁI.

PARSONS, J.:—In January, 1879, the applicant was appointed the guardian of the property of the opponent under Act XX of 1864. The opponent came of age in 1886, and in March, 1892, asked the District Judge of Poona to make an order directing the applicant to deliver to her her property, with all accounts relating thereto. The District Judge, after hearing the applicant, made the order asked for, and the applicant has now applied to this Court to exercise its extraordinary jurisdiction and set aside the order.

The District Judge says that "under the old law, Act XX of 1864, no power to make any such order existed," and he has made his order under the provisions of section 41 of the Guardians and Wards Act, 1890, which he holds applies to the case by virtue of section 51. The question is, whether the Act of 1890 applies to guardians whose powers had ceased by reason of their wards having attained majority, or otherwise, prior to the passing of the Act. This question I determine in the negative.

The words in section 51 "a guardian appointed by or holding a certificate of administration from a civil Court" when read with the definition in section 4 (2), can only mean a guardian who is such at the time the Act comes into force. They cannot mean a guardian who had been appointed or who had held a certificate, but who was no longer a guardian, his ward having come of age and his powers having ceased before the passing of the Act. I am confirmed in this view by the words in section 41 itself. Clause 3 of this section says: "When for any cause the powers of a guardian cease, &c." The word "cease" must here mean cease after the Act comes into operation. I cannot construe it as equivalent to "have ceased," or read the words "or have ceased" after it. On this construction of the Act, I decide that the District Judge had no jurisdiction under the Act of 1890 to make the order in question. Act XX of 1864 must govern the case.

I must also rule that the District Judge was wrong in refusing to enquire into the allegation of the applicant that the opponent had adopted a son and had, after she attained majority, constituted him the trustee of that son in respect of the property in

1892.

VALLABDA'S HIRA'CHAND v. KRISHNÁBA'I.

question. Clearly, if that allegation was proved, and if the applicant had validly been created the trustee of the son, no order could have been passed directing the applicant to hand over property to the creator of the trust in breach of that trust. I would make the rule absolute, but as my learned colleague differs from the view taken by the District Judge as to his power to make the order under Act XX of 1864, in which view I am inclined to concur, this Court simply reverses the order of the District Judge as made without jurisdiction under the Guardians and Wards Act, 1890, leaving it open to the opponent to move the District Court under Act XX of 1864, if so advised. The opponent must pay the applicant's costs that have been incurred in this and the District Court.

Order reversed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Telang.

1892, *October* 5.

VITHALRA'O, (ORIGINAL DEFENDANT No. 5), APPELLANT, *v.* VA'GHOJI, (ORIGINAL PLAINTIFF), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882*), Sec.* 16*—Suit to recover mortgage-debt by sale of mortgaged property out of jurisdiction—Jurisdiction.*

A suit by a mortgagee to recover the mortgage-debt from the mortgagors personally, as well as by sale of the mortgaged property, is one falling within clauses *(c)* or *(d)* of section 16 of the Code of Civil Procedure (Act XIV of 1882), and can only be instituted in that Court within the local limits of whose jurisdiction the mortgaged property is situate.

A Court has no jurisdiction to entertain such a suit relating to property situate outside the local of limits of its jurisdiction.

APPEAL from the decree of Ráo Bahádur Chunilál Mánecklál, First Class Subordinate Judge of Poona, in Suit No. 84 of 1889.

The plaintiff sued to recover Rs. 7,886-2-9 on a mortgage-bond executed by defendants Nos. 1 and 2 on 28th May, 1874.

* Appeal No. 37 of 1891.