

lappa denied Krishnappa's title on 18th October, 1880. But according to the record all that Mallappa did then was to deny execution of the agreement. The pleader for respondents has been unable to point to any evidence showing that Mallappa then denied Krishnappa's title. It is unnecessary, therefore, to determine whether, if Mallappa had then denied Krishnappa's title, or his own permissive occupation, Krishnappa or his sons would have been bound to sue within twelve years from that date. Possibly Krishnappa might then have sued at once to eject Mallappa: or he might have elected to hold to the written agreement. However that might be, we are unable to adopt the view that, taking the agreement of 3rd May, 1880 to be proved, the claim is barred by limitation.

We must, therefore, reverse the decision of the Assistant Judge and remand the appeal for disposal on the merits. If the agreement is proved, then plaintiffs are entitled to succeed so far as limitation is concerned. If the agreement is not proved, then the basis of their claim fails. Costs to be costs in the cause.

Decree reversed and appeal remanded.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

DATTARAM (ORIGINAL PLAINTIFF), APPELLANT, v. GANGARAM AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Guardian—Certificated guardian—Mortgage by such guardian without Court's permission—Validity of such mortgage—Sanction under Civil Procedure Code (Act XIV of 1882), Sec. 305—Guardians and Wards Act (VIII of 1890), Secs. 29 and 30—Act XX of 1864.

Anant was the owner of the property in dispute. He mortgaged it with possession to defendant No. 1 in 1884. Anant died leaving an adopted son Vithal, a minor. Thereupon one Vasudev was appointed by the District Court to be guardian of the person and property of the minor under Act XX of 1864. In September, 1890, Vasudev mortgaged the same property to plaintiff with the sanction of the Subordinate Judge's Court obtained under section 305 of the Code of Civil Procedure (Act XIV of 1882). In 1895 the plaintiff as second mortgagee brought this suit to redeem the earlier mortgage of 1884.

* Second Appeal, No. 1216 of 1897.

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Held, that Vasudev, as certificated guardian, had no power to mortgage the minor's property without the previous permission of the Court which had appointed him to act as guardian, and that the sanction of another Court given under section 305 of the Code of Civil Procedure (Act XIV of 1882) was not sufficient to legalize the mortgage.

Held, also, that such mortgage would have been absolutely void under Act XX of 1864, but was only voidable under section 30 of Act VIII of 1890 at the instance of any other person affected thereby.

Held, further, that defendant No. 1, the original mortgagee, was not affected by the plaintiff's mortgage, and that the only person really affected by that mortgage was Vithal, the owner of the equity of redemption, who was a necessary party to the suit.

SECOND appeal from the decision of Ráo Bahádur Thakurdas Mathuradas, Assistant Judge of Ratnágiri.

One Anant Narayan Apte was the owner of the land in dispute. He mortgaged them to defendant No. 1 by a mortgage-deed dated 13th April, 1884.

Anant died, leaving an adopted son Vithal, a minor.

On the 30th January, 1885, Vithal's natural father Vasudev Krishna was appointed guardian of his person and property under Act XX of 1864 by the District Judge of Ratnágiri.

On the 10th September, 1890, Vasudev mortgaged the minor's property, including the land in dispute, to the plaintiff, with the sanction of the Subordinate Judge of Vengurla granted under section 305 of the Civil Procedure Code (Act XIV of 1882).

In 1895 the plaintiff as puisne mortgagee filed the present suit to redeem the earlier mortgage of 13th April, 1884.

The Court of first instance dismissed the suit, holding that the plaintiff's mortgage was invalid, as it had not been effected with the previous sanction of the District Court under section 29 of the Guardians and Wards Act (VIII of 1890).

This decision was upheld, on appeal, by the Assistant Judge.

His reasons were as follows:—

“The mortgagor Vasudev, who is now dead, was not an ordinary guardian, but a guardian appointed by the District Court under the Bombay Minors' Act XX of 1864. That Act was repealed on the 1st July, 1890, but the appointment of Vasudev as the guardian of the ward Vithal was kept alive by section 2 of the

Guardians and Wards Act, 1890. Before passing the mortgage dated 10th September, 1890, he ought to have obtained the sanction of the District Court under section 29 of the Act. But he did not do so. The mortgage is, therefore, illegal and unauthorized, and confers no right upon the plaintiff: see the cases cited in *Manishankar v. Bai Muli* (1).

“It is said that the mortgage was made for the benefit of the ward and with the sanction of the lower Court under section 305, Civil Procedure Code. Such a sanction, as also such beneficial purpose, assuming that the purpose was beneficial, would not supply the place of the permission of the District Court necessary under the provisions of the Guardians and Wards Act, 1890.”

Against this decision plaintiff preferred a second appeal to the High Court.

V. G. Bhandarkar for appellant:—Section 29 of the Guardians and Wards Act (VIII of 1890) provides, no doubt, that a guardian appointed by the Court cannot mortgage any part of the immoveable property of his ward without the previous permission of the Court. But where the guardian mortgages the property with the sanction of the Court under section 305 of the Code of Civil Procedure, the mortgage is legal and valid. The mortgage is the act of the Court and not of the guardian. Moreover, section 30 of Act VIII of 1890 distinctly provides that the transaction is not absolutely void, but voidable only at the instance of any other person affected thereby. The original mortgagee who resists our claim is not affected by our mortgage. To him it is immaterial who pays off his mortgage money. The only person who can be said to be affected by our mortgage is the minor on whose behalf the guardian professed to act, but he is not a party to the suit.

H. C. Coyaji (with *Manekshah Jehangirshah*) for respondents was not called on.

PARSONS, J.:—The equity of redemption of the property which is sought to be redeemed in this suit from the original mortgagee, who is the first defendant, was mortgaged to the plaintiff by a judgment-debtor, who had obtained a certificate under section 305 of the Code of Civil Procedure, authorizing him to do so. The judgment-debtor, however, was not the real owner of the property, but was the guardian for the suit of the minor

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to whom the property belonged, and he had also been appointed the guardian of his property under the Minors Act, XX of 1864. Under section 29 of the Guardians and Wards Act, 1890, which continued his guardianship and now governs the case, he was prohibited from mortgaging the property of his ward without the previous permission of the Court.

It was first argued that the sanction of the Court under section 305 of the Code of Civil Procedure was sufficient to legalise the transfer, but this clearly is not right, for the Court mentioned in section 29 of the Guardians and Wards Act is, according to the definition contained in section 4 (5), the Court which appointed or declared the guardian in pursuance of an application under this Act, that Court in the present case was the District Court of Ratnágiri, and the guardian had not obtained the permission of that Court to the mortgage. Then it was argued that the mortgage was the act of the Court, and not of the guardian, but the Court does not under section 305 execute any mortgage; all it does is to authorize the judgment-debtor to do what otherwise would be void by reason of the provisions of section 276, *viz.*, to mortgage property while under attachment. The mortgage when effected is the act of the judgment-debtor alone.

Being thus made without the previous permission of the Court the mortgage would under the provisions of the Act of 1864 have been absolutely void and would confer no title at all upon the plaintiff (see *Choksi Motilal v. Mansang*⁽¹⁾). This, however, is not so under the Act of 1890. Section 30 of that Act expressly makes such transfers voidable only. The words used are "voidable at the instance of any other person affected thereby." The only person mentioned in the section is the guardian, so that any other person apparently, except him, would have the right to declare the transfer void, provided he was affected by it. We do not think that the original mortgagee in the present case can be in any way affected by the subsequent mortgage of the equity of redemption. He has a right to his money only, and it cannot make any difference to him whether he is paid by A or B. The other person really affected by the mortgage is the owner of the

(1. P. J. for 1898, p. 5.

equity of redemption, but he has not been made a party to the suit, and we do not know what view he takes of the mortgage. The Judge of the lower Court rightly says that he is a necessary party to the suit (see section 85 of the Transfer of Property Act, 1882) and would have joined him and have proceeded with the suit had he not held the mortgage void.

As we hold that the mortgage is not void, we must reverse the decree of the lower appellate Court and remand the case for a decision on the merits after Vithal has been joined as a defendant. Costs to be costs in the cause, to be apportioned by the Court passing the final decree.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

BAI MANGAL (ORIGINAL DEFENDANT), APPELLANT, v. BAI RUKHMINI
(ORIGINAL PLAINTIFF), RESPONDENT.*

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Hindu law—Daughters—Maintenance—Widowed daughters—Their right of maintenance out of their father's estate.

According to Hindu law, it is only the unmarried daughters who have a legal claim for maintenance out of their father's estate. The married daughters must seek their maintenance from the husband's family. If this provision fails, and the widowed daughter returns to live with her father or brother, there is a moral and social obligation, but not a legally enforceable right by which her maintenance can be claimed as a charge on her father's estate in the hands of his heirs.

SECOND appeal from the decision of Ráo Bahádur V. V. Paranjpe, Additional First Class Subordinate Judge, A. P., at Broach.

One Sanmukhram died, leaving a widow Bai Rukhmini, and a daughter Bai Mangal by another wife.

Bai Mangal was a widow in indigent circumstances, without any provision from her husband's family. She was, therefore, supported by her father during his life-time.

After Sanmukhram's death, Bai Rukhmini filed a suit to recover possession of the deceased's property from Bai Mangal.

* Second Appeal, No. 926 of 1897.