

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice.

1910.
April 14.

MANCHAND PANACHAND GUJAR (ORIGINAL DEFENDANT 3), APPELLANT,
v. KESARI KOM KHUPCHAND AND ANOTHER (ORIGINAL PLAINTIFFS),
RESPONDENTS.*

Limitation Act (XV of 1877), section 8, Schedule II, article 179, Explanation 1—Limitation Act (IX of 1908), section 7—Minor decree-holders—Applications for execution by guardian—Attainment of majority by one decree-holder—Application by guardian takes effect in favour of all—Right of the major decree-holder to give discharge to the judgment-debtor in respect of the judgment-debt.

Two minor sisters, who were born in the years 1881 and 1887, obtained a decree against the defendants in May 1900. The minor decree-holders were represented by a guardian appointed by the Court. The said decree was confirmed by the High Court in appeal in March 1901. Subsequently the guardian presented applications for the execution of the decree in 1904, 1905 and 1906, and while the last application was pending the guardian died. Thereupon the decree-holders presented an application for execution as majors in 1908. The defendants contended that as the elder decree-holder had attained majority, the application by the guardian was, as to her, unauthorized and the execution of the decree was barred as against her. It was further contended that as the elder decree-holder could from the time of her attaining majority make an application and give a good discharge to the judgment-debtor for the decretal-debt without the concurrence of the minor, time had, therefore, run against both under section 8 of the Limitation Act (XV of 1877) or section 7 of the Limitation Act (IX of 1908).

Held that by reason of the first explanation of article 179 of the Limitation Act (XV of 1877) an application made by a representative of one of joint decree-holders takes effect in favour of all. Therefore, though the elder decree-holder had attained majority, the applications made by the guardian as the next friend of the minor decree-holder took effect in favour of both.

Held, further, that the contention under section 8 of the Limitation Act of 1877 or section 7 of the Limitation Act of 1908 was inconsistent with the decisions in *Govindram v. Patia*⁽¹⁾ and *Zamir Hasan v. Sundar*⁽²⁾, the applicability of which had not ceased owing to any change in the words of section 7 of the Limitation Act of 1908.

FIRST appeal from the decision of V. N. Rahurkar, First Class Subordinate Judge of Satara, in an execution proceeding.

* First Appeal No. 102 of 1909.

⁽¹⁾ (1895) 20 Bom. 383.

⁽²⁾ (1899) 22 All. 199.

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The facts of the case were as under :—

Two minor Hindu sisters, Kesari and Thaku, who were born in the years 1881 and 1887 respectively, obtained a decree against three defendants in the Court of the First Class Subordinate Judge of Satara on the 1st May 1900. The minors were represented by one Balaram, a guardian appointed by the District Court of Satara, and he having subsequently died his brother Ramji assumed the management of the minor's estate *suo motu*. The said decree was confirmed by the High Court in March 1901. In the years 1904, 1905 and 1906 the guardian presented applications for the execution of the decree, and while the last application was pending the guardian Ramji died. Thereupon, in the year 1908 the two decree-holders, Kesari and Thaku, filed the present application for execution as majors. At the time of the application the ages of Kesari and Thaku were 27 and 21 years respectively. Kesari being a major in the years 1904, 1905 and 1906 when the guardian presented applications for the execution of the decree, the defendants contended that those applications were made by an unauthorized person, therefore, they did not avail the plaintiffs and owing to this reason the present application was beyond time.

The Subordinate Judge overruled the defendants' objection and allowed execution to proceed for the following reason :—

Kesari and Thaku were joint decree-holders. Under section 231 of the Civil Procedure Code of 1882 Thaku could apply for the benefit of herself and her sister. She was a minor. Section 7 of the Limitation of 1877 or of 1908 would save the bar of limitation even if there had been no previous applications at all (20 Bom. 383; 6 Bombay Law Reporter 647). In this case there were previous applications and the present application which was made within three years from the attaining of majority by Thaku cannot be barred.

Defendant 3 preferred an appeal.

N. M. Patwardhan for the appellant (defendant 3).—

Kesari had attained majority when the applications for execution were made by the guardian. He had therefore no authority to make the applications. Those applications were therefore ineffectual and the present application which is made by Kesari and Thaku is barred by limitation. Further, Kesari having attained majority could give a valid discharge to the judgment-debtor during the

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minority of Thaku under section 231 of the Civil Procedure Code of 1882. Therefore under section 8 of the Limitation Act of 1877 time began to run against Kesari and Thaku both. Supposing they were not joint creditors or claimants under that section, still under the provisions of section 7 of the Limitation Act of 1908 there can be no doubt as to Kesari's right to grant a discharge to the judgment-debtor and the bar of limitation is not saved.

K. N. Kojaji for the respondents (plaintiffs).—

The decree to be executed was a joint decree, therefore, an application for execution made by one joint decree-holder would take effect in favour of both under the first explanation to article 179 of the Limitation of 1877: see the Full Bench ruling of the Allahabad High Court in *Zamir Hasan v. Sundar*⁽¹⁾. With respect to the right of Kesari to give discharge to the judgment-debtor during the minority of Thaku, we contend that the 'discharge' mentioned in section 8 of the Limitation Act of 1877 refers to a discharge which is wholly the act of the party giving the discharge. Here the judgment-creditors were sisters and neither could give a discharge on behalf of the other. The discharge under section 231 of the Civil Procedure Code of 1882 is a power exercised by the Court and not by the party: *Zamir Hasan v. Sundar*⁽¹⁾; *Govindram v. Tatia*⁽²⁾. The change of language in section 7 of the Limitation Act of 1908 has made no difference with regard to the question of discharge. Either section contemplates a case like that of a manager capable of giving a discharge on behalf of the whole joint family. We therefore submit that our present application is within time.

SCOTT, C. J.:—It is contended in this appeal that the learned Subordinate Judge was wrong in holding that an application for execution of a decree which had been passed in favour of two Hindu females during their minority, was not barred.

The application was made in 1908 and at that date the age of the elder decree-holder was 27 and that of the younger decree-holder 21. There had previously been several applications for

(1) (1899) 22 All. 199.

(2) (1895) 20 Bom. 333.

the execution of the decree, for, Ramji, the brother of the deceased guardian of the minors, had in 1904, 1905 and 1906 presented different darkhasts purporting to act as the guardian of both the decree-holders.

Now as a guardian had been appointed for them they did not attain the age of majority until 21 and at the time of the applications in 1904, 1905 and 1906 the younger decree-holder was still a minor.

It is contended that the elder had attained the age of majority and that, therefore, the execution of the decree must be barred as regards her. It is, however, pointed out by the Full Bench in *Zamir Hasan v. Sundar*⁽¹⁾, that by reason of the first explanation of article 179 of the Limitation Act an application, made by a representative of one of joint decree-holders, takes effect in favour of all; therefore, though the elder decree-holder Kesari had attained majority the applications made by Ramji as next friend of Thaku took effect in favour of both.

It is also argued that under section 8 of the Limitation Act of 1877, or, at all events under section 7 of the Limitation Act of 1908, the elder decree-holder Kesari could, from the time of her attainment of majority, make an application under section 231 of the Code of Civil Procedure of 1882 and give a good discharge to the judgment-debtor in respect of the judgment-debt.

That contention, however, is inconsistent with the decisions in *Govindram v. Tabia*⁽²⁾ and *Zamir Hasan v. Sundar*⁽¹⁾, and the applicability of those cases has not ceased owing to any change in the words of section 7 of the Limitation Act of 1908.

I, therefore, think that the learned Judge in the lower Court came to the right conclusion, and I dismiss this appeal with costs.

Appeal dismissed.

G. B. R.

(1) (1899) 22 All. 199.

(2) (1895) 20 Bom. 33.