APPELLATE CIVIL.

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

MAHA'DA'JI HARI LIMAYE, (ORIGINAL PLAINTIFF), *v.* GANPATSHET DHONDSHET AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

1890. *September* 1.

Mortgage-debt—Apportionment by mortgagors—Mortgagee's acquiescence—Liability according to shares.

Mortgagor co-sharers having, after the mortgage transaction, effected division among themselves and apportioned their liability under the mortgage-debt according to their shares, with the acquiescence of the mortgagee,

Held, that though the mortgagee was not bound to recognize the arrangement made by the mortgagors among themselves, still as he appropriated the amounts paid by some of the mortgagors in paying off their respective shares of the mortgage-debt without there being a special direction to that effect from those mortgagors, he was entitled to recover the remainder of that debt from the share of the mortgagor co-sharer by whom it was due.

THIS was a second appeal from the decision of R. S. Tipnis, Acting Assistant Judge of Ratnágiri.

Suit to recover money.

The plaintiff alleged that the three defendants, while they were living as undivided brothers, mortgaged to him, with possession, certain property by a mortgage-bond, dated the 2nd September, 1873, for Rs. 400, agreeing to repay the amount on the 27th September, 1878; that subsequently the defendants repaid to him Rs. 327 for which he had given them a receipt; that the receipt stated that Rs. 221 remained due to the plaintiff for balance of principal; that subsequently, *viz.*, in the year 1882, the defendants effected a division of property among themselves; that defendants Nos. 2 and 3 passed certain bonds to the plaintiff in which their two-third share of the mortgage, including other debts, had been included, and that in the present suit the plaintiff sought to recover Rs. 73-10-8 (that is, a third share of the balance of principal (Rs. 221) mentioned in the receipt), and Rs. 52-5-4, interest thereon, in all Rs. 126, by the sale of a third share of the mortgaged property and from defendant No. 1 personally.

Defendant No. 1 pleaded (*inter alia*) that he alone had paid the amount of Rs. 327 to the plaintiff; that out of this sum Rs. 100

* Second Appeal, No. 615 of 1889.

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was paid in satisfaction of the mortgage-debt; that at the time of division the debts of the family were partitioned with the plaintiff's cognizance; that Rs. 100 of the mortgage-debt fell to his share and Rs. 300 to that of defendant No. 2; that he had paid his share of the debt, and that defendants Nos. 2 and 3 were colluding with the plaintiff.

The Subordinate Judge held that defendant No. 1 was liable to pay the amount claimed by the plaintiff.

Defendant No. 1 appealed to the District Court, and the Acting Assistant Judge having held that defendant No. 1 had not paid his share of the debt, took the account, and amended the Subordinate Judge's decree by awarding to the plaintiff Rs. 19-8-2.

Against the decree of the District Court the plaintiff appealed to the High Court.

Ganesh Krishna Deshmukha for the appellant.

Shámráv Vithal for respondent No. 1.

Náráyan Vishnu Gokhale for the respondents Nos. 2 and 3.

SARGENT, C. J.:—It is admitted or at any rate not in dispute that the defendants apportioned their liability between themselves for the debt found due to the plaintiff in December, 1882, when the account was settled between the plaintiff and the three brothers. No doubt plaintiff was not bound to recognize this arrangement between the brothers; but the evidence shows that he thought proper to do so, as is plain from the bonds passed by defendants 2 and 3 to the plaintiff, which recite the division and the acceptance by the plaintiff from defendants 2 and 3 of Rs. 315-13-4 in discharge of their shares in the *kháta*. It was for him, in the absence of any special directions from defendants 2 and 3, to appropriate the sum so paid as he thought proper to the defendants 2 and 3's shares in the several debts which made up the Rs. 450 found due in 1882—Lindley on Partnership, p. 227. This he has practically done (and that, too, in a manner which was most equitable to the defendants 2 and 3) by appropriating so much as was necessary to pay off their shares of the mortgage-debt. Under these circumstances he is now entitled to recover the remainder of the mortgage-debt by sale of the defendants' one-third share of the mortgaged lands.

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We must, therefore, reverse the decree of the Court below and restore that of the Subordinate Judge, but substituting Rs. 119-10-2 for Rs. 126-0-0, with costs on respondents.

Decree reversed.

APPELLATE CIVIL.

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

1890. *September* 1.

HONA'PA BIN NARASHINVHA SHETTI, (ORIGINAL PLAINTIFF), APPELLANT, *v.* MHA'LPA'I BIN BA'BPA'I AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

The Bombay Minor's Act (XX *of* 1864), *alienation by a person not holding a certificate under—Natural or de facto guardian—Charge of minor's person and property—Jurisdiction of Courts—Bengal Act* (*XL of* 1858).

The Bombay Minor's Act (XX of 1864) does not forbid the natural or *de facto* guardian of a minor not holding a certificate under the Act from disposing of property belonging to a minor.

The meaning of the first section of the Act is that the care of the persons of all minors and the charge of their property shall be, as is expressly provided in the Bengal Act (XL of 1858), subject to the jurisdiction of the Court.

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

Suit to recover the amount of a *hundi*.

Defendant No. 1, Mhálpái, drew a *hundi* in favour of one Mhálapáshetti, who died without having presented the *hundi* for payment. After Mhálpáshetti's death his widow, Padmávatibái, presented the *hundi* for payment, and the drawee dishonoured it. Subsequently Padmávatibái, as the natural guardian of her minor sons, sold the *hundi* to plaintiff, who sued to recover the amount thereof, namely Rs. 576-6-8, from the defendants (the drawer).

The defendants admitted execution of the *hundi*, but contended that Padmávatibái not having obtained a certificate under Act XX of 1864, she was not competent to sell it.

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

* Second Appeal, No. 747 of 1889.