

1916.

PANDURANG
LAXMAN
v.
GOVIND
DADA.

for the applicant here has, however, relied upon *Ishar Das v. Asaf Ali Khan*⁽¹⁾ and *Subbarayudu v. Lakshminarasamma*,⁽²⁾ which undoubtedly support his contention that the judgment-debtor who has transferred his interest in the property to a third person after the Court sale has no right to make an application to have the sale set aside under Rule 89. I have carefully considered these decisions. I regret that I am unable to follow them. These two decisions do not seem to me to be quite consistent with each other; and both of them appear to me to be based either upon too restricted a view as to the object and scope of the Rule or upon an interpretation involving the reading of certain words in the Rule which do not occur therein.

I, therefore, agree that the rule should be discharged with costs.

Rule discharged.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Heaton.

1916.

April 12.

ARJUN RAMJI MHANKAL (ORIGINAL DEFENDANT NO. 1), APPELLANT
v. RAMABAI KOM RAQJI VITHOBA PADWAL AND OTHERS (ORIGINAL
PLAINTIFF AND DEFENDANTS NOS. 2 TO 4), RESPONDENTS.*

*Indian Limitation Act (IX of 1908), sections 3 and 7, Schedule I, Article 142—
Minor—Representative—Death of the minor after majority but pending
disability—Right of personal representative to sue—Limitation.*

Where a minor acquired a cause of action to sue for possession of property and died within three years after attaining majority, his personal representative can, although twelve years have expired since the cause of action accrued, institute a suit on the same cause of action at any time within the three years' period which had already commenced in the life-time of deceased.

⁽¹⁾ (1911) 34 All. 186.

⁽²⁾ (1913) 38 Mad. 775.

* Second Appeal No. 759 of 1914.

In such a suit the deceased must be included in the term "plaintiff" for the purpose of Article 142, for, according to section 3 of the Limitation Act, "plaintiff" includes any person from or through whom the plaintiff derives his right to sue.

SECOND appeal against the decision of M. B. Tyabji, District Judge, Ratnagiri, reversing the decree passed by E. F. Rego, Subordinate Judge at Malwan.

Suit to recover possession.

The property in suit originally belonged to the defendants who sold it to the plaintiff's father-in-law Vithoba on the 15th July 1894. Vithoba leased it to one Vishnu Gopal under a registered Kabulayat for a period of five years. Vithoba had a son Ravji who predeceased him in 1892 leaving him surviving his widow (plaintiff), a minor son Shridhar, and a daughter.

In 1896 Vithoba died.

In 1899 the term of lease in favour of Vishnu expired and since then the defendants remained adversely in possession of the property.

On the 5th August 1910 Shridhar died after having attained majority on the 21st December 1909.

On the 22nd May 1912 the suit was filed by the plaintiff as the heiress of Shridhar to recover possession of the property from the defendants.

The defendants contended *inter alia* that no consideration passed for the sale deed and that the suit was barred by limitation.

The Subordinate Judge held that the suit was barred by limitation though he found plaintiff's title to the property established. He, therefore, dismissed the suit.

The District Judge, on appeal, reversed the decree holding that the suit was in time as having been brought within three years from the date Shridhar attained majority.

1916.

ARJUN
RAMJI
v.
RAMABAI.

1916.

ARJUN
RAMJI
v.
RAMABAI.

The defendant No. 1 appealed to the High Court.

P. B. Shingne and S. M. Varde for the appellant :—
We contend that the claim is barred by time. The privilege to sue given by section 7 of the Limitation Act is personal. The ordinary period of limitation for the suit had already expired before the date of the institution of the suit in this case and while the special period of three years given by the Limitation Act was running the person in whose favour the period ran, died. It is not, therefore, open to his personal representative to claim the benefit of the privilege. The third clause of section 7 of the Limitation Act impliedly excludes the right of the personal representative to stand in the shoes of the deceased. It has been held that the privilege given by the corresponding provision of the earlier Acts was personal: see *Mahomed Arsad Chowdhry v. Yakoob Ally* ⁽¹⁾; *Rudra Kant Surma Sircar v. Nobo Kishore Surma Biswas* ⁽²⁾; *Mahadev v. Babi.* ⁽³⁾

H. C. Coyajee with *A. G. Desai* for respondent No. 1:—
The personal representative can maintain the present suit: see section 3 of the Limitation Act; wherein "plaintiff" is said to include any person from or through whom the plaintiff derives title. Under section 7 of the Limitation Act the title to bring the suit had not been extinguished because the period for instituting the suit had not determined and the right survived to the representative: see also section 89 of the Probate and Administration Act. The correctness of the Calcutta rulings has been doubted by the Madras High Court: see *Subramanya Pandya Chokka Talavar v. Siva Subramanya Pillai.* ⁽⁴⁾

B. V. Desai for heir No. 2 of respondent No. 2 and for respondent No. 3.

⁽¹⁾ (1875) 15 Beng. L. R. 357.

⁽²⁾ (1883) 9 Cal. 663.

⁽³⁾ (1902) 26 Bom. 730.

⁽⁴⁾ (1894) 17 Mad. 316 at p. 342.

SCOTT, C. J. —The question is whether where a minor acquired a cause of action to sue for possession of property and died after majority, but before the expiry of three years from the date of the cessation of his disability of minority, his personal representative can, although twelve years have expired since the cause of action accrued, institute a suit on the same cause of action at any time within the three years' period which had already commenced in the life-time of the deceased. In our opinion the personal representative can maintain such a suit. In such a suit the deceased must be included in the term plaintiff for the purpose of Article 142, for, according to section 3 of the Limitation Act "plaintiff" includes any person from or through whom the plaintiff derives his right to sue.

The title of the *quondam* minor had not been extinguished by twelve years of dispossession because on attaining majority he was entitled to a further period of three years within which to sue. To use the words of section 28 "the period limited for instituting a suit for possession of the property had not determined."

It is otherwise where a minor with the cause of action more than twelve years in existence dies pending disability. In such a case no extended term has commenced for him; therefore the cause of action which would survive up to twelve years from its origin would be extinguished on expiry of that period notwithstanding that the minor had not been able to judge whether or not to sue; for this reason the third clause of section 7 provided a fresh term for the representative of a person with a cause of action dying under disability.

The express provision for such a case in the third clause of section 7 does not therefore impliedly exclude the right of the personal representative to stand in the shoes of the deceased for the purpose of subsisting

1916.

 ARJUN
 RAMJI
 v.
 RAMABAI.

1916.

ARJUN
RAMJI
v.
RAMABAI.

causes of action which is expressly recognised to belong to executors and administrators by section 89 of the Probate and Administration Act of 1881.

In *Mahomed Arsad Chowdhry, v. Yakooob Ally* ⁽¹⁾ Markby J. observes that "the minor.....or his representative in interest after his death, has a special period allotted to him for bringing the suit. There are no words whatsoever in section 7, which would give to any other person, in whatever way he might happen to be connected with the minor, any other period for bringing the suit than that specified for ordinary persons." The question was whether the special period was not confined to the minor and his representatives *after death* to the exclusion of representatives *after transfer* if the term 'representatives' could be appropriately used for transferees.

A full Bench of the Calcutta High Court came to a similar conclusion as regards transferees in *Rudra Kant's case* ⁽²⁾ though there are dicta of the Chief Justice and Mitter J. which would confine the rights of representatives after death to the special case provided for by the third clause of section 7. Mr. Justice Wilson who was a member of the Full Bench and of the referring Bench gave reasons for doubting the correctness of the decisions in both the above Calcutta cases. Their correctness has been doubted also by the Madras High Court in *Subramanya Pandya Chokka Talavar v. Siva Subramanya Pillai* ⁽³⁾ where it is remarked that "Those decisions involve...the apparent anomaly that a minor cannot transfer his title to property though at the date of transfer it is a subsisting interest so far as he is concerned." In this connection also we may refer to section 6 of the Transfer of Property Act which

⁽¹⁾ (1875) 15 Beng. L. R. 357.

⁽²⁾ (1883) 9 Cal. 663.

⁽³⁾ (1894) 17 Mad. 316 at p. 342.

provides that property of any kind may be transferred subject to certain special exceptions.

In *Mahadev v. Babi* ⁽¹⁾ a Bench of this Court has indicated a preference for the reasoning of Wilson J. in his judgments in *Rudra Kant's case* ⁽²⁾ and has expressed the opinion that *Mahomed Arsad Chowdhry v. Yakoob Ally* ⁽³⁾ decided that section 7 limits to the minor and to his representatives after his death the privilege of computing the period subject to certain conditions *from the date when the disability ceases or from the death of the minor before he can attain majority.*

In this view we concur. We are not here concerned with the question decided in *Rudra Kant's case* ⁽²⁾ with reference to representatives by transfer. Shridhar, as whose heiress the plaintiff claims, died on the 5th August 1910 having attained majority on the 21st December 1909—this suit was filed on the 22nd of May 1912 and is therefore in time. We affirm the decree and dismiss the appeal with costs of 1st respondent payable by the appellant.

Decree confirmed.

J. G. R.

⁽¹⁾ (1902) 26 Bom. 730.

⁽²⁾ (1883) 9 Cal. 663.

⁽³⁾ (1875) 15 Beng. L. R. 357.

1916.

ARJUN
RAMJI
v.
RAMABAI.