proceed on any issue of adverse possession. The defendants were content to deal with the question of limitation as a question involving only Article 142, and as my learned colleague has shown and as I entirely agree, Article 142 does not bar the plaintiff's claim. It seems to me that to allow the defendants now to substitute an attack on a ground of adverse possession—and this would involve a remand of the case—would be an indulgence to them which is not required either by law or by justice.

So I concur in the order proposed.

Decree reversed.

R. R.

APPELLATE CIVIL.

Before Sir Stanley Batchelor, Kt., Ag. Chief Justice and Mr. Justice Shah.

BABU GANESH DESHMUKH AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS *v.* SITARAM MARTAND DESHMUKH (ORIGINAL PLAINTIFF), RESPONDENT.*

1916. *August* 16.

Limitation Act (IX of 1908), section 5—Delay in filing appeal—Death of party pending judgment—Legal representatives not brought on record—Minority of one of the appellants—Negligence of the guardian—Excuse of delay—Sufficient cause, a question of discretion.

S filed a suit against G in the Subordinate Judge's Court. G died after the hearing of the suit, but before delivery of judgment. The judgment was pronounced on the 3rd July 1913 against G. On the 2nd October 1913 G's widow R filed an appeal to the District Court on behalf of her two sons B and D, of whom B was major but D a minor. The appeal was found to be beyond time by fifty days. The question being raised whether there was a sufficient cause for excuse of delay in favour of the minor appellant,

Held, that there was no sufficient cause as R and B, the adult relatives of the minor, who were concerned to prosecute the litigation in their own interests and in the interest of the minor, were negligent, remiss and careless.

* Second Appeal No. 603 of 1915.

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SECOND appeal against the decision of G. D. Madgaokar, District Judge of Ahmednagar, confirming the decree passed by V. G. Vaidya, Joint Judge at Ahmednagar.

The plaintiff brought a suit against defendant Ganesh Waman for the recovery of a sum of money due on a promissory note. The defendant denied the claim.

The hearing in the Subordinate Judge's Court was concluded on the 8th April 1913 and the case was adjourned for judgment.

On the 22nd May 1913, the defendant Ganesh died leaving a widow Radhabai and two sons Babu and Dattatraya, of whom Babu was of full age having attained majority on 3rd May 1913, but Dattatraya was a minor.

On the 3rd July 1913, the judgment in the case was pronounced against the defendant. Radhabai then with a view to appeal applied for a copy of the judgment on the 19th September 1913 and filed the appeal on the 2nd October 1913 which was found to be beyond time by fifty days.

The causes assigned for the delay were (*inter alia*), the death of the defendant Ganesh, the departure of his family for Poona about the 12th June and their absence from Ahmednagar till early in September.

The lower appellate Court held that Babu and Radhabai were, upon their own admissions, guilty of gross carelessness and lack of vigilance. They, knowing of the pendency of the suit and the name of their pleader, from 22nd May 1913, when the defendant died, till September, that is, for a period of three months, failed to put themselves in communication with him although they could have done so at any time through post from Poona. He, therefore, found that there was no sufficient cause shown for excuse of delay and dismissed the appeal.

J. G. Rele, for the appellants :—When the judgment was delivered there was no legally appointed guardian to see that the appeal was filed in time. The plaintiff was aware of defendant's death and it was his duty to bring the heirs of the deceased defendant on record. Under Article 177 of the Limitation Act, 1908, the plaintiff had six months' time to do so. I, therefore, submit that the appeal being presented within six months from the death of the defendant, the lower Court should have excused the delay.

Secondly, if Babu's interest alone was concerned, there would be no case on the findings of the lower Court for excuse of delay under section 5 of the Limitation Act : but there was the interest of the minor Dattatraya and the Court should have allowed the minor leave to appeal after time when Babu who was acting as his natural guardian had allowed the time for appeal to expire through carelessness and negligence. The minor would otherwise suffer for the negligence of his guardian. In the case of *Ranee Birjobuttee* v. *Pertaub Sing*[1] under similar circumstances the minor was allowed to prosecute the appeal even after expiry of time : see also Trevelyan on Minors, 4th edition, p. 294.

P. V. Kane, for the respondents :—Sections 6 to 8 of the Limitation Act apply to suits and applications for execution and not to appeals. Therefore, minority by itself is no ground for excuse of delay. The appellants can only resort to section 5 of the Limitation Act. That section confers a discretion on an appellate Court to excuse delay. The exercise of that discretion cannot be questioned in second appeal unless it was shown that the appellate Court acted arbitrarily or capriciously.

Though the minor may be entitled to consideration from the Court, there is a counter-balancing consideration in this case. The respondent obtained a decree in

[1] (1860) 8 Moo. I. A. 160.

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his favour. There is no reason why he should be deprived of the fruits of the litigation simply because the minor's guardian was remiss in his duty. When a decree is made and the time for appealing is once passed, a very valuable right is secured to the successful litigant and the Court should not interfere with it: see *Karsondas Dharamsey* v. *Bai Gungabai*.[1] The case of *Ranee Birjobuttee* v. *Pertaub Sing*[2] rests on its peculiar facts.

BATCHELOR, Ag. C. J.:—The appellants before us are Babu and Dattatraya, sons of the original defendant in the suit, Ganesh Vaman Deshmukh. Babu is of full age, but Dattatraya is an infant. Babu attained his majority on the 3rd May 1913. On the 22nd May of the same year his father Ganesh died. On the 3rd July 1913 the trial Court delivered judgment against the original defendant.

The appeal in the District Court was filed on the 2nd October, and is admittedly on the face of things about fifty days late. The question before us is whether there are materials which would justify us in disturbing the District Judge's order refusing under section 5 of the Limitation Act to excuse the delay in the presentation of the appeal. Section 5 prescribes that an appeal may be admitted after the expiry of the prescribed period of limitation when the appellant satisfies the Court that he had sufficient cause for not preferring the appeal within the period. The question whether sufficient cause is in the circumstances disclosed is primarily a question of discretion, and we have now to determine whether Mr. Rele for the appellants satisfies us that we should interfere with the District Judge's exercise of his discretion in this case. It is perfectly clear that there is no case for interference in regard to the adult defendant Babu Ganesh. But in regard to the infant,

[1] (1905) 30 Bom. 329. [2] (1860) 8 Moo. I. A. 160.

there is no doubt the important consideration that he ought not, if he can be protected consistently with fairness to other people, to be prejudicially affected by the negligence or omissions of his adult relatives. There is, however, another competing principle which must also be borne in mind, that is the principle stated in *Karsondas Dharmasey* v. *Bai Gungabai* [1] where Sir Lawrence Jenkins points out that "when the time for appealing is once passed a very valuable right is secured to the successful litigant: and the Court must therefore be fully satisfied of the justice of the grounds on which it is sought to obtain an extension of the time for attacking the decree, and thus perhaps depriving the successful litigant of the advantages which he has obtained." I am of opinion that it is of capital importance to give due weight to this consideration in Indian litigation, and though I do not suggest that the rule can yet be enforced in India as rigorously as it is enforced in England, I may call attention to the obvious fact that easy condonation of remissness and dilatoriness tends to their indefinite continuance. The way to get the rule respected is, I think, to enforce it in all cases where that can be done without serious hardship; for it seems to me that some finality and certainty of decision are of the highest consequence in India. In this context I may cite what was said by Jessel M. R. in *Curtis* v. *Sheffield* [2] which was decided so long ago as 1882: "The next point, and as it seems to me the most serious point, is this, at what time are people entitled to rely upon the judgment of a competent tribunal as to their rights and interests in property. Upon that question there has been a great change of opinion in modern times. In modern times it has been considered that there is nothing more important than that people's rights when ascertained by the judgment

[1] (1905) 30 Bom. 329 at p. 330. [2] (1882) 21 Ch. D. 1 at p. 4.

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of a competent tribunal, if questioned, should be questioned within a very short period." It seems to me probable that if, in the past, the rule had been applied here with less sympathy for the individual in default and more regard to the general interest of all litigants, India in 1916 would not be so far behind where England was in 1882.

Now the learned District Judge has found that the adult appellant Babu and his mother Radhabai knew of the pendency of this suit, and knew too the name of Ganesh's pleader. But though they had this knowledge from the date of Ganesh's death, they failed to put themselves in communication with the pleader, although it would have been an easy matter for them to do so. Babu, it appears, is an educated young man, and the widow Radhabai is described by the Judge as a lady well able to hold her own. As to the facts, therefore, there can be no doubt that Radhabai and the appellant Babu, who were concerned to prosecute this litigation in their own interests and in the interests of the infant, were negligent, remiss and careless, nor has any real cause, far less a sufficient cause, been given in excuse. That being so, it appears to me that we ought not to vary the District Judge's order, and that the minor ought not now to be able to disturb the respondent in the enjoyment of the fruits of his legal victory. This decision is, I think, not at variance with anything said by the Privy Council in *Ranee Birjobuttee* v. *Perlaub Sing.*[1] If the facts of that case be studied, it will be seen that they were strong in the infant's favour, and even so their Lordships' decision reads rather as a reluctant concession to specially strong facts than as affording any countenance to the argument that, despite the absence of any excuse for delay, a successful litigant, after the decision in his favour

[1] (1860) 8 Moo. I. A. 160.

has become ordinarily indefeasible, is again to be exposed to the harassment of an appeal merely because one of his adversaries happens to be an infant. Indeed their Lordships in express terms guard themselves from being understood to imply that where infants are concerned any degree of delay may be considered justifiable, or excusable; and provision is made for the case of circumstances so strong as to prevent infancy from being an apology or an excuse. It appears to me that this is such a case, and I do not think there is anything which would warrant us in differing from the learned Judge below, who has clearly approached the case with every sympathy for the widow and the orphan, but has found himself unable to assist them. The appeal, therefore, must be dismissed with costs.

SHAH, J.:—On the whole in this case I see no reason to hold that the discretion has been wrongly exercised by the lower appellate Court. On the facts I am satisfied that the appellant No. 1 Babu and his mother Radhabai had the necessary knowledge of the decision of the suit, and were negligent in not preferring the appeal in time. The only difficulty in the case arises in consequence of there being a minor brother of Babu, who has joined through his guardian Radhabai with Babu in presenting the appeal to the lower appellate Court. The original defendant died after the arguments in the suit were heard, and before the judgment was pronounced, and the appellants who would be the legal representatives of the deceased defendant were not on the record when the judgment was delivered. In the ordinary course, if a defendant dies during the pendency of the suit, and if the fact of his death is brought to the notice of the Court, the parties would have six months under the Limitation Act within which to make an application to bring the legal representatives on the record with a view to continue

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the proceedings. In this case when the judgment was pronounced, the names of the present appellants were not on the record, and there was no legally appointed guardian whose duty it was to see that the appeal was preferred, if at all, in time. Under these circumstances it seems to me that every allowance ought to be made in favour of a minor heir whose interests apparently would be in the hands of his natural guardian, who had not on any previous occasion represented him in the suit. I do not for a moment suggest that as a matter of course the same time which would be allowed for the purposes of an application to bring the legal representatives on the record should be allowed to the minor for preferring an appeal. But it would not be unfair to take that period as indicating a limit within which, if action is taken on behalf of the minor, the delay in preferring the appeal may be condoned under appropriate circumstances. I am not prepared to say in this case that this consideration was not present to the mind of the learned District Judge. He has considered all the facts and circumstances connected with this point, and making all allowance in favour of the minor, he has come to the conclusion that the delay cannot be condoned; and I do not think that on the general consideration which I have indicated, I would be justified in dissenting from that conclusion. I, therefore, agree that the appeal should be dismissed with costs.

Decree confirmed.

J. G. R.