

1918.

SHRINIWAS
APPACHARYA

v.

JAGADEV-
APPA.

liberty to bid was given by the Collector negatives any power of the Court under Order XXI, Rule 72 (2) to allow a set-off, for that order contemplates both liberties being given by the same authority, viz., the Civil Court, which in fact was not the case here.

In my opinion, therefore, this appeal ought to be dismissed with costs.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

1918.

February 18.

LAXMAVA KOM HUCHHAPPA NASIPUDI (ORIGINAL DEFENDANT No. 3),
APPELLANT v. RACHAPPA BIN CHANBASAPPA KARAVEERHETTI
(ORIGINAL PLAINTIFF), RESPONDENT.*

Limitation Act (IX of 1908), Article 44,—Sale of minor's property by his mother—Suit to set aside the sale brought more than three years after the minor attains majority.

The mother and natural guardian of a minor having sold the minor's property, a suit to set aside the sale was brought more than three years after the minor attained majority :—

Held, that the suit was barred under Article 44 of the Indian Limitation Act, 1908.

Balappa v. Chanbasappa⁽¹⁾ and *Anandappa v. Totappa*⁽²⁾, distinguished.

SECOND appeal from the decision of E. Clements, District Judge of Dharwar, reversing the decree passed by V. B. Halbhavi, Subordinate Judge at Hubli.

Suit to recover possession of property.

The facts were that the property in dispute, which belonged to defendant No. 1, were sold during his minority by his mother and natural guardian on the 31st May 1909, to the husband of defendant No. 3. Defendant No. 1 attained majority on the 29th September 1909; and sold the property to the plaintiff on the 25th September 1912.

* Appeal No. 35 of 1917 from order.

⁽¹⁾ (1915) 17 Bom. L. R. 1134. ⁽²⁾ (1911) 17 Bom. L. R. 1137, footnote.

The present suit was filed on the 12th August 1913.

1918.

The Subordinate Judge held on a preliminary issue that the suit was barred under Article 44 of the Indian Limitation Act, the suit having been brought more than three years after defendant No. 1 attained majority

LAXMAVA
v.
RAGHAPPA.

The District Judge, on appeal, held, following *Balappa v. Chanbasappa*⁽¹⁾ that the suit was not barred by limitation, reversed the decree and remanded the suit to the first Court for trial on merits.

Defendant No. 3 appealed to the High Court.

S. Y. Abhyankar (for *Nilkanth Atmaram*), for the appellant :—The case of *Balappa v. Chanbasappa*⁽¹⁾ does not apply, as the alienation was by a step-mother. But an alienation by an unauthorised person is not a nullity and needs to be set aside : see *Mahableshtar Krishnappa v. Ramchandra Mangesh*⁽²⁾ : see also *Mata Din v. Ahmad Ali*⁽³⁾.

P. B. Shingne, for the respondent :—This case is governed by *Balappa v. Chanbasappa*⁽¹⁾ : see also *Anandappa v. Totappa*⁽⁴⁾ ; *Bhagvant Govind v. Kondi valad Mahadu*⁽⁵⁾ ; *Ramausar Pandey v. Raghubar Jati*⁽⁶⁾ ; *Sikher Chund v. Dulputty Singh*⁽⁷⁾ ; *Abdul Rahman v. Sukhdayal Singh*⁽⁸⁾.

S. Y. Abhyankar, in reply :—The case of *Bhagvant Govind v. Kondi valad Mahadu*⁽⁵⁾ is impliedly overruled in *Malkarjun v. Narhari*⁽⁹⁾. Further, a step-mother is not a guardian under Hindu law : see *Thayammal v. Kuppanna Koundan*⁽¹⁰⁾. She is, therefore, an unauthorised person : see *Mata Din v. Ahmad Ali*⁽³⁾.

(1) (1915) 17 Bom. L. R. 1134.

(6) (1883) 5 All. 490.

(2) (1913) 38 Bom. 94.

(7) (1879) 5 Cal. 363 at p. 370.

(3) (1912) 34 All. 213.

(8) (1905) 28 All. 30 at p. 31.

(4) (1911) 17 Bom. L. R. 1137, footnote.

(9) (1900) 25 Bom. 337.

(5) (1889) 14 Bom. 279.

(10) (1914) 38 Mad. 1125.

1918.

LAXMAVA
v.
RACHAPPA.

BEAMAN, J. :—We think that the plaintiff's suit is clearly time-barred. At the time of the sale by his mother he was a minor and she was his natural guardian. She sold in that character. The plaintiff did not bring his suit within three years after attaining majority. (I might add that the actual plaintiff was the assignee of the minor just mentioned). In these circumstances, but for certain decisions of this Court, to which we have been referred, we should have entertained no doubt whatever but that the suit was time-barred under Article 44 of the first Schedule to the Indian Limitation Act. The case of *Balappa v. Chanbasappa*⁽¹⁾ and the case of *Anandappa v. Totappa*⁽²⁾ with which we have been especially pressed, are, we think, easily distinguishable. We need only mention the first of these cases and point out that the transferor was not the natural guardian of the minor at all but his step-mother. The decision can then be put on the ground that the alienation was not by a guardian strictly speaking so at all but at the highest by a *de facto* guardian who was not authorized to deal in any way with the minor's property. This would make it conform to the principle of the Privy Council decision in the case of *Mata Din v. Ahmad Ali*⁽³⁾, which is cited with approval in their Lordships' judgment. There appears to have been a slight error in quoting the conclusion of their Lordships of the Privy Council, for a reference to that case will show that the limitation point under Article 44 was disposed of on the simple ground that the alienation complained of was made by a person who was not a guardian and who was not authorized to make it. As far as it goes, therefore, by implication that decision of the Privy Council supports the view to which we give effect in this judgment. We take the words of Article 44 as they stand in their plain

⁽¹⁾ (1915) 17 Bom. L. R. 1134. ⁽²⁾ (1915) 17 Bom. L. R. 1137, footnote.

⁽³⁾ (1912) 34 All. 213.

and natural sense and so taken they seem to us to cover every fact in this case beyond the reach of argument.

We might add without unnecessarily extending this discussion, that we were also referred to a decision of this Court in the case of *Bhagvant Govind v. Kondi valad Mahadu*⁽¹⁾, the facts of which closely resemble the facts before us. It is sufficient to say, however, that so much of that judgment, as is relevant for our present purposes is very distinctly disapproved, if not impliedly overruled, by the Privy Council in *Malkarjun's case* (*Malkarjun v. Narhari*)⁽²⁾.

We would, therefore, reverse the decree of the lower appellate Court and restore the decree of the trial Court with all costs upon the plaintiff throughout.

Decree reversed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Marten.

VITHAL DHONDDEV RAILKAR (ORIGINAL PLAINTIFF), APPELLANT *v.* THE ALIBAG MUNICIPALITY (ORIGINAL DEFENDANT), RESPONDENT.*

1918.

February 19.

District Municipalities Act (Bom. Act III of 1901), section 96, sub-sections 1, 2, 3 and 4—Permission to build a privy granted under sub-section (2)—Subsequent order by the Municipality revoking the permission—Legality of the order.

The plaintiff applied to the Municipality on December 1, 1913, for permission to build a privy on his own land. The permission was granted by the Municipality on 22nd December under sub-section 2 of section 96 of the District Municipalities Act, 1901. On January 8, 1914, the Municipality acting on the resolution of the Managing Committee gave notice and passed an order to the plaintiff not to build the privy until further orders. The plaintiff having sued for the cancellation of the order of January 8, 1914, as *ultra vires*,

(1) (1889) 14 Bom. 279.

(2) (1900) 25 Bom. 337.

* Second Appeal No. 180 of 1917.