

seems to me that the main object of the Legislature in section 7 is to limit the indulgence which is otherwise given to minors, so that, if there are several minors who can claim the benefit of section 6, that concession does not extend to cover the whole period of time up to the youngest of the minors becoming a major, but can only be availed of by the eldest of them.

*Decree confirmed.*

J. G. R.

### APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Finlay.*

PRABHULING APPA KHANGOUDA DESAI (ORIGINAL DEFENDANT),  
APPELLANT *v.* GURUNATH BALAJI KALKUNDRI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.

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*Indian Limitation Act (IX of 1908), Article 182, Explanation II—"Proper Court", interpretation of—Execution proceedings before Sangli Courts are proceedings before "proper Courts"—Intermediate application barred by limitation—Subsequent applications if made in time and not objected to are not barred.*

On the 10th September 1907, a decree was passed by the Sangli Court. An application was made to that Court to execute the decree; but it proved infructuous. On the 11th November 1907, a second Darkhast was made to that Court; but it was transferred to the Shahapur Court on the 14th idem. It resulted in recovery of Rs. 11,412 odd on the 24th March 1915. The third Darkhast was presented to the Sangli Court on the 9th August 1915, but it was disposed of on the 10th November of the same year. The next Darkhast was made to the Belgaum Court, but it was disposed of on the 16th May 1917. The present Darkhast, which was filed in the same Court on the 27th August 1917, was objected to as having been barred by limitation on two grounds: (1) the proceedings from November 1907 to November 1915 not being before "proper Courts" did not save limitation; (2) the third Darkhast which was filed more than three years after the date of the second Darkhast having been barred by limitation, the subsequent Darkhasts also were similarly barred:—

*Held*, (overruling the objections) that the proceedings before the Sangli Courts operated to save limitation, because those Courts were "proper Courts"

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within the meaning of Article 182, clause 5, Explanation II of the Indian Limitation Act, 1908.

*Held*, further, that assuming that the third Darkhast was barred by limitation, yet inasmuch as proceedings were taken thereunder until the disposal of the Darkhast they provided a new starting point for limitation, and the subsequent Darkhasts which were in time and not objected to were not affected by the bar of limitation.

*Nabibhai Vazirbhai v. Dayabhai Amulakh*<sup>(1)</sup>, distinguished.

*Desaiappa v. Dundaappa*<sup>(2)</sup>, followed.

APPEAL from the decision of S. R. Koppikar, First Class Subordinate Judge at Belgaum.

Execution proceedings.

The decree under execution was passed by the Court of the Special Judge at Sangli on the 7th March 1907. It was confirmed by the Administrator at Sangli on the 18th September 1907.

The first Darkhast presented to the Sangli Court ended on the 25th June 1907 without any result as the decree-holder did not pay process fees.

The second Darkhast was made to the same Court on the 11th November 1907; but it was transferred to the Shahapur Court on the 14th of the same month. It ended on the 24th March 1915 after recovery of Rs. 11,412-3-0.

The third Darkhast was filed in the Sangli Court on the 9th August 1915; but was disposed of on the 10th November 1915.

The fourth Darkhast came to be made to the Belgaum Court; it was disposed of on the 26th May 1917.

The present Darkhast was presented in the same Court on the 27th August 1917. It was objected to as having been barred by limitation, on the ground that the execution proceedings before Sangli and Shahapur Courts did not save limitation as these Courts were not "proper

<sup>(1)</sup> (1916) 40 Bom. 504.

<sup>(2)</sup> (1919) 44 Bom. 227.

Courts" within the meaning of Article 182, clause (5) of the Indian Limitation Act, 1908.

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The Court overruled the objection and ordered execution proceedings to go on, on the following grounds :—

It is first contended that the period from 1907 to 10th November 1915 during which the execution proceedings were pending in the Sangli and Shahapur Courts does not save limitation as those Courts were not "proper Courts" within the meaning of Article 182, clause 5 of the Limitation Act. The authorities quoted in support of the contention are I. L. R. 35 Bom. 139 and I. L. R. 40 Bom. 504. It is pointed out that in the latter case Mr. Justice Shah only assumed, but did not decide, that an application made for the execution of a decree to a Baroda Court could be treated as an application to a proper Court within the meaning of Article 182. It seems to me, however, that the point raised must be considered as settled authoritatively by the latest ruling in *Janardhan Gorind v. Narayan Krishnaji*, 20 Bom. L. R. 421. It was decided in that case that an application made to a British Indian Court to transfer its decree for execution to a Sangli Court was a step-in-aid of execution within the meaning of Article 182. But weighty arguments which were accepted in the judgments show that the Courts in Sangli are on a par with the British Indian Courts as "proper Courts" for the purpose of limitation under Article 182. Under Explanation II to the same Article "proper Court" means the Court whose duty it is to execute the decree or order. In the present case the decree to be executed was one passed by the Sangli Court, and the execution proceedings which are relied on for the purpose of saving limitation were also conducted in that Court. I do not see by what mode of reasoning the Court at Sangli can be considered as not the proper Court to execute its own decree.

The judgment-debtor appealed to the High Court.

*G. S. Rao*, for the appellant :—The present Darkhast is time-barred under Article 182, clause (5) of the Limitation Act. The third Darkhast was presented in Sangli Court on the 9th August 1915. This was more than three years after the presentation of the second Darkhast in that Court on the 11th November 1907. The lower Court has held that the disposal of the second Darkhast on the 24th March 1915 gave a fresh starting point for limitation. I submit that that view is wrong.

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It is the presentation of the Darkhast that saves limitation and in this case it is not shown that a fresh Darkhast was presented within three years after the presentation of the second Darkhast on the 11th November 1907. Thus the presentation of the third Darkhast was barred and consequently even the subsequent Darkhast, though presented within three years of the preceding Darkhast, was barred by limitation: *Vithoba Kondiba v. Tejiram Bhavaniram*<sup>(1)</sup>.

[*J. G. Rele* pointed out *Desaippa v. Dundappa*<sup>(2)</sup>.]

Secondly, I submit that the period from 1907 to 10th November 1915 during which the execution proceedings were pending in Sangli and Shahapur Courts did not save limitation as those Courts were not "proper Courts" within the meaning of Article 182, clause 5 of the Limitation Act. The word "Court" in the body and Schedule of the Limitation Act means the Court in British India and not a Court in a Native State: *Channalapa Chenbasapa v. Abdul Vahab*<sup>(3)</sup>; *Nabibhai Vazirbhai v. Dayabhai Amulakh*<sup>(4)</sup>.

It is no doubt true that under section 44 of the Civil Procedure Code, 1908, a decree passed by a Court in a Native State may be executed in British India as if it has been passed by a Court in British India, but that does not make a Court in a Native State a "proper Court" within the meaning of the provisions of Limitation Act.

*J. G. Rele*, for respondents Nos. 1 and 2, not called upon.

*S. Y. Abhyankar*, for the respondent No. 3.

MACLEOD, C. J. :—This is a first appeal from the decision of the learned Subordinate Judge in Darkhast No. 321 of 1917. The original suit was decided

<sup>(1)</sup> (1912) 14 Bom. L. R. 264.

<sup>(2)</sup> (1919) 44 Bom. 227.

<sup>(3)</sup> (1910) 35 Bom. 139.

<sup>(4)</sup> (1916) 40 Bom. 504.

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and a decree was passed in the Sangli Court on the 18th of September 1907. The first Darkhast presented to the Sangli Court ended on the 25th of June 1907 without any result as the decree-holder failed to pay process fees. The second darkhast was filed in the same Court on the 11th of November 1907 and on the 14th of that month that Court transferred the proceedings to the Court at Shahapur. The Darkhast ended on the 24th of March 1915 after the recovery of Rs. 11,412-3-0. The third Darkhast was presented in the Sangli Court on 9th of August 1915. It proved ineffectual and was disposed of on the 10th of November 1915. The next Darkhast was presented in the Belgaum Court (Darkhast No. 476 of 1915) and was disposed of without result on the 26th of May 1917. The Darkhast under appeal was presented to the Belgaum Court on the 27th of August 1917.

It was contended that the Darkhast was barred by limitation but the Court ordered the Darkhast to proceed. It is now argued that the period from 1907 to the 10th of November 1915 during which the execution proceedings were pending in the Sangli and Shahapur Courts does not save limitation as those Courts were not proper Courts within the meaning of Article 182, clause (5) of the Indian Limitation Act. "Proper Court" under Article 182, Explanation II, means the Court whose duty it is to execute a decree or order. It is difficult then to see how it can be said that the Sangli and Shahapur Courts were not proper Courts within the meaning of Article 182. I do not see how the ruling cited—*Nabibhai Vazirbhai v. Dayabhai Amulakh*<sup>(1)</sup>—would affect the question. That case only decided that when a decree was incapable of execution in British Courts owing to its being barred on account of the British law of limitation, it made no difference

<sup>(1)</sup> (1916) 40 Bom. 504.

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that a different law was applicable to the Courts from whose jurisdiction the decree had been transferred for execution. Under section 44 of the Code the Governor-General in Council may by notification in the Gazette of India declare that the decrees of any civil or revenue Courts situated in the territory of any Native Prince or State in alliance with His Majesty and not established or continued by the authority of the Governor-General in Council or any class of such decrees may be executed in British India as if they had been passed by the Courts of British India. Therefore when this decree was transferred for execution to the Belgaum Court, it had to be treated exactly in the same way as if it had been passed by the Court at Belgaum. The period occupied by the execution proceedings in the Sangli and Shahapur Courts must be treated as if the execution proceedings were pending in proper Courts within the meaning of Article 182.

Then it was suggested that limitation began from the time the second Darkhast was filed in the Sangli Court, that fresh proceedings had not been instituted within three years of that date, although as a matter of fact the Darkhast was continued and money was being recovered under it until the 24th of March 1915. If a Darkhast is filed and the Court directs instalments to be paid under it and recovers instalments, it cannot be that while the instalments are being recovered any further proceedings are necessary : *Bapuchand v. Mugut-rao*<sup>(1)</sup>. Assuming that the third Darkhast presented on the 9th of August 1915 would have been held to be barred by limitation if the point had been taken, the point was not taken, and proceedings continued under that Darkhast until it was disposed of on the 10th of November 1915, then the next Darkhast which was presented in the Belgaum Court and continued

(1) (1896) 22 Bom. 340.

until it was disposed of on the 12th of May 1917 was within time. In *Desaippa v. Dundappa*<sup>(1)</sup> the same question came up before Mr. Justice Heaton and myself, and following the decision of the Privy Council in *Mungul Pershad Dichit v. Grija Kant Lahiri Chowdhry*<sup>(2)</sup> we decided that if an application be admitted and proceedings taken thereunder, although as a matter of fact they would be barred by limitation if an application were made for the disposal of the application on that ground, they provide a new starting point for limitation. Following that decision it is clear that this Darkhast was within three years from the previous Darkhast. Therefore on that ground the appeal fails.

It may be noted that this question was never raised in the lower Court. The only question argued was whether the Sangli and Shahapur Courts were proper Courts.

The appeal, therefore, must be dismissed with costs.

*Appeal dismissed.*

R. R.

<sup>(1)</sup> (1919) 44 Bom. 227.

<sup>(2)</sup> (1881) L. R. 8 I. A. 123.

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## APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.*

BASVANT MUSHAPPA HUBLI AND ANOTHER (ORIGINAL DEFENDANTS NOS. 3 AND 4), APPELLANTS *v.* MALLAPPA KALLAPPA HUBLI (ORIGINAL PLAINTIFFS), RESPONDENTS<sup>2</sup>.

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July 20.

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*Hindu Law—Adoption—Adoption by unchaste widow—Shudras.*

In the Presidency of Bombay, a Shudra widow though unchaste can make a valid adoption.

<sup>2</sup> Second Appeal No. 887 of 1919.