APPELLATE CIVIL

Before Mr. Justice Fawcett and Mr. Justice Mirza.

SUPDU DAULATSING DAJI PATIL AND OTHERS (ORIGINAL DECREE-HOLDERS), APPELLANTS *v.* SAKHARAM RAMJI ALIAS DAULAT RAMJI (ORIGINAL JUDGMENT-DEBTOR), RESPONDENT.* 1928 *February* 16

Indian Limitation Act (IX of 1908), section 7—Joint Hindu family—Decree—Execution—Minority of one of members of family—Minority will not prevent time running against all members—Manager can give valid discharge in execution without concurrence of minor members.

Under section 7 of the Indian Limitation Act, 1908, a manager of a joint Hindu family can give a valid discharge without the concurrence of the minor members of the family in the case of an application to execute a decree, just as he can in the case of a suit, and the mere fact that one of the members is a minor will not prevent time running against all the members of the family.

Bapu Tatya v. *Bala Ravji*[1] and *Rati Ram* v. *Niadar*,[2] followed.

Manchand Panachand v. *Kesari*[3] and *Govindram* v. *Tatia*,[4] disapproved.

Seshan v. *Rajagopala*[5] and *Huchrao Tinmaji* v. *Bhimrao Gururao*,[6] referred to.

SECOND APPEAL against the decision of R. R. Sane, Assistant Judge at Dhulia, confirming the decree passed by V. V. Pataskar, First Class Subordinate Judge of Jalgaon.

Proceedings in execution.

On March 3, 1913, the appellants-plaintiffs obtained an instalment decree against one Ramji for the recovery of Rs. 2,569. The appellants Supdu (No. 1), Rajaram (No. 2) and Bhaurao (No. 3) were minors and were represented by appellant No. 4, Mansing, as their next friend. All the appellants were members of a joint Hindu family with Mansing as the manager. In execution of the decree, Darkhast No. 530 of 1916 was filed on March 27, 1916. The second application was made on September 8, 1921, for the recovery of the last five instalments which fell due in January of each of the five years from 1917 to 1921. The appellants alleged that the application

*Second Appeal No. 493 of 1925.

(1) (1920) 45 Bom. 446.
(2) (1919) 41 All. 435.
(3) (1910) 34 Bom. 672.
(4) (1895) 20 Bom. 383.
(5) (1889) 13 Mad. 236.
(6) (1917) 42 Bom. 277.

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was in time as Bhaurao (No. 3) who was a minor at the date of the decree attained majority on January 15, 1920.

The defendant, judgment-debtor, did not appear though served with notice under Order XXI, Rule 22, Civil Procedure Code, 1908.

The Subordinate Judge found that appellant No. 4, Mansing, as the manager of the appellant's joint family, was competent to give a valid discharge without the concurrence of the minor appellant No. 3, Bhaurao, the instalments which fell due in 1917 and 1918 were time barred. He, therefore, ordered that the execution should proceed for the recovery of the remaining three instalments.

On appeal, the Assistant Judge, relying on the decisions in *Bapu Tatya* v. *Bala Ravji* (45 Bom. 446) and *Rati Ram* v. *Niadar* (41 All. 435) dismissed the appeal.

The plaintiffs-decree-holders appealed to the High Court.

P. B. Shingne, for the appellants.

P. V. Kane, for the respondents.

FAWCETT, J. :—The Assistant Judge has fully and carefully considered the point whether the appellant No. 3, who was a minor at the date of the application for execution made in 1916, can avail himself of his minority so as to bring the application of September 8, 1921, within the period of limitation allowed by law. He has followed the view taken in *Rati Ram* v. *Niadar*[1] and *Bapu Tatya* v. *Bala Ravji*,[2] as opposed to the view taken in *Govindram* v. *Tatia*,[3] *Manchand Panachand* v. *Kesari*[4] and similar decisions. In our opinion the language of section 7 of the Indian Limitation Act of

[1] (1919) 41 All. 435.
[2] (1920) 45 Bom. 446.
[3] (1895) 20 Bom. 383.
[4] (1910) 34 Bom. 672.

1908 does make a change in what was held to be the law under the corresponding section 8 of the Indian Limitation Act of 1877. The observation of Scott C.J. in *Manchand Panachand* v. *Kesari*[1] to the contrary is a decision of a single Judge not binding upon us, whereas the view taken in *Bapu Tatya* v. *Bala Ravji*[2] was that of a Division Bench and is, in our opinion, correct. Section 8 of the Act of 1877 used the words " joint creditors or claimants," and it was held in *Seshan* v. *Rajagopala*,[3] that these words did not include execution creditors. This was because a joint decree-holder under certain provisions of the Code of Civil Procedure could not give a valid discharge of the decretal debt without a supplementary authority or act of the Court executing the decree, whereas " section 8 applies only to those cases in which this act of the adult joint owner is *per se* a valid discharge." In other words, it was held that the case of one of joint decree-holders applying to execute a decree could never fall under section 8. But the Legislature has clearly shown its dissent from this view by expressly including in section 7 of the Act of 1908 the case of " one of several persons jointly entitled to make an application for the execution of a decree," and putting this on the same footing as one of several persons jointly entitled to institute a suit. We may refer also to the remarks in *Duraiswami Sastrial* v. *Venkatarama Iyer*[4] as to the change made by the Legislature in 1908. As the law now stands, the manager of a joint Hindu family can give a valid discharge without the concurrence of the minor members of the family in the case of an application to execute a decree, just as he can in the case of a suit (cf. *Huchrao Timmaji* v. *Bhimrao Gururao*[5]), and the mere fact that one of the members

(1) (1910) 34 Bom. 672.
(2) (1920) 45 Bom. 446.
(3) (1889) 13 Mad. 236 at pp. 239-240.
(4) (1911) 21 M. L. J. 1088.
(5) (1917) 42 Bom. 277.

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is a minor will not prevent time running against all the members of the family. We, therefore, dismiss the appeal with costs.

MIRZA, J. :—I concur.

Decree confirmed.

J. G. R.

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Before Mr. Justice Fawcett and Mr. Justice Mirza.

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KRISHNARAO AMBADAS PIMPLADKAR JAHAGIRDAR (ORIGINAL DEFENDANT 1), APPELLANT v. KRISHNARAO RAGHUNATH TALEKAR, AND OTHERS (ORIGINAL PLAINTIFFS 1 AND 2 AND DEFENDANT 2), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), section 47—Order refusing to alter valuation in proclamation of sale or to adjourn sale—Order not appealable.

An order refusing to alter the valuation of the property as entered in a proclamation of sale or to adjourn the sale in order to have a further inquiry as to its value is not appealable under section 47 of the Civil Procedure Code, 1908.

Sivagami Achi v. *Subrahmania Ayyar*,[1] relied on.

Deoki Nundan Singh v. *Bansi Singh*[2]; *Ajudhia Prasad* v. *Gopi Nath*[3]; *Deokinandan Singh* v. *Raja Dhakeswar Prasad Narain Singh*[4]; *Saurendra Nath Mitra* v. *Mritunjay Banarji*[5]; *Ramanathan Chettiar* v. *Venkatachellam Chettiar*[6]; *Kaveribai Ammal* v. *Mehta & Sons*[7] and *Lanka Rama Naidu* v. *Lanka Ramakrishna Naidu*,[8] referred to.

FIRST APPEAL against the decision of R. B. Khangaonkar, First Class Subordinate Judge at Nasik.

In Darkhast No. 605 of 1925, the defendant No. 1 made an application on September 25, 1926, to the Court complaining of certain irregularities in the proclamation of sale issued by the Court, namely, that the mention of the area and assessment of the Jahagir village and the statement that the village would be sold in four lots would not be sufficient for the general public to ascertain how those lots were made by the Court; that the words

*First Appeal No. 441 of 1926.

(1) (1903) 27 Mad. 259.
(2) (1911) 16 W. N. 124.
(3) (1917) 39 All. 415.
(4) (1916) 2 Pat. L. J. 13.
(5) (1920) 5 Pat. L. J. 270.
(6) (1923) 44 M. L. J. 599.
(7) (1923) 46 M. L. J. 71.
(8) (1923) 46 M. L. J. 192.