1901 APRIL 11 & 12 & MAY 1.

ORIGINAL CIVIL.

28 C. 462.

[465] Where it is proposed to depart from the rules of English Law, which have been introduced into this country, it must be shown that those rules, if adhered to in this country, will work an injustice or hardship. Here no injustice is worked by an adherence to those rules, because in cases where the person aggrieved is unable to prove that he has suffered actual damage, he can call in the criminal law to punish the wrong-doer. *Prima facie* there is nothing repugnant to justice, equity and good conscience in calling on a person, who is claiming pecuniary compensation for damage caused by a wrongful act, to prove that some damage has been caused to him by the act of which he complains.

In my opinion the plaintiff has failed to show that the rules of English Law applicable to the present case ought to be departed from, and, inasmuch as the words are not *per se* actionable and no damage in fact has been alleged or proved, the action must be dismissed with costs.

Attorney for the plaintiff : Babu *A. K. Mitter*.

Attorneys for the defendant : Messrs. *Thakur and Bysack*.

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28 C. 465.

APPELLATE CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice and Mr. Justice Banerjee.

SURJA KUMAR DUTT (*Judgment-debtor*) *v.* ARUN CHUNDER ROY AND ANOTHER (*Decree-holders*).* [3rd May, 1901.]

Limitation Act (*XV of* 1877), *ss.* 7 *and* 8—*Minor—Decree-holder—Civil Procedure Code* (*Act XIV of* 1882), *s.* 231.

When only one of several joint decree-holders is a minor, s. 7 of the Limitation Act saves an application for execution by the minor decree-holder from being barred by limitation.

[466] *Seshan* v. *Rajagopala* (1), *Narayanan Nambudri* v. *Damodaran Nambudri* (2) dissented from.

Govindram v. *Tatia* (3), *Zamir Hassan* v. *Sundar* (4) followed.

THIS appeal arose out of an application for execution of a decree for partition. On the 13th March 1890 a decree, directing the parties to get possession of *sehams* and compensation according to the report of the Ameen, was made. The plaintiffs took out execution on the 10th December 1890, against the defendants Nos. 1, 2 and 3. They made several other applications for execution and the last one was made on the 13th March 1896. In that execution, the plaintiffs credited Rs. 9 and odd, which were due by them to defendants Nos. 1, 2 and 3. The said sum was credited on the 21st March 1896, when the compensation due to defendants Nos. 1, 2 and 3 became finally settled. On the 18th November 1897 the defendants Nos. 2 and 3 made an application for execution against some other defendants. This petition was dismissed by the Court on the ground that a copy of the Ameen's report was not filed, and the question of limitation, which was raised by some of the judgment-debtors, was left undecided. On the 13th August 1898 the present application for execution was made by defendants Nos. 2 and 3. When the decree was

* Appeal from Order No. 357 of 1900, against the order of G. Gordon, Esquire, District Judge of Dacca, dated the 28th of May 1900, affirming the order of Babu Sudhangshu Bhusan Roy, Subordinate Judge of that District, dated the 24th of April 1899.

(1) (1889) I. L. R. 13 Mad. 236.
(2) (1893) I. L. R. 17 Mad. 189.
(3) (1895) I. L. R. 20 Bom. 888.
(4) (1899) I. L. R. 22 All. 199.

1901 MAY 8.

APPELLATE CIVIL.

28 C. 465

passed the defendants Nos. 2 and 3 were minors, and when the last application for execution was made, defendant No. 3 was still a minor. The judgment-debtors *inter alia* objected to the execution on the ground that it was barred by limitation. The Court of First Instance overruled the objection and allowed execution to proceed. On appeal to the Subordinate Judge, the decision of the first Court was confirmed. Against this decision the judgment-debtors appealed to the High Court.

Babu *Bassunt Coomar Bose* for the appellant.

Babu *Hari Bhusan Mookerjee* for the respondents.

[467] MACLEAN, C. J.—The only question which arises on this appeal is whether the present application for execution is barred by the statute of limitation.

It appears that the suit is one for partition, in which a decree was made so far back as 1890 and, under that decree, the present appellant had to pay to the defendants Nos. 1, 2, and 3 a sum of Rs. 800 or Rs. 900 by way of equality of partition. So far as this payment is concerned, it was a joint decree. Defendants Nos. 2 and 3 are the present respondents. Nothing has been done by the defendants Nos. 1, 2 and 3 to enforce the abovementioned partition of the decree, until the present application was made by the defendants Nos. 2 and 3, the younger of whom is still a minor, whilst the other attained his majority a short time, at any rate within 3 years, before the present application.

The question is whether the present application is out of time, and this depends upon whether or not the applicants are entitled to the benefit of s. 7 of the Limitation Act. Both the Lower Courts have held that the claim is not statute barred.

There is no case in this Court, which directly touches the question, though that of *Anando Kishore Dass Bakshi* v. *Anando Kishore Bose* (1) has some bearing upon it. It is conceded by the appellant, that the case does not fall within s. 8 of the Limitation Act. There was no one, who could give a discharge for the money without the concurrence of the minors, the defendants Nos. 2 and 3.

But it is urged for the appellant that the present applicants are not protected by s. 7 of the Act. Now s. 7 says,—I will read only that portion which is pertinent :—

" If a person entitled to make an application be at the time from which the period of limitation is to be reckoned, a minor . . . . he may make the application within the same period after the disability has ceased as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed."

[468] To my mind there is no difficulty in the construction of the section. The language is quite clear and read in its natural and ordinary meaning covers the case of the present applicants. Here the applicants at the time, from which the period of limitation was to be reckoned, were minors, and *prima facie* they would appear to be entitled to the special protection afforded by the section. But it is contended for the appellant, that the section does not apply, when the minor is not the sole creditor or claimant, but is one of several joint creditors or claimants. There is nothing in the language of the section to support this view, which seems to me to be contrary to s. 8, which defines what is to happen in the case of one of several joint creditors or claimants being a

(1) (1886) I. L. R. 14 Cal. 50.

minor, and which section would be unnecessary, if the appellant's contention were well founded. However, as I have indicated above, I can see nothing in the section to warrant such a construction. The appellant, however, relies upon certain cases in the High Court of Madras, which no doubt are in his favour.

In the case of *Seshan* v. *Rajagopala* (1) it was held that the section applied to cases, in which there is either one decree-holder and he is a minor, or in which all the joint decree-holders are minors or labor under some other disability. The learned Judges relied upon an English case, that of *Perry* v. *Jackson* (2), which however was a case decided under the proviso to the statute of James I, and of 3 and 4 William 4, c. 42, s. 4. But there is an important difference between the language of the proviso in the English Statute and s. 7 of the Indian Limitation Act. In the proviso in the English Statute the words are: "If any person or persons," which seem to indicate that the proviso applies only to cases, in which the sole claimant is a minor, or, if there are more than one claimant, where they are all minors or otherwise under disability. And this is pointed out by Lord Kenyon in his judgment, for he says: "The words of this clause grammatically speaking do not apply to the present case, they only extend to cases, where the person individually a [469] single plaintiff or *persons* in the plural, when there are several plaintiffs, are not in a situation to protect their interest."

He lays stress upon the expression "persons" in the proviso.

Here, as was conceded, no valid discharge could have been given without the concurrence of the minors. I should be disposed to think that the principle of law enunciated in *Perry* v. *Jackson* (2) has found its way into section 8 of the Indian Act. But I do not think it covers the case now before us. There are two subsequent decision in the same High Court to the same effect.

The view however entertained by the Madras High Court has not been accepted by other High Courts in India. In the case of *Gobind Ram* v. *Tatia* (3) where the case in the Madras High Court was cited, a different conclusion was arrived at and the construction of s. 7 of the Limitation Act, for which the present appellant contends, was not accepted, whilst in the case of *Zamir Hassan* v. *Sundar* (4) decided by a Full Bench of the Allahabad High Court the last-mentioned case in the Bombay High Court was followed. There is therefore between the High Courts of Bombay and Allahabad on the one hand, and of Madras on the other, a difference of opinion upon the point, and, in my opinion, speaking with all respect for the decisions in the Madras High Court, the view taken by the other High Courts appear to me to be the sounder. I see no reason to say anything about s. 231 of the Code, the language of which is plain. I think therefore that the claim is not out of time. The appeal consequently fails and must be dismissed with costs.

BANERJEE, J.—I am of the same opinion. The question upon the determination of which the decision of this case depends, is, whether, when only of several joint decree-holders is a minor, s. 7 of the Limitation Act can save an application for execution by the minor decree-holder from being barred by limitation.

The learned vakil for the appellant asks us to answer that question

(1) (1889) I. L. R. 13 Mad. 286.
(2) (1792) 4 T. R. 516, 519.
(3) (1895) I. L. R. 20 Bom. 388.
(4) (1899) I. L. R. 22 All. 199.

1901
MAY 8.

APPELLATE CIVIL.

28 C. 465.

in the negative, and the ground upon which bases his [470] contention is shortly this, that s. 7 of the Limitation Act can save an application for execution from being barred only, where either the sole decree-holder is a minor, or where all the decree-holders are minors; and that, where some of the joint decree-holders are not minors, the section cannot save the application of any one of the decree-holders from the operation of limitation. And in support of this contention he relies upon the cases of *Seshan* v. *Rajagopala* (1) and *Narayanan Nambudri* v. *Damodaran Nambudri* (2).

There is nothing in the language of s. 7 of the Limitation Act to support the contention of the learned vakil for the appellant. That section enacts—I am reading only so much of the section as bears upon this case—that, if a person entitled to make an application be, at the time from which the period of limitation is to be reckoned, a minor, he may make the application within the same period after the disability has ceased as would otherwise have been allowed from the time prescribed therefore in the third column of the second schedule hereto annexed."

Where there is a joint decree in favour of several persons, any one of them is under s. 231 of the Code of Civil Procedure entitled to make an application for execution of the decree, and, if he is a minor, the provisions for extended time under s. 7 of the Limitation Act would apply to him. To hold that s. 7 does not save the case of a minor decree-holder, when he is one of several joint-decree-holders, who are not all under disability, would be to import into s. 7 some provision similar to what is contained in s. 8 of the Limitation Act. And could that have been intended? I think not, because the reason, upon which the provision in the first part of s. 8 rests, would be inapplicable to such a case, having regard to the provisions of s. 231 of the Code of Civil Procedure. It cannot be said that one of several joint decree-holders can give a valid discharge without the concurrence of the others. Indeed s. 231 of the Code goes to show that there cannot be such a valid discharge, but that the Court, when it allows [471] execution to proceed at the instance of one of several joint-decree-holders, is to pass such orders, as it thinks necessary, to protect the interests of persons, who have not joined in the application for execution. In my opinion, therefore, there is nothing in s. 7 of the Limitation Act to support the construction contended for by the learned vakil for the appellant.

As for the two Madras cases relied upon in the argument, with all respect for the learned Judges who decided time, I must say I am unable to agree with the view taken by them. The decisions in these cases are based upon the case of *Perry* v. *Jackson* (3), which was a case upon the construction of a provision in an English Statute somewhat similar to s. 7 of the Indian Limitation Act. But as has been pointed out in the judgment of the learned Chief Justice, the language of the English Statute is different, and, for the present purpose, materially different from that of s. 7 of the Indian Act. I, therefore, dissent from the view taken in the Madras cases, and following the cases of *Govindram* v. *Tatia* (4) and *Zamir Hassan* v. *Sunder* (5) answer the question stated at the outset in the affirmative. *Appeal dismissed.*

(1) (1889) I. L. R. 13 Mad. 236.
(2) (1893) I. L. R. 17 Mad. 189.
(3) (1792) 4 T. R. 516.
(4) (1895) I. L. R. 20 Bom. 383.
(5) (1899) I. L. R. 22 All. 199.