

Before Sir Barnes Peacock, Kt., C. J., Mr. Justice Bayley, Mr. Justice
L. S. Jackson, Mr. Justice Macpherson, and Mr. Justice Mitter.

1863

Aug. 7.

MADHUSUDAN MANJI v. DEBIGOBINDA NEWGI.*

See also

I. L. R.

1 Cal. 108

1 B. L. R.

(O. C.) 10

3 N. W. P. 338

3 B. L. R.

(App.) 79.

8 B. L. R. 372.

10 B. L. R. 232.

Majority—Act XL. of 1858—Regulations X. and XXVI. of 1793.

Every person, not being a European British subject, who has not attained the age of 18 years, is a minor for the purposes of Act XL. of 1858, and, unless he is a proprietor of an estate paying revenue to Government, who has been taken under the jurisdiction of the Court of Wards, the care of his person and the charge of his property are subject to the jurisdiction of the Civil Court, and he is a minor whether proceedings have been taken for the protection of his property or the appointment of a guardian or not.

THIS was a suit to recover possession of a moiety of certain garden land, together with mesne profits. The plaintiff alleged that this was his ancestral property of which his father, Rajnarayan, had been in joint possession; that his father had died in Phalgun 1255 B. S. (March 1849), leaving him a minor; that he attained his majority (*viz.* 18 years of age) on the 3rd Magh 1269 (15th January 1862), and that in 1271 (1864), he discovered that the defendants had possessed themselves of this property;—hence he brought this suit, on the 23rd Paush 1272 (6th January 1866). Madhusudan, one of the defendants, raised the defence (*inter alia*) that the plaintiff's suit was barred by lapse of time.

The Sudder Ameen held that the plaintiff was not a proprietor of an entire mehal paying revenue to Government, and, therefore, he attained his majority on the completion of his 15th year, and as this suit was not brought within 3 years from that date, it was barred.

On appeal the Judge held, on the authority of *Monsur Ali Ramdayal* (1) and that of *Hara Mani v. Tazimuddin Chowary* (2) that the minority of a landholder paying rent to

* Special Appeal, No. 2127 of 1867, from a decree of the Judge of West Burdwan, reversing a decree of the Sudder Ameen of that district.

(1) 3 W. R., 50,

(2) 2 Wym. Rep., 126;

1868

MADHUSU-
DAN MANJI
v.
DEBIGOBIN-
DA NEWGI.

Government direct, be the estate large or small, does not cease till he is 18 years of age. The Judge gave a decree for the plaintiff.

The defendant, Madhusudan, appealed to the High Court. The case was heard before KEMP and E. JACKSON, JJ., by whom a reference was made to a Full Bench, as follows :—

E. JACKSON, J.—The ground of special appeal in this case is, that the Judge has erroneously decided the plea of limitation.

The question turned upon the date on which the plaintiff attained his majority. The first Court held that the plaintiff became a major at the age of 15 years, because though he was a proprietor of land paying revenue direct to Government, he was owner of only a share in a revenue-paying estate. The Judge on appeal held, that as he was a landholder paying revenue directly to Government, be the estate large or small, his minority did not cease till he was 18 years of age. In support of this view of the law, the Judge quotes *Mansur Ali v. Ramdayal* (1). There is not a word, however, in the judgment reported in that case which bears upon the point. That decision relates only to the cases of proprietors of land not paying revenue direct to Government.

The point which the Judge had to decide, *viz.*, whether the plaintiff, as a zemindar paying revenue direct to Government, attained majority at the age of 18 or 15 years, turns at first on Regulation XXVI. of 1793, section 2. That Regulation, referring to Regulation X. of 1793, extends the term of minority laid down in section 28 of that Regulation from 15 years to 18 years. It does not extend the class of proprietors to whom Regulation X. was applicable. It must, in fact, be read as if section 28, Regulation X. of 1793, had fixed the minority of the class of proprietors to whom it was applicable at 18 years of age. The next question is whether Regulation X. of 1793 is applicable to all proprietors of land paying revenue to Government, be they large or small, as held by the Judge, or as held by the first Court only to those proprietors who hold entire estates, and not those who only hold shares of estates. The Judge is right in stating that the loss of the estate is not the

entire to judge whether the Regulation applies to the plaintiff or not. But he was not right on this ground to over-rule the judgment of the lower Court, because the lower Court had not rejected the plaintiff's claim on the ground that the share which the plaintiff held was a small one. The lower Court was right in the view of this Regulation which it took, that it applied not to sharers in any estate, but to proprietors of entire estates. Section 2 of the Regulation distinctly lays this down, and states that it applies to sharers of an estate only, when all the sharers come under the head of disqualified proprietors, as for instance when all the sharers are minors. Section 3 of the Regulation equally distinctly lays down that this Regulation is in no respect to be held applicable to any landholders, except those stated in section 2. It follows then that the first Court was right in laying down the law, that as the plaintiff was only a sharer in a revenue-paying estate, the plaintiff could not on this ground claim to delay his majority until the age of 18 years, because he did not attempt to show that all the other proprietors of the estate were disqualified proprietors.

But it is further argued before us, that the Judge did not proceed on the terms of the Regulation XXVI. of 1793, but on section 26, Act XL. of 1858. If so, the question before the Judge was not whether the plaintiff was a revenue-paying proprietor, and the precedent the Judge has quoted is directly against the view which he has taken of the law. The Judge, in the case of *Mansur Ali v. Ramdayal* (1) held, that section 26, Act XL. of 1858, was only applicable to cases where the estate of the minor had come under the charge of the Civil Court, and it is not alleged in this case that the estate of the plaintiff has been taken in charge of by the Civil Court; therefore, following that precedent, the Judge should have declared that the plaintiff attained majority at 15 years, and held the suit barred by limitation as far as this ground applied to it. But after giving the question my fullest consideration, I hesitate to follow that precedent. I observe that one of the learned Judges, who joined in that judgment, stated that he entertained doubts upon it. I do not read the words "for the purposes of

10068

MADHUSU-
DAN MANJI
v
DEBGOBIN-
DA NEWGI.

(1) 3 W.P.R., 59

1868

MADHUSU-
DAN MANJI
v.
DEBIGOBIN-
DA NEWGI.

this Act" contained in section 26, as in any way confining the law contained in that section to cases where this Act has been put in force. It seems to me that the Act can be put in force at any time until the minor has attained the age of 18 years. Act XL. of 1858 applies to all persons (not being European British subjects) who have not been brought under the superintendence of the Court of Wards, and it declares that the charge of their persons and property shall be subject to the jurisdiction of the Civil Court; and it goes on to say that for the purposes of this Act, every person shall be held to be a minor who has not attained the age of 18 years.

The argument, upon which it is attempted to confine this section of the law to cases where the Act has been put in force, seems to be this: *First*, the old law, Regulation XXVI. of 1793, has been declared to be applicable only to matters connected with the revenue-paying estate, and not to matters unconnected with such estates,—the rule which was followed in *Daiba Mayi Dasi v. Jogeswar Hati* (1); *secondly*, the words contained in section 26, Act XL. of 1858, *viz.*, "for the purposes of this Act," follow the same principle, and the law there laid down is only applicable similarly to the cases of minors whose estates have come under the jurisdiction of the Civil Court. On the first point, with all deference to the learned Judges who in that case declared the law to be settled, I am not satisfied that it was so settled. I am certain that Mr. Justice Norman and I have held a different opinion in a case which came before us in 1864, though I cannot discover the case in the printed reports. I am unable also to find any printed reports of judgments in which the law has been settled as stated by the Judges, though there is a later precedent taking a contrary view of the law (2). And there are certainly no restrictive words in Regulation X. or Regulation XXVI. of 1793. which confine the operation of section 2, Regulation XXVI. of 1793, only to matters connected with revenue-paying estates.

On the second point, I admit there is more difficulty. Act XL. of 1858 includes all minors, not European British Subjects, who are excluded from the provisions of Regulation

(1) 1 W. B., 75.

(2) 5 W. B., 2.

XXVI. of 1793. These are all subject by that Act to the jurisdiction of the Civil Court up to the age of 18 years. For the purposes of that Act, they are all declared not to attain majority until they have reached 18 years of age. It is admitted that the Civil Court can exercise its jurisdiction over them at any age up to 18 years. But it is said that if it does not exercise its jurisdiction, the minor attains his majority at 15 years of age. We have then the anomaly that, although he has already attained his majority at 15 years, the Civil Court on being moved to exercise its jurisdiction, can again declare him to be a minor at the age of 17, or in any subsequent time up to his arriving at 18 years. I am not aware whether the Legislature intended to place any special meaning or stress on the words "for the purposes of this Act," but I should be inclined to give them their full meaning, *viz.*, that to enable the Civil Court to exercise its jurisdiction over the property and person of minors up to a proper age, the law of minority, which usually prevailed, was declared to be altered, and extended to 18 years. In fact, I cannot read this law as having any other effect than altering the general law of minority, and in fixing one law for all minors not taken under the charge of the Court of Wards, and not European British Subjects, *viz.*, 18 years of age. As this view of the law is different from that which has been expressed by other Judges, the proper course is to refer the question to the determination of a Full Bench of this Court.

1868

MADHUSU-
DAN MANJI
"
DEBIGOBIN-
DA NEWGI.

Baboo *Hem Chandra Banerjee*, for appellant, contended, that the period of minority under the Hindu law generally extended to the completion of the 16th year, (*vide* Strange's Elements of Hindu Law, p. 72; Macnaghten's Hindu Law, Wilson's edition, p. 117; and Dayabhaga, chapter III., section 1, verse 17,) and that notwithstanding the alterations made by Regulations X. and XXVI. of 1793, and by Act XL. of 1858, the plaintiff (respondent) in this case attained his majority of 16 years of age.

Baboo *Ambika Charan Banerjee* for respondent was not called upon.

1868

MADHUSU-
DAN MANJIC
v.
DEBIGOBIN-
DA NEWGI.

The opinion of the Court was delivered by

PEACOCK, C. J.—This case appears to me to be very clear when we look at the whole of Act XL. of 1858. The recital declares, “that it is expedient to make better provision for the care of the persons and property of minors not brought under the superintendence of the Court of Wards,” treating those whose estates have been brought under the Court of Wards as minors. Certain Regulations are repealed, and then by section 2 it is enacted that “except in the case of proprietors of estates paying revenue to Government, who have been or shall be taken under the protection of the Court of Wards, the care of the persons of all minors not being European British Subjects, and the charge of their property, shall be subject to the jurisdiction of the Civil Court.” By this section, also, proprietors of estates paying revenue to Government who have been taken under the care of the Court of Wards are treated as minors, for such persons are excepted out of the general term “all minors,” as if it had been said “all minors except those who are under the care of the Court of Wards.” Section 26 declares that, “for the purpose of this Act, every person shall be held a minor who has not attained the age of eighteen years.”

Every person, therefore, not being a European subject, who has not attained the age of 18 years, is a minor for the purposes of the Act, and unless he is a proprietor of an estate paying revenue to Government, who has been taken under the jurisdiction of the Court of Wards, the care of the person and the charge of his property are subject to the jurisdiction of the Civil Court.

Then, can it be said that being a minor subject to the jurisdiction of the Civil Court, he is not a minor unless proceedings are taken in the Civil Court for the protection of his property; or for the appointment of a guardian. His relatives may neglect his interests, but he is still a minor. There may be a minor whose interests are neglected as well as a minor whose interests are looked after and protected. The exception of the Act
Subject, the former than for those who have some one to look
(1) i heir interests.

Being a minor, the plaintiff came within sections 11 and 12 of Act XIV. of 1859, and was under a disability until he attained the age of 18. As pointed out by Mr. Justice E. Jackson, if the law were otherwise, this anomaly would follow, that a minor may have attained his majority on one day and become a minor on the next. A man cannot be said not to be under a disability as a minor when he is liable as a minor to have his property and person put under the charge of a guardian. If he is a proprietor of an estate paying revenue to Government and has been taken under the protection of the Court of Wards, he is still a minor up to the age of 18. (Regulation XXVI. of 1793, section 2.) It cannot be said that he is not a minor when on account of his minority his estates have been taken under the charge of the Court of Wards, under the provisions of Regulation X. of 1793, when by section 22 of that Regulation he is to have a guardian of his person; and by section 7 and 15, a manager of all his estates, real and personal; and by section 32, he cannot sue in the Civil Courts for any cause of action.

1868

MADHUSU-
DAN MANJI
v.
DEBIGOBIN-
DA NEWGL.

Before Sir Barnes Peacock, Kt., Chief Justice, Mr. Justice, Bayley, Mr. Justice I. S. Jackson, Mr. Justice Macpherson, and Mr. Justice Mitter.

RAGHUNANDAN THAKUR v. RAM CHARAN KAPALI.*

Gomasta's Sannud—Act X. of 1862, Schedule A, Art. 43.

1868
Aug. 8.

A sannud which authorises a Gomasta to collect rents, and to sue for them, requires to be stamped.

Such a Sannud requires a 4-rupee Stamp under Art. 43, Schedule A. of Act X of 1862.

THIS was one of three analogous suits for enhancement of rent, instituted by one Amjid Ali, tehsildar, under a sannud of appointment of Raghu Nandan Thakur, on behalf of his master.

The Deputy Collector dismissed the case, on the ground "that the party bringing the suit was not duly empowered to that effect in accordance with section 35 of Act XX. of 1865."

On appeal, the Judge held that, "a tehsil mohurir, who merely made entries in his employer's accounts, was not entitled

* Special Appeal, No. 2251 of 1867, from a decree of the Judge of Tipperah, affirming a decree of the Deputy Collector of that district.