

be restored to possession. The Subordinate Judge has held that the plaintiff gave the defendant some assurance, but he does not definitely find what assurance the plaintiff gave the defendant, nor that it was of such a nature as to make his conduct fraudulent in applying for the order for foreclosure being made absolute. The Subordinate Judge seems to have allowed his feelings of sympathy with the defendant to influence him. We do not think this was right, and we can see no reason which can justify his setting aside the order absolute and allowing the defendant to pay off the debt long after the time for doing so had elapsed.

We must therefore, under s. 622, Civil Procedure Code, set aside the order of the Subordinate Judge in the case and restore that of the Munsif, which we accordingly do. The applicant is entitled to costs.

S. C. G.

Order set aside.

Before Mr. Justice Rampini and Mr. Justice Pratt.

NARENDRA NATH SARKAR

v.

RAI CHARAN HALDAR.*

1902

March 18.

Limitation Act (XV of 1877) s. 20—Certificated guardian, power of—Authorized agent—Payment of interest by certificated guardian, effect of—

The certificated guardian of a minor is an agent duly authorized to pay interest upon a debt due by the minor within the meaning of s. 20 of the Limitation Act (XV of 1877).

Chhato Ram v. Bilto Ali (1) and Maharana Shri Ranmal Singji v. Vadilal Vakhat Chand (2) referred to.

THE defendants Nos. 1 and 2 appealed to the High Court.

This appeal arose out of an action for money due on a bond dated the 11th Bysack 1295. The allegations of the plaintiff

* Appeal from Appellate Decree No. 2599 of 1899 against the decree of Babu Jadu Nath Ghose, Subordinate Judge of Khulna, dated 14th September 1899, reversing the decree of Babu Harendra Narain Guha, Munsif of Satkheria, dated the 28th of April 1899.

(1) (1898) I. L. R. 26 Calc. 51.

(2) (1894) I. L. R. 20 Bom. 61.

1902
 NARENDRA
 NATH
 SARKAR
 v.
 RAI
 CHARAN
 HALDAR.

were that one Hara Nath Sarkar died in 1288 B.S., leaving his widow Soudamini and three sons, Jogendra Nath, Narendra Nath and Surendra Nath; that Jogendra Nath, as executor under Hara Nath's will, managed the estate for his two minor brothers; and that, during his executorship, he borrowed from the plaintiff a sum of Rs. 500 on a letter dated the 9th Assar 1298; that while the debt was unpaid, Jogendra Nath died, leaving a widow, named Kamalbasini; that, after the death of Jogendra Nath, Soudamini, as the certificated guardian of defendants Nos. 1 and 2 (Narendra Nath and Surendra Nath), executed the bond in suit on the 11th Bysack 1295 B.S., jointly and severally with defendant No. 3 (Kamalbasini); and that payments on account of interest were made to the plaintiff from time to time by the said certificated guardian. The plaintiff accordingly sued for the money due on the bond. Defendant No. 3 denied execution of the bond and pleaded limitation. Defendants Nos. 1 and 2 *inter alia* pleaded that the suit was barred by limitation, inasmuch as the payments on account of interest were not made by their duly authorised agent. The Court of first instance dismissed the suit against defendant No. 3 on the ground that no case had been made out against her; it also dismissed the suit against the defendants Nos. 1 and 2 on the ground of limitation. On appeal the learned Subordinate Judge of Khulna, Babu Jadu Nath Ghose, held that the suit was not barred: he accordingly gave the plaintiff a decree against defendants Nos. 1 and 2 only.

Babu Nil Madhub Bose and Babu Hari Charan Sarkhel for the appellants.

Babu Sarat Chunder Roy Chowdhry for the respondents.

RAMPINI AND PRATT JJ. The only point which arises in this appeal is whether the suit is barred as against the minors Narendra Nath Sarkar and Surendra Nath Sarkar, who are the defendants Nos. 1 and 2.

The suit is brought upon a bond dated the 11th Bysack 1295, executed by Soudamini Dassi, the certificated guardian of the minor defendants, and one Kamalbasini I asi. The bond

was executed for a sum of Rs. 500 borrowed by Jogendra Nath Sarkar, the brother of the minors, who is now dead. The plaintiff now sues for the debt.

The Lower Appellate Court has held that the suit is barred as against Kamalbasini Dasi, the defendant No. 3, but that a fresh period of limitation has arisen owing to certain payments made by the certificated guardian of the minor defendants Nos. 1 and 2, so that the suit is not time-barred against them.

The defendants Nos. 1 and 2 appealed to this Court and, on their behalf, it is contended that the judgment of the Subordinate Judge is wrong and that the suit is barred as against them, because their certificated guardian who made certain payments for interest for them was not an agent duly authorized to pay interest on their behalf within the meaning of s. 20 of Act XV of 1877. In support of this contention the pleader for the appellants has called attention to the case of *Chhato Ram v. Bilto Ali* (1) and the case of *Maharana Shri Rammal Singji v. Vadilal Vakhat Chand* (2). These cases, however, relate not to s. 20 of the Limitation Act, but to s. 19. They lay down, no doubt, "that an acknowledgment of debt by a guardian of a minor appointed under the Guardian and Wards Act does not bind a minor and is not such an acknowledgment under s. 19 of the Limitation Act as would give a new period of limitation against the minor." The learned pleader, in particular, calls attention to the terms of the judgment in the case of *Chhato Ram v. B'ho Ali* (1), in which the learned Judges say as follows:—"A guardian is not ordinarily an agent. He has certain statutory powers in regard to the property under his management, and no more. In some three decisions of this Court it has been decided that a natural guardian has not the power to acknowledge a debt so as to bind a minor under s. 19 of the Limitation Act. We can see no difference in regard to that section between a guardian who has obtained a certificate and one who has not."

Now the appellants contend that the words which the Judges who decided that case were interpreting were the words "agent duly authorized on this behalf" in s. 19; and, as these are the

(1) (1898) I. L. R. 26 Calc. 51.

(2) (1894) I. L. R. 20 Bom. 61.

1902

NARENDRA
NATH
SARKAR
v.
RAJ CHARAN
H. DAS.

1902
 NARENDRA
 NATH
 SARKAR
 v.
 RAI CHARAN
 HALDAR.

very words which occur in s. 20, therefore this decision must afford a guide to the interpretation of the same words in s. 20. We do not agree with this contention. The provisions of s. 19 are very different from those of s. 20. The provisions of s. 19 relate to the effect of an acknowledgment in writing so as to give a new period of limitation, but it may very well be that a person who is not an agent duly authorized to give an acknowledgment in writing, so as to start a new period of limitation under s. 19, may yet be an agent authorized to pay interest upon a debt within the meaning of s. 20. In this case we think that the certificated guardian of the minor was really the agent authorized to pay interest on the debt. The guardian, Soudamini Dasi, was the person, who executed the bond on behalf of the minors, and she subsequently made seven payments on account of interest between Kartick 1300 and Chaitra 1301. This has led the Judge to conclude that she was the agent for the payment of interest; and then there is the subsequent payment by the new guardian, Bhobo Nath Roy Chowdhry, of Rs. 10 on the 28th Assin 1302.

We, therefore, think that the Subordinate Judge is right in coming to the conclusion that these payments of interest were made by agents duly authorized on behalf of the minors. For, if these agents could not pay interest, then no one could pay interest; and the creditor would, in that case, be forced to sue the minor for the debt before the expiry of the period of limitation allowed by law and could not give them any grace. To interpret the law in this way would be against the interest of minors in general.

In these circumstances we must find, as the Subordinate Judge has found, that the payment of interest made by the guardian has given a new period of limitation and that the suit is not time-barred.

The learned pleader for the appellants has raised another ground of appeal which, however, he has not pressed very strongly, namely, that a decree for the whole debt should not have been given against the appellants. But we think that, under the terms of the bond, it is clear that the minors were jointly and severally

hable, and that, although the suit has been dismissed as against the defendant No. 3, yet a decree for the whole amount has been very properly given against the two defendants, who are appellants before us.

The appeal is dismissed with costs.

Appeal dismissed.

S. C. G.

Before Mr. Justice Banerjee and Mr. Justice Pratt.

PRAMATHA CHANDRA ROY

v.

KHETRA MOHAN GHOSE.*

1902
July 1.

Transfer of Property Act (IV of 1882) s. 89—Mortgage—Order absolute for sale of mortgaged property, application for—Decree—Execution—Uncertified payment to decree-holder—Appeal—Civil Procedure Code (Act XIV of 1882) ss. 244, 258, 540, 578—Court-fee, insufficiency of—Error affecting merits or jurisdiction.

Proceedings under s. 89 of the Transfer of Property Act are not proceedings in execution of a decree, but in continuation of the original suit; and an appeal from an order absolute made under that section lies under the provisions of s. 540 of the Code of Civil Procedure as an appeal from an original decree.

Tiluck Singh v. Parsotein Proshad (1), and *Tara Prasad Roy v. Bhubodeb Roy* (2) relied upon.

The decision of the majority of the Full Bench in *Mallikarjunadu Setti v. Lingamurti Pantulu* (3) dissented from, and that of the minority (Sir Arnold White C.J. and Moore J) followed.

In an application under s. 89 of the Transfer of Property Act for an order absolute for sale of the mortgaged property, s. 258 of the Civil Procedure Code is no bar to an inquiry into the plea of payment of the mortgage debt.

THE plaintiffs, Pramatha Chandra Roy and another, appealed to the High Court.

The plaintiffs having brought a suit against Khetra Mohan Ghose, the defendant, on a simple mortgage bond, Khetra Mohan,

* Appeal from Appellate Decree No. 135 of 1899, against the decree of H. R. H. Coxe, Esq., District Judge of Midnapore, dated the 15th of October 1898, reversing the decree of Babu Amrita Lal Palit, Munsiff of Midnapore, dated the 3rd of September 1898.

(1) (1895) I. L. R. 22 Calc. 925. (2) (1895) I. L. R. 22 Calc. 931.

(3) (1900) I. L. R. 25 Mad. 244.