1866.

CHANDRA-BHA'GA'BA'I v. KA'SHINA'TH VITHAL.

In accordance with previous decisions of this court, such part of the property in the plaintiff's hands (if any) as may be held to be her peculiar property, should not be taken into account, is in need of support.

A new decree to be passed: costs to follow final decision.

Suit remanded.

1865.
Nov. 25.

Special Appeal No. 174 *of* 1865.

HARI MAHA'DA'JI JOSHI .....*Appellant.*
VA'SUDEV MORESHVAR JOSHI.....*Respondent.*

Hindú Law—Minority—Limitation—Reg. V. of 1827, *Sec.* VII., Cl. 3. *—Act XIV. of* 1859.

Held that Reg. V. of 1827, Sec. VII., Cl. 3, did not alter the Hindú law of minority; but only defined the period of limitation in cases of minority generally; and that the term "minors" used in Sec. 12 of Act XIV. of 1859 must be construed according to the law of the party in the case.

THIS was a special appeal from the decision of R. H. Pinhey, District Judge of the Konkan, in Appeal Suit No. 615 of 1864, reversing the decree of the Munsif of Pen in Original Suit No. 695 of 1864.

The facts fully appear in the following judgment, recorded by the District Judge, on the 25th of January 1865:—

"This action was instituted by the respondent, Hari, as the son and heir of Mahádáji Moreshvar Joshi, deceased, to recover from the appellant, Vásudev Moreshvar Joshí, his one-third share of half an inám field called khadkí or bhátí, in the village of Karambelí, in the Sánkshí Táluká of the Kulábá Sub-Collectorate, in the Konkan District, valued at Rs. 850, and three years' mesne profits, estimated at Rs. 140, on the ground that the field was originally the common property of three brothers, viz., his father, Mahádáji, the appellant, Vásudev, and Bálkrishna, and that Balkrishna had given him his one-third share of the half-field which he held, while the appellant refused to give him one-third share of the other half.

1865.
HARI MAHA'DA'JI v. VA'SUDEV MORESHVAR.

"The defendant Vaíjanáth did not defend the suit. The defence of Vásudev was that plaintiff's father, Mahádáji, separated from his father, Moreshvar, and from appellant, taking his share of the family property, forty years ago; that the field mentioned in the plaint was not part of the property assigned to the appellant's father; that this field has been cultivated by the appellant alone for the past forty years; that plaintiff stated in his plaint, that he brought this action now, because he had been up to within a late period a minor; but this assertion was inadmissible, as his mother, as his guardian, had sued for him, and had sold a portion of the estate; that it is evident that plaintiff's father did take his share of this one field only; that it was determined, in Appeal No. 74 of 1858, that plaintiff had no right to a share of this field, and this present claim was barred by Sec. 2 of the Code of Civil Procedure; and that the amount of mesne profits claimed was excessive.

"On the 3rd of October 1864, A'zam Mukundráv Bháskar, Munsif of Peṇ, awarded the claim with costs, on the ground that it was not proved that plaintiff's father had separated from the family after receiving his share of the family property; except that the Munsif awarded only Rs. 12½, mesne profits, instead of Rs. 14½, as claimed.

"Vásudev Moreshvar Joshi appeals, on the grounds that—(1) It was contrary to law that the Munsif awarded plaintiff's claim, when it was barred by the statute of limitation; (2) plaintiff's father separated from his family more than forty years ago, and at the time of separation he took his full share of the property; (3) the Munsif has erred in allowing the claim, when the plaintiff was unable to substantiate it by proof; (4) the cause of action arose when the plaintiff's father separated, and not when his grandfather died; (5) the Munsif should not have admitted the plea of minority, when plaintiff, although a minor, was under the guardianship of his mother, who managed the estate; and (6) the Munsif's award as regards mesne profits was not just.

"The issues for decision in this suit are—(1) Is the land mentioned in the plaint the undivided property of the family of the parties of this suit? (If so, of course, plaintiff, as the heir of his father, Mahádáji, is entitled to recover a one-third share, unless the claim is barred by the lapse of time. Therefore, the second issue will be) (2) If so, is the claim barred by lapse of time? (3) If not, have the mesne profits been properly assessed by the Munsif?

"My finding on the first issue is in the affirmative, and for plaintiff. The appellant has himself proved this in this court: for, at his request, I sent for the record and proceedings in Appeal Suit No. 74 of 1858, decided by the Joint Judge, Mr. Compton, on the 5th of February 1859, and examined the phárkhat No. 72. This phárkhat disposes of the first issue in this appeal most completely. It is admitted on all sides that this is the phárkhat executed by respondent's father, Mahádáji, to his father, Moreshvar or Mor Joshi. By it he admits the receipt of his share of the family property; and relinquishes all claim to that portion of the property that remained with his father and brothers, except the land which is the subject of the present suit. Regarding the land which is the subject of the present suit, the following explicit provision is made:—

"*Mauje karbeli yetheṅ inám jamín bighá ek áhe ti tumhí vidyamán aháṅ toṅ tumhá kade, túmche máge, trivarga yathá vibhágeṅ gheuṅ:*" that is, on the death of Mor Joshi, the field which is the subject of the present suit, was specially reserved for division between his three sons, of whom respondent's father, Mahádáji, was one. Therefore, unless the claim is barred by lapse of time, respondent's claim to a third of the land must be awarded.

"My finding on the second issue is, that the claim is barred by the law of limitation. Respondent's pleader admits, and it is also stated in the plaint, that Mor Joshí, the father of Mahádáji and of the appellant, and grandfather of the respondent, died in Shake 1766 (A.D. 1844), that is, twenty-two years before this action was filed. The respondent con-

1865.

HARI MAHA'DA'JI v. VA'SUDEV MORESHVAR.

tends that the ordinary term of limitation does not apply to this case, as he was, as an infant, incompetent to sue. In his examination before the Munsif respondent called himself twenty. Now the paragraph above quoted from Mahádáji's phárkhat shows that the cause of action in this case accrued from the date of Mor Joshi's death; and Sec. 11 of Act XIV. of 1859 (*a*) must be applied to this case. Either Mahádáji was alive when his father, Mor Joshi, died; or else Mahádáji was dead. If Mahádáji was alive when Mor Joshi died, then, as at the time when the cause of action accrued to him, he was not under a legal disability, no time can be allowed on account of the subsequent disability of his son, the respondent, claiming through him. If Mahádáji was dead when Mor Joshi died, then it follows that Mahádáji died either in or before the year Shake 1766 (A.D. 1844); and therefore, Mahádáji's son, the respondent, was twenty-two years of age when this suit was instituted. But, by Hindú law, respondent's legal disability as an infant ceased when he attained the age of sixteen years; and, therefore, this suit was not "commenced within three years from the time when the disability ceased." Hence it follows, that, whether Mahádáji predeceased his father or not, respondent's claim is barred by lapse of time.

"I need not, therefore, record any finding on the third issue. I reverse the Munsif's decree; and reject the claim with costs."

(*a*) Sec. 11:—"If at the time when the right to bring an action first accrues, the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall have ceased, as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but if at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person, or of the legal disability of any person claiming through him."

Sec. 12:—"The following persons shall be deemed to be under legal disability within the meaning of the last preceding section: married women in cases to be decided by English law, *minors*, idiots, and lunatics."—Act XIV. of 1859.

Vishnu Moreshvar Kelkar, for the appellant, contended that since Reg. V. of 1827, Sec. VII., Cl. 3 (*b*), provides that the legal disability of a minor is removed on his attaining the age of eighteen years, the District Judge was wrong in applying the Hindú law to the case.

Dhirajlál Mathurádás for the respondent.

COUCH, J.;—Reg. V. of 1827, Sec. VII., Cl. 3, does not alter the Hindú law of minority (*c*); but only defines the period of limitation. This is now governed by Act XIV. of 1859, Secs. 11 and 12, where the word "minor" is only used. The Act must be construed according to the general law; and Act XX. of 1864, Sec. 30, makes no difference.

The decision of the Judge on the question of minority is, therefore, right; and we confirm his decree with costs.

WARDEN, J., concurred.

Decree affirmed.

(*b*) "The whole current of authorities fixes majority at sixteen years, which Jagannátha and Servara, compilers of Digests, explained to mean the entrance on the sixteenth year; but which elder commentators of greater weight understand to mean sixteen years complete,"—*Colebrooke* in 2 *Strange, H. L.* 78. See also 1 *Colebrooke's Digest*, p. 201, 3rd Edn.: 1 *Macnaghten, Princ. H. L.* 103, ch. vii.; and *Steele, Law and Custom of Hindú Castes*, III., 27.—ED.

(*c*) "And in cases of the minority or continued insanity of the claimant, no limitation shall bar the recovery of a claim sued for within six years of the minor attaining the age of eighteen years, or the insane person recovering the use of reason; and if a claimant die during such minority or insanity, the said period of six years from his death shall be applied to suits entered by his heirs or executors."