Civil Petition.

1868. July 2.

GANGA'DHAR RAGHUNA'TH ..... *Petitioner.*
CHIMNA'JI KESHAV DA'MLE ..... *Opponent.*

Minor—Hindú Law—Execution of Decree—Reg. V. of 1827, *Sec.* VII., *cl.* 3.

Held that a Hindú of the age of seventeen years was competent to apply for the execution of a decree obtained by a deceased person of whom he was the representative.

Reg. V. of 1827, Sec. VII., cl. 3, does not prevent a Hindú less than eighteen years of age from suing, but restricts him to a particular period after which he is no longer a minor.

THIS was an application to the High Court in the exercise of its extraordinary jurisdiction, under cl. 2 of Sec. v. of Reg. II. of 1827.

One Lakhshmibái, the widow and representative of Raghunáth Trimbak Sáne, filed a suit against Chimṇáji Keṣhav Dámle for the redemption of a house, and finally obtained a decree in the High Court (in Special Appeal No. 32 of 1866, decided on the 25th of June 1866) to the effect that she (the plaintiff) should, on payment of Rs. 222, recover possession of the house in dispute, and that in default of payment of the said sum of Rs. 222 within six months from the date of the decree, the mortgage should be foreclosed. Lakhshmibái having died, the petitioner, Gangádhar, alleging that he was her adopted son, applied for possession of the house on payment of the sum decreed for redemption. The defendant, Chimṇáji, opposed this application, on the ground that the petitioner was a minor, and that, therefore, a guardian, holding a certificate under Act XX. of 1864, alone could sue out execution. The Munsif, however, on the 24th of December 1866, overruled the objection, on the ground that the petitioner was seventeen years of age, and was capable of managing his own affairs, and that, therefore, no certificate of guardianship was required in the case. He accordingly made the order prayed for. From this order the defendant, Chimṇáji, appealed to A. L. Spens, Acting Judge at Thánáá, who recorded his judgment as follows :—

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"I find that the Munsif has erred (1) in allowing execution on the application of a minor; (2) that he has erred in allowing execution until the applicant had procured a certificate from the District Court, seeing that it is not absolutely certain that the applicant is the legal representative of the deceased decree-holder. Sec. 208 of Act VIII. of 1859 does not make it essential that a certificate should in every instance be obtained by a representative before he can be allowed to apply for execution: *Rajah Gopal Singh Deb* v. *Gopal Chunder Chuckerbutty and another* (*a*); but Sec. 208 does require that the Court should satisfy itself that the applicant is what he professes to be."

It was further contended, in appeal, that the Munsif had ordered possession of property which was not mentioned in the decree of the High Court; and, as regarded this head of appeal, the Acting Judge postponed the inquiry until a copy of the decree passed by the High Court should be produced.

The appeal was subsequently called on for hearing before R. H. Pinhey, District Judge at Thán̤á, who, on the 23rd of November 1867, reversed the Munsif's order, observing that the appeal was virtually disposed of by the late Acting Judge, when he determined that the Munsif had erred in allowing the execution on the application of a minor.

10th March 1868. *Shántárám Náráyán* obtained a *Rule nisi* to set aside the order of the District Judge.

Dhirajlál Mathurádás now showed cause:—The applicant is only seventeen years of age, and is, therefore, a minor, and incapable of executing the decree. This Court has ruled that for the purposes of limitation the age of a claimant must be construed according to the law of the party in the case, and that Act XX. of 1864 makes no difference in that respect: *Hari Mahádáji Joshi* v. *Vásudev Moreshvar Joshi* (*b*); but, though by Hindú Law the age is different, eighteen years is fixed as the period of minority under cl. 3, Sec. VII. of Reg. V. of 1827. If a man is minor for bringing a suit, he

(*a*) 7 Calc. W. Rep., Civ. R. 393. (*b*) 2 Bom. H. C. Rep. 348.

cannot *à fortiori* make an application for the execution of a decree.

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PER CURIAM (NEWTON and TUCKER, JJ.):—Under the general Hindú law, the applicant, having attained the age of seventeen years, was competent to institute any legal proceedings for the purpose of enforcing his rights. Cl. 3, Sec. VII., Reg. V. of 1827 fixes a special period of limitation in cases of minority, and merely prescribes the age of eighteen years as the time at which the minor's disability is to cease. Except for this particular purpose, it does not alter the general law. We, therefore, reverse the order of the District Judge made on the 23rd of November 1867, and direct that he proceed with the further consideration of the opposite party's appeal. Costs of this application to be borne by Chimnáji Keshav.

Referred Case.

July 14.

JITMAL valad BAHIRAVDA'S .....*Plaintiff.*
RA'MCHANDRA valad JAGRUP *et al.* .....*Defendants.*

Small Cause Court—Order rejecting plaint—Power ot set aside.

Held that it is not competent to the Judge of a Small Cause Court in the Mofussil to set aside an order which he has made rejecting a plaint.

CASE referred for the decision of the High Court, under Sec. 22 of Act XI. of 1865, by Bháskar Dámodhar, Judge of the Small Cause Court at Ahmednagar.

"The abovenamed plaintiff presented his plaint on the 20th of March last, and it was set down for disposal on the 10th of April. It was, however, found on that day that the plaint did not clearly describe the cause of action. The plaint was, therefore, rejected, in accordance with Sec. 29 of the Code of Civil Procedure, the provisions of which have, by Sec. 47 of Act XI. of 1865, been extended to all suits and proceedings under that Act, so far as the same may be applicable.

"On the 16th of April, the plaintiff presented an application praying that the order rejecting the plaint might be