

*Referred Case.*

Dhondiba Lakshuman ... .. Plaintiff.

Kusa, a Minor, by his Mother and  
Guardian, Bayaji ... .. Defendant.*Procedure—Minor—Defendant—Certificate of Administration.*

A suit against a minor whose estate exceeds Rs. 250 in value cannot be proceeded with, unless he be represented by a person holding a certificate of administration under Act XX of 1864.

The plaintiff may apply to the District Judge to appoint an administrator, if none such has been appointed.

Under Section 22 of Act XI. of 1865, the following case was submitted for the orders of the High Court by Janardan Vasudevji, Judge of the Court of Small Causes at Puna.

“How is a suit instituted against a minor represented by a guardian, as the representative of a deceased person, to be proceeded with, when such guardian enters appearance without obtaining a certificate of administration in respect of the minor's estate, which exceeds Rs. 250 in value.

“The guardian of a minor defendant entered appearance on the day for which the suit was set down for retrial, and, on being interrogated, she admitted that her deceased husband had left lands, which, after his death, she had assigned in mortgage to his creditors as security for debts amounting to Rs. 400: and as she produced no certificate of administration in respect of the estate to which the minor has succeeded, she was directed to obtain one from the District Judge, without which she was told that she could not be heard in answer to the plaintiff's claim, under Section 2 of Act XX. of 1864. For this purpose she was allowed three long adjournments; but she has failed to produce the requisite certificate, and her pleader now states that he has no instructions from his client as to whether she has or has not obtained the certificate.

“The defendant's pleader cannot be heard in defence: and if a suit be proceeded with *ex parte* under such circumstances, the interests of the minor may perhaps suffer in cases in which there may be a good defence.

1869  
Oct 7.

1869

Dhondiba  
LakhumanKusa, a minor  
by his Mother  
and Guardian,  
Bayaji

"By law the care of the person of a minor and the charge of his property vest in the District Judge (vide Sec. 1, Act XX. of 1864). That officer is therefore the legal guardian of the minor, and I think may be joined as a defendant in that character in cases in which no kinsman of the minor has obtained a certificate of administration."

Per Curiam (Warden and Lloyd, JJ).:—The suit cannot be proceeded with unless the minor be represented by a person holding a certificate of administration under Act XX of 1864. The Small Cause Court Judge should inform the plaintiff that he should apply to the District Judge to appoint an administrator under that Act.

Oct. 13.

*Special Appeal No. 354 of 1869.*

Shridhar Vinayak, Minor, by his Guardian,

Sakharam Sadashiv ... .. *Appellant.*

Babaji bin Jivaji... .. *Respondent.*

*Limitation—Purchase at sale by Court—Suit heard and determined—Res judicata.*

As a purchaser at an auction sale held by a Court only acquires the right title and interest of the judgment-debtor in the property sold, a plea of limitation that would be good against the judgment-debtor is good also against the purchaser.

When a person fails to establish a prescriptive title in a suit in which he is plaintiff, it does not follow that the defendant is entitled to recover the subject of such suit in an action brought by him.

This was a Special appeal from the decision of Baron De-H. Larpent, Joint Judge Puna District, in Appeal Suit No. 238 of 1869, confirming the decree of the Munsif of Puna.

The plaintiff, Babaji bin Jivaji, purchased a house, the subject of the present suit, at an auction sale held, in 1861, in execution of a decree obtained by Vithal Janardan, against his judgment-debtor, Dattu Kasar. The plaintiff, on attempting to take possession of the house, was obstructed by Vinayak Shivram, the father of the minor defendant,