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bearing upon this point, which we think it as well to note—3 Morris 53, decided 28th March 1856; 4 Morris 24, 15th May 1857; 8 Harrington 232, 23rd September 1861; 9 Harrington 294, 31st March 1862; 7 Harrington 132; 7 Harrington 218; 7 Harrington 257; 2 Morris 51; and 2 Morris 262.

The Assistant Judge has thrown out the case on the preliminary point of limitation. We must, therefore, in reversing his decree, return the case that he may dispose of the appeal on the merits. Costs to follow judgment.

[APPELLATE CIVIL JURISDICTION.]

Cross Special Appeals Nos. 271 *and* 338 *of* 1874.

February 19.

No. 271.

GOPA'L KA'SHI .....*Defendant and Appellant.*

RAMA'BA'I SA'HEB PATVARDHAN and another ... } *Plaintiffs and Respondents.*

No. 338.

RAMA'BA'I SA'HEB PATVARDHAN and another ... } *Plaintiffs and Appellants.*

GOPA'L KA'SHI.....*Defendant and Respondent.*

Suit by a Hindu widow having a son—Limitation—Act XIV. of 1859*—Certificate of guardianship—Act XX. of* 1864*—Civil Procedure Code, Section* 73.

In 1864 a Hindu widow, having a minor son, sued, in her own name and on her own behalf, to recover certain immoveable property. The action was brought on a lease which expired in 1854. The defendant denied the lease, and contended that the suit should be dismissed, as it could not be maintained by the widow in her own name. In 1871, the son, who had in the meantime attained his majority in 1865, was made a co-plaintiff on his own application:

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Held that the suit was barred, inasmuch as it must, if maintainable, be deemed to have been instituted in 1871, when the son was made a co-plaintiff the plaint previously to that time having been in the widow's own name and expressly on her own behalf.

Held also that as the widow had no certificate of guardianship, she was precluded by Act XX. of 1864 from bringing a suit in her own name in respect of her son's property, and that making the son a co-plaintiff in 1871 could not change the character of the suit, as it had existed previous to that date so as to defeat the law of limitation.

Held (by Pinhey, J.,) that the minor was wrongly made a plaintiff in 1871. *Durm Das Panday* v. *Mussumat Sham Soondri* (3 Calc. W. R. P. C. 44). distinguished.

THESE were cross special appeals from the decision of E. Hosking, Assistant Judge at Satara, amending the decree of Vásudev Nilkanth, Subordinate Judge of Tasgaum.

Ramábái Sáheb, widow of the late Bháu Sáheb Patvardhan, in 1864 sued to recover possession of certain land in Kasbe Bhilawádi from the defendant Gopal Káshi, and stated that the same had been let to the defendant in 1847 under a lease which expired in 1854. The suit was brought by Ramábái in her own name, and in her own right as the heir of her husband, although she had, at the time, a minor son, named Ganpatráv, who did not attain his majority until 1865. Gopál denied the lease, and contended that it was not competent to Rámabái to maintain the suit on her own behalf, and urged that it should be dismissed. On the 17th March 1871, Ganpatráv was allowed, under Section 73 of the Civil Procedure Code, to join the suit as co-plaintiff with Ramábái. Thereupon the defendant contended that the period of limitation should be calculated back from the time when Ganpatráv joined the suit, and that, therefore, the claim was barred by the Limitation Act, as it was brought after the lapse of more than twelve years from the time when the cause of action accrued in 1854. Both the lower courts held that Ganpatráv was properly made a co-plaintiff, and that the claim was not barred by limitation, as it was filed by Ramábái within the period of limitation. They, accordingly, decreed in plaintiffs' favour part of the land, and rejected the claim to the remaining part, on the ground that the plaintiffs failed to prove their right thereto

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In special appeal, the principal contention was on the point of limitation.

The special appeal was argued before SARGENT and PINHEY, JJ., on the 19th of February 1875.

Bhairavnáth Mangesh, for the appellant, contended that Ganpatráv ought not to have been made a party to the suit, as his interest was not thereby affected within the meaning of Section 73, Civil Procedure Code: *Joy Govind Doss* v. *Goureeprashad* (*a*), *Mussamat Khodeja* v. *Ahmed Hossein* (*b*). Ramábái could not be said to have brought the suit on behalf of her son while a minor, because she had obtained no certificate as required by Act XX. of 1864, Section 2, nor under Section 20 of that Act, could she maintain it in her own name after the son's minority ceased. Moreover, if it was a suit on behalf of the son, it must be considered to have been instituted on the 17th March 1871, when he was made a party, and limitation must be calculated back from that time. The claim, therefore, was barred: *Kishen Loll Chowdhry* v. *Chunder Coomar Roy* (*c*), *Mánaklál* v. *Bháskarráv*, S. A. No. 494 of 1871, decided by GIBBS and MELVILL, JJ., on the 12th February 1872, *Shivrám Vithal* v. *Bhagirthibái* (*d*).

Shántárám Náráyan for the respondents submitted that the suit, though instituted by Ramábái in her own name, might be regarded as brought by her on behalf of her son. It was so regarded by the Privy Council in a case in which a Hindu widow (plaintiff) adopted a son after the institution of the suit by her for the recovery of her husband's share in the family property: *Durm Das Panday* v. *Mussumat Sham Soondri* (*e*).

SARGENT, J.:—This action was originally instituted by Ramábái Saheb to recover certain lands, which had formed part of the *saranjám* of her late husband, Bháu Sáheb, on the ground that they had been leased to the defendants in 1847

(*a*) 7 Calc. W. Rep. Civ. R. 202. (*b*) 10 Calc. W. Rep. Civ. R. 389.
(*c*) Calc. W. Rep. for 1864, Civ. R. 152. (*d*) 6 Bom. H.C. Rep. A.C.J. 20, 22.
(*e*) 6 Calc. W. Rep. P. C. 44.

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for the term of seven years. It was brought in her own name, purported to be in her own behalf, and did not even mention the existence of her son Ganpatráv.

The defendants, by their written statement, contended that Ramábái had no cause of action, there being a son living. On 23rd December 1870, she made a representation to the Court (Exhibit 80), in which she claims exclusively in her own right as heir of her husband, her son not having been acknowledged by the British Government. She further contends that in any case her son was the only person entitled to take the objection to her title, and that he was living under her protection. In March 1871, Ganpatráv was made a co-plaintiff on his own application, notwithstanding the opposition of the defendants, who filed a supplementary written statement in July 1871, in which they contended that Ganpatráv's interest was not affected by Ramábái's suit, and that Section 73 was, therefore, not applicable. I entertain but little doubt that, under these circumstances, the making Ganpatráv a co-plaintiff was an improper proceeding. Assuming, however, that Ganpatráv was properly made a party, it could only be on the assumption that Ramábái was henceforth suing on behalf of her son, otherwise there would clearly be a misjoinder of plaintiffs. Now the right of Ganpatráv, as son of Bháu Sáheb, was to recover possession of the lands in question on the expiration of the lease to defendants. That lease expired in 1854. Ganpatráv's right to recover possession of the lands would, therefore, have accrued at that date, and his right of action, owing to his not having come of age until 1865, would be barred in 1868. The suit, however, so far as it can be deemed to be based on Ganpatráv's title, must be deemed to have been instituted when he was made a co-plaintiff in 1871, and was, therefore, too late. This is apparent from the circumstance that the plaint had, previously to that date, been in Ramábái's own name as heir of her husband, and was expressed to be in her own behalf. Moreover, not having a certificate of guardianship, she was precluded, by the Minors Act XX. of 1864, from bringing

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a suit in her own name in respect of her son's property, nor could the making Ganpatráv a co-plaintiff in 1871 change the character of the suit, as it had existed, previous to that date, so as to defeat the statute. It was suggested by Mr. Shántárám that the suit might be regarded as having been brought in 1864, treating her now as a trustee for Ganpatráv, and he referred us to the case before the Privy Council, reported in 6 Calc. W. R. P. C. R. 45. There, no doubt, a suit brought by a widow in her own right was treated as having been continued as trustee for her adopted son after the date of adoption. There was, however, no question of the statute in that case, but merely whether the widow could be deemed as having any title to recover in the suit after the adoption, and the Court held that she had, holding that she must be deemed to be suing as a trustee for her adopted son. In dealing, however, with the question of the statute of limitations, which arises in this case, it is plain that Ramábái could only be considered as suing as a trustee for her son, from the time when Ganpatráv was made a co-plaintiff with her.

We are obliged, therefore, to hold that the suit was barred, and the decrees of the courts below must, accordingly, be reversed with costs on special respondents throughout.

PINHEY, J.:—This suit was instituted, in 1864, by Ramábái Sáheb, widow of Bháu Sáheb Tásgánvkar, to recover possession of certain property in the possession of the defendant Gopál Káshi, and said to have been leased to the defendant in 1847 by the plaintiff's deceased husband.

Ramábái sued in her own right as widow and heir of her late husband. She did not claim the property on behalf of her infant son, nor did she mention that she had any son. Moreover, as she had not been appointed administratrix of her infant son's property under Act XX. of 1864, she was not competent to maintain or institute this suit on her son's behalf.

She admits that she had a son, Ganpatráv, born to her in 1849. It is clear, therefore, to my mind that this suit was

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not maintainable by Ramábái either for herself or for her infant son, and I am, therefore, of opinion that the suit should have been dismissed.

But in 1871, that is nearly seven years after the suit was filed, and when Ganpatráv was 22 years of age, he was allowed to become a party to the suit, and was made by the Subordinate Court a co-plaintiff with Ramábái. I am of opinion that it was not competent to make Ganpatráv a co-plaintiff in the suit, either under Section 73 of the Code of Civil Procedure or under Section 20 of Act XX. of 1864, and that, therefore, his name should be removed from the record. Ramábái, by her own showing, had no cause of action, and it was not, in my opinion, competent to Ganpatráv, seven years afterwards, to come into a suit, which was bad in itself, and ought to have been dismissed years before, and import into the suit a cause of action which should date back from the date on which an unmaintainable plaint was filed by Ramábái.

Again, up to 1871, when Ganpatráv was made a co-plaintiff, there was no cause of action before the Court on which the Court could award against the defendant. If Ganpatráv had any cause of action against defendant, he must be held to have asserted it first in 1871, when he became a plaintiff on the record, for he cannot be said to have derived any right through Ramábái, who up to that time was the sole plaintiff on the record. But in 1871, Act XIV. of 1859 was the law of limitation, and under this Act, his claim was barred. It is admitted by the pleaders on both sides that Ganpatráv's claim was barred by limitation, if Act XIV. of 1859 applies to it, and if his claim dates from the time that he became a party to the suit.

And, therefore, I also think the decrees of the courts below should be reversed, and the claim dismissed with costs throughout.