

sider whether it would be possible for him, under sections 212 and 220 of the Succession Act, to obtain, in the circuitous method suggested in argument, the limited probate which he desires.

1880

In re
THAKER
MADHAVJI
DHARAMSI.

Application refused.

Attorneys for the applicant.—Messrs. *Hore, Conroy, and Brown.*

Attorney for Government.—Mr. *R. V. Hearn.*

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Kimball.

SHIDDHESHVAR (ORIGINAL PLAINTIFF), APPELLANT, v. RAMCHAN-
DRARAV (ORIGINAL DEFENDANT), RESPONDENT.*

1882
April 10.

Bombay Hereditary Offices Act III of 1874, Section 10—Certificate by Collector—Jurisdiction—Hindu law—Age of majority—Mortgage by a person not owner—Agent—Ratification—Estoppel.

A certificate under section 10 of Bombay Act III of 1874, stating that a *vatan* has been assigned to an officiator as his remuneration, and granted by the Collector to save a *vatan* from attachment before judgment, does not exclude the jurisdiction of the Civil Court to make a decree, notwithstanding that the decree may be rendered inoperative by the Collector issuing a fresh certificate.

A Hindu to whom Act XX of 1864 (Minors Act) is not applied, and who is not governed by the Indian Majority Act, 1875, attains his majority when he attains the age of sixteen years.

The plaintiff sued the defendant on mortgages executed to the plaintiff by the adoptive mothers of the defendant (who were also defendants) subsequently to his adoption. The plaintiff contended that the mortgages had become effectual as against the defendant by reason of his subsequent conduct. Evidence was given that he had promised his adoptive mothers to redeem the mortgages, and that he had stood by and allowed the plaintiff to carry out the provisions of the mortgage deeds to his own detriment by paying maintenance to the defendant's adoptive mothers, and by paying off certain mortgages which had been created by them previously to the adoption of the defendant.

Held that the defendant was not liable upon the mortgages. His promise to redeem the Mortgages was not made to the plaintiff, but to his adoptive mothers, and there was no consideration for such promise as he made. Nor could the promise have the effect of ratification, for the ratification of the unauthorized contract of an agent can only be effectual when the contract has been made by the agent avowedly for or on account of the principal, and not when it has been made on account of the agent himself.

*Regular Appeal, No. 14 of 1881.

1382.

SHIDDHESH-
VAR
v.
RA'MCHAN-
DRARA'V.

Held, also, that knowledge on the part of the defendant that the plaintiff was carrying out the provisions of the mortgage deeds, and his allowing the plaintiff to do so, did not estop him from disputing them afterwards, for it was no part of his duty to step in and protect the plaintiff against the consequences of his own unauthorized dealings with his property.

This was a regular appeal from the decision of Rao Bahadur Purushotam S. Binivale, Subordinate Judge (First Class) at Satara.

The plaintiff sued Lakshmibai and Bhavanibai—widows of one Mahipatray, and Ramchandraray, their adopted son. He alleged that the widows executed two mortgage deeds to him for Rs. 5,000 and Rs. 4,000 on the 27th August, 1867, and 15th April, 1868, respectively, which sums he claimed with interest and mesne profits.

The female defendants admitted the execution of the deeds, but pleaded (*inter alia*) that they were executed during the minority of their adopted son, the third defendant, who alone was responsible for the plaintiff's demand. They also stated that the plaintiff had agreed to give them a certain amount for maintenance, and if he continued to give them that amount they would not oppose the plaintiff's claims. The third defendant (*inter alia*) contended that the property mortgaged was *deshmukhi vatan*, and assigned to the officiator as remuneration, and not alienable without the sanction of the Collector of the district. He also contended that the acts of the first two defendants did not bind him, he having been a minor at the date of the deeds.

The Court below held that the deeds had, in fact, been executed, but that there was no legal necessity for their execution, and that the third defendant was not bound by the acts of his adoptive mothers. It was of opinion that there was collusion between the plaintiff and the widows. It also held that the Collector having certified, under section 10 of the Vatan Act (Bombay Act III of 1874), that the property was *vatan*, the mortgages should be held to be of no effect, and a decree was made in favour of the plaintiff against the first two defendants only.

The plaintiff appealed to the High Court, making the third defendant the only respondent.

Inverarity (with him *Kirloskar*) for the appellant.—The adoption of the third defendant by the first and second defendants took

place in 1864,—that is, before the execution of the earlier of the plaintiff's mortgages. The two defendants were indebted in large sums at that time, and the plaintiff paid them off. The mortgages to the plaintiff were before the Vatan Act of 1874. The Collector of Satara under section 10 of the Act, did grant a certificate on the 28th of February, 1879, declaring the property to be *vatan* assigned to the officiator as remuneration ; but this certificate touches only beneficial personal interest. Section 10 of the Act does not empower the Collector to declare a mortgage to be null and void. The third defendant acquiesced in the acts of the plaintiff and of the other defendants for many years after he attained the age of majority,—that is, eighteen years complete. He even promised his mothers to redeem the mortgages.

Lang (with him *Shantaram Narayan*) for the respondent.—The female defendants had no right to mortgage: *Bai Kesar v. Bai Ganga* (1). At the date of the earlier mortgage the third defendant was more than sixteen, which is the age of majority according to Hindu law. Evidence shows he was eighteen. Any promise made by him was without consideration, and ineffectual. It did not amount to ratification. The fact that he allowed the plaintiff to give maintenance to his mothers, does not debar him from disputing unauthorized dealings with his property.

MELVILL, J.—In this case the Collector of Satara has given a certificate under the provisions of section 10 of Bombay Act III of 1874, in which he states that the whole of the property against which the plaintiff seeks to enforce his mortgages is *deshmukhi vatan* assigned as the remuneration of the officiator, and, consequently, inalienable. This certificate appears to have been issued to defeat an attachment before judgment placed in this suit, and, having fulfilled its object, it cannot be said that it operates to exclude the jurisdiction of this Court to make a decree in the plaintiff's favour. There can be no doubt, however, that if this Court were to make such a decree, the Collector would immediately renew his certificate, and this Court would then be constrained, by section 10 of the Act, to cancel its decree, which would consequently be wholly inoperative. Under these

1882 .

SHIDDHESH-
VAR
v.
RA'MCHAN-
DRARA'V.

1882

SHIDDHESH-
VAR
v.
RA'MCHAN-
DRARA'V.

circumstances it seems strange that the plaintiff should have thought it worth his while to press this appeal.

Independently, however, of this consideration, we are of opinion that the plaintiff is not entitled to a decree against the third defendant, Ramchandra, or against the mortgaged property. The mortgages were executed on the 27th August, 1867, and the 15th April, 1868, by the two first defendants, Lakshmibai and Bhavanibai, in their own names. These ladies had adopted the third defendant Ramchendrarav in 1864. Consequently, at the date of the mortgages, they had no right to deal with the property as their own, since it had long since vested in Ramchandra. Nor, even if they had professed, (which they did not do,) to deal with it as Ramchandra's guardians, had they any power so to act: for the evidence proves to our satisfaction that, at the date of the earlier of the two mortgages, Ramchandra had attained the age of sixteen, and, therefore, as Act XX of 1864 had not been applied to him, he was, according to the rulings of this Court, no longer a minor: *Shivji Hasam and others v. Datu Mavji* (1); *Hari Mahadaji v. Vasudev Moreswar* (2); *Gungadhur v. Chimnaji* (3).

The mortgages having been effected by persons who had no authority to deal with the property, it is contended that they had nevertheless become effectual through the subsequent conduct of Ramchandra. It is in evidence that Ramchandra promised the two first defendants that he would redeem the mortgages; but he made no promise to the plaintiff, nor was there any consideration for such promise as he made. Nor can the promise have the effect of a ratification: for a ratification of the unauthorized contract of an agent can only be effectual when the contract has been made by the agent avowedly for, or on account of, the principal, and not when it has been made, as in the present case, on account of the agent himself: *Wilson v. Tumman* (4). The only other ground on which it is contended that Ramchandra is bound, is that he stood by and allowed the plaintiff to carry out the provisions of the mortgage deeds to his own detriment, by paying maintenance to the two widows, and by paying off certain mortgages which had been created by the widows pre-

(1) 12 Bom. H. C. Rep. 231.

(3) 5 Bom. H. C. Rep. 95.

(2) 2 Bom. H. C. Rep. 325.

(4) 6 M. & G., 235.

vously to Ramchandra's adoption. But it was no part of Ramchandra's duty, (even if he knew of what was going on,) to step in, and protect the plaintiff against the consequences of his own unauthorized dealings with Ramchandra's property. If he has acquired, by assignment, any valid charges against that property, it is open to the plaintiff to assert his claim in another suit, if he think it worth his while to do so in the face of the Collector's certificate.

The decree of the Subordinate Judge is confirmed with costs.

APPELLATE CIVIL.

Before Mr. Justice Melville and Mr. Justice Kemball.

HUSEIN BEGAM (ORIGINAL PLAINTIFF), APPELLANT, v. ZIA-UL-NISA BEGAM
AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

April 10.

Mahomedan law—Sale of minor's property—Validity of such sale—Guardian—Sanction of sale by ruling authority.

The plaintiff sued to recover her husband's share in certain property at S. to which he and other persons became entitled as heirs of M. That property had been sold to the defendants by the heirs of M. during the minority of the plaintiff's husband, his elder brother acting for him in the transaction. It was proved that the sale of the property to the defendants had been approved of by H., who was the Agent of the Governor of Bombay at S., and the representative of the ruling authority in the management of M.'s estate. The plaintiff contended that, according to Mahomedan law, it was not competent for the elder brother of a minor, as guardian, to alienate a minor's property.

Held that the sanction of the ruling power constituted a sufficient authority for the act of the guardian, provided that the transaction was one which, according to Mahomedan law, a duly constituted guardian might have entered into on behalf of his ward. That law permits a guardian to sell the immoveable property of his ward, when the late incumbent died in debt, or when the sale of such property is necessary for the maintenance of the minor. The evidence in the present case showed that the indebtedness of M. and the distressed condition of his heirs existed in a sufficient degree to justify the sale of the whole property of the heirs.

This was an appeal against the decree of Rao Bahadur Mangeshrav Balvant, Subordinate Judge (First Class), Surat.

The plaintiff in this case sought to establish her title to a fourth of her husband Kutubudin's share in the three-annas' share in