

There was no appearance on either side in the High Court.

SARGENT, C. J.—There is nothing in the Dekkhan Agriculturists' Relief Act to lead to the conclusion that the term "immovable property" is used in any other sense than that which has been given to it in the cases under the Civil Procedure Code to which the Subordinate Judge has referred in the margin of his referring letter. Standing crops must, therefore, be held to be immovable property within the meaning of section 22 of the first named Act.

1882

SADU
v.
SAMBHU.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Melvill.

BÁBAJI (ORIGINAL OPPONENT), APPELLANT, v. SHESHGIRI AND OTHERS
(ORIGINAL APPLICANTS), RESPONDENTS.*

July 20.

*Minors—Administration—Manager—Jurisdiction—Account—Act XX of 1864—
Undivided Hindu family.*

A certificate of administration may be granted, under Act XX of 1864, for the share of a minor who is a member of an undivided Hindu family.

When a certificate is given in such a case the District Court has no jurisdiction to attach the undivided property in which the minor has a share, with a view to ascertain and divide off the minor's share. Such ascertainment and division can only be effected by a regular suit.

THIS was an appeal from the order of E. Hosking, Assistant Judge (Full Power) at Kaládgi.

Narsápá and Bhimáná were brothers carrying on a joint trading concern. Bhimáná having died, Narsápá was, on the 8th of July, 1875, appointed administrator of the share of his nephews, Sheshgir, Venkápá, and Tipáná, the sons of Bhimáná. On the death of Narsápá his grandson Bábáji Shrinivas carried on the business. In 1879 the eldest son of Bhimáná attained majority, and applied to the Court to take charge of the shares of his minor brothers and of himself. The Senior Assistant Judge, Mr. Scott, of Kaládgi, in pursuance of this application, attached a shop at the village of Ilkal, and had the accounts examined by two commissioners, who presented their report on the 1st of April, 1880. Two days afterwards Mr. Scott directed, with the consent of the applicant

*Appeal, No. 14 of 1881, under Act XX of 1864.

1882

BABAJI
v.
SHESHGIRI.

Sheshgir, that Babaji should continue to carry on the business, on his finding security for Rs. 55,000, until further orders. Babaji, having found the security, was put in charge of the business. On a consideration of the accounts furnished and the objections urged by each party, Mr. Hosking, who succeeded Mr. Scott on the 27th of August, 1880, informed the parties that he would attach the business, arrange for the recovery of debts due to the firm, and that an inquiry would be made into the past management, the effect of which seemed to be to reduce the business in four years from Rs. 1,09,741 to Rs. 61,823, or nearly one-half its former value. Subsequently Babaji's younger brother was joined as an opponent with Babaji, and the Court made an order declaring Babaji and Lakshman sole owners of the joint business at Ilkal, on condition that they pay Sheshgir and his brothers Vankapa and Tipana Rs. 72,000 principal and Rs. 13,200 interest by fifteen instalments.

Babaji applied to the High Court.

Branson (with him *Shamrav Vithal*) appeared for the applicants.—The proceedings of the lower Court are irregular and without jurisdiction. The applicant before that Court, Sheshgir, had attained majority when he asked the Court to take charge of his share and the shares of his minor brothers. Act XX of 1864 does not contemplate such an application. Regarding the application of Sheshgir only as one for the appointment of an administrator, the Court had no jurisdiction to attach the property and remove Babaji from the management: *Doorga Persad v. Kesho Persad*(1). Sheshgir's remedy is by a suit only without which there could be no partition. The family is undivided, and Act XX of 1864 does not apply: *Bhagirthibai v. Sadashivrav*(2); *Guracharya v. Svamirayacharya*(3).

Manekshah Jehangirshah for the minors Venkapa and Tipana.—The objection as to jurisdiction was not taken in the Court below. The brothers Narsapa and Bhimana were separate, although the shop at Ilkal and at two other places were kept joint. Babaji was appointed to manage the joint shop on furnishing security for Rs. 55,000, and can be called to account under section

(1) L. R. 9 Ind. Ap. 30. (2) Printed Judgments for 1881, p. 155.

(3) I. L. R. 3 Bom. 431.

16 of the Minors' Act. Babaji consented to Mr. Hosking making a division of the property, and cannot complain of it now. A suit for division against an administrator can be brought only in the District Court: *Utamram v. Damodardas*(1). Mr. Hosking had, therefore, jurisdiction to make the division.

1882

BABAJI
v.
SHESHGIRI.

SARGENT, C.J.—The application of Sheshgir in 1879, so far as it was made on his own behalf, was clearly not within the Minors' Act. So far as it was an application for the appointment of an administrator of the estate of his minor brothers, the decision of the Privy Council in *Doorga Persad v. Kesho Persad Singh*(2) would seem to show that the Court could have made such appointment, but it clearly had no right on that application to attach the shop or remove Babaji from the management of it. The rights of other persons than the minors in the joint shop could only be dealt with in a regular suit instituted by a person properly representing the minors. The order of Mr. Scott attaching the shop on 1st April, 1880, which was then in the occupation and under the management of Babaji, was, therefore, clearly beyond his jurisdiction. As to the order of 3rd April, made with the consent of Sheshgir and Babaji, it is clear that it does not appoint Babaji administrator of the minors' estate, but simply reinstates Babaji temporarily in the management of the shop on the terms of his giving 55,000 rupees security. This, however, would not confer any jurisdiction on the Assistant Judge to require Babaji to account as contemplated by section 16 of the Minors' Act. All that the Assistant Judge could do, if he was not satisfied with the management by Babaji, was possibly to enforce the security against him. We must, therefore, annul the order as made without jurisdiction, and leave Sheshgir and the minors to their remedy by suit. Parties to pay their own costs throughout.

Order annulled.

(1) 9 Bom. H. C. Rep. 39.

(2) L. R. 9 Ind. Apps. 30.