

up to whom only the succession is settled by special texts." (West and Bühler, 3rd ed., p. 472.) If that view be correct, the step-mother, as heading the list of non-specified heirs, would necessarily precede the half-brother's widow. But, even if her correct place be not at the head of such *gotrajá sapindás*, there can be no reason why she should be postponed to one whose husband was not so nearly related to the deceased as was her own husband. We are of opinion, therefore, that, in the present case, if the family was united, and Shripatráv was the last surviving male, his step-mother, the defendant, would succeed to the estate before the plaintiffs' vendor Sugandhábái.

As the District Judge has taken a wrong view of the law, and has, in consequence, omitted to try the several questions of fact, of which a determination is necessary for a right decision of the case, we reverse his decree, and direct that the appeal be reheard with reference to the foregoing remarks. Costs to abide the result.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanábhái Haridás.

VENKATRAV RAJE GHORPADE, CHIEF OF MUDHOL, (ORIGINAL PLAINTIFF), APPELLANT, v. MA'DHAVRAV RAMCHANDRA ALIAS BA'PAJI PARGA VKAR AND OTHERS, (ORIGINAL DEFENDANTS,) RESPONDENTS.*

1886.
July 28.

Minors Act XX of 1864—The authority of the Political Agent appointed by Government as manager of the estate of a minor Chief to sue in respect of the Chief's property in British territory—Civil Procedure Code (Act XIV of 1882), Sec. 37, Cl. (c)—Recognized agent

A suit was brought by the Political Agent, Southern Marátha Country, as administrator of the estate of the Chief of Mudhol, who was described in the plaint as being nineteen years of age, to eject the defendants from certain lands, belonging to the Chief, situated in the Sátára District. The defendants raised a preliminary objection to the institution of the suit by the Political Agent, on the ground that he was neither a certificated guardian of the Chief under the Bombay Minors Act XX of 1864, nor a *recognized agent* within the meaning of section 37 of the Civil Procedure Code.

*Second Appeal, No. 544 of 1884.

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Held, that the appointment, by Government, of the Political Agent to manage the estate of the Chief of Mudhol during a certain period could not give him the position contemplated by the Bombay Minors Act XX of 1864. With regard to property in British India, he had no authority to sue on behalf of the minor, without obtaining a certificate of administration under the Act.

Held, also, that the Political Agent was not a "recognized agent" of the Chief of Mudhol within the meaning of section 37, clause (c) of the Code of Civil Procedure.

Held, also, that the irregularity of the Political Agent's suing for the Chief, without authority, was one affecting the merits of the case, though not the jurisdiction of the Court. If the Political Agent was not properly representing the Chief, he had no *merits*, no right as against the defendants. The District Judge was, therefore, right in reversing the decree of the first Court,—section 578 of the Code of Civil Procedure having no application to the present case.

SECOND appeal from the decree of W. H. Crowe, District Judge of Sátára, reversing the decree of Ráv Sáheb Rágho Náráyan, Second Class Subordinate Judge of Karád.

This suit was instituted by the Political Agent, Southern Marátha Country, as administrator of the estate of the Chief of Mudhol, who was described in the plaint as being nineteen years of age, to recover possession of certain lands, situated in the Sátára District; from the defendants, who were alleged to be tenants holding over after the determination of their lease.

The defendants replied (*inter alia*) that the Chief of Mudhol being a minor, the Political Agent had no right to sue, without a certificate of administration under the Bombay Minors Act XX of 1864, and that even if the Chief were not a minor, the Political Agent was not a "recognized agent" of the Chief, within the meaning of section 37 of the Civil Procedure Code (Act XIV of 1882).

The Court of first instance overruled both these objections, and awarded the plaintiff's claim.

On appeal, the District Court held, first, that the Chief of Mudhol was not a minor at the institution of the suit, and so the Political Agent had no authority to sue as his next friend; and, secondly, that the Political Agent was not the "recognized agent" of the Chief of Mudhol, within the meaning of section 37 of the Civil Procedure Code (XIV of 1882). The District Judge, therefore, dismissed the suit.

Against this decision the Chief of Mudhol preferred a second appeal to the High Court.

Branson (with *Yashvant Vāsudev Athalyé*) for the appellant.

Inverarity (with *Ganesh Rāmchandra Kirloskar*) for the respondents.

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WEST, J.:—The appointment, by Government, of the Political Agent to manage the estate of the Chief of Mudhol could not give him the position contemplated by Act XX of 1864. With regard to any property in British India, he had no authority to sue, under the Act, on behalf of the minor, without an appointment made, in accordance with its provisions, by the Civil Court. Apart from those provisions the Chief of Mudhol must have ceased to be a minor at sixteen years of age, or, if domiciled in British India, at eighteen years of age. He was described in the plaint as nineteen years of age, and the Political Agent could not, therefore, sue on his behalf as the next friend of a minor. Whether the British Government, acting for the Paramount Power, could, within the territories not subject to the British laws, impose on the Chief of Mudhol a special prolongation of the status of minority which the British Courts ought to recognize as adhering to him everywhere, is a question that need not be determined, as there is nothing to indicate that the Government sought or intended to do anything of the kind. All that appears is, that it for a certain time transferred the management of the Chief's estates to the Political Agent, *i.e.*, transferred, so far as this could be done, by a mere executive order. Such an order could not supersede, in British territory, the provisions of the law in the case of the Chief of Mudhol any more than in the case of any other person.

Section 37 clause (c) of the Code of Civil Procedure (Act XIV of 1882) was not intended, we think, to apply to such a case as the present. The Chief of Mudhol did not appoint the Political Agent, as a *munim*, to carry on business for him within the jurisdiction of the Court at Sātara. The Political Agent did not pretend that he had any such authorization. Nor was he nominated by Government, under section 432 of the Code of Civil Procedure, at the request of the Chief to conduct the suit for him. He

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evidently thought that his general appointment to manage the Chief's estates enabled him to sue on his behalf in the Courts in British territory; but in this he was mistaken.

The District Judge, in appeal, dismissed the suit as improperly brought. The Chief himself was represented in the District Court, but the objection was clearly taken there that the suit had been brought without authority by the Political Agent. In the Court of first instance, also, the Political Agent's want of authority had been urged on the twofold hypothesis of the Chief's being and not being a minor. The Subordinate Judge discussed the question fully; and it cannot be said that the irregularity, if it was merely such, of the Political Agent's suing for the Chief without authority was at any moment waived by the fourth defendant. In going on with the suit under these circumstances the Political Agent did so at his peril. He does not appear to have been represented in the District Court; but the appeal having been drawn, in terms, as to the persons corresponding to those used in the plaint, the defendants' appealing cannot be held to have been prejudiced by the Chief's taking as respondent the place of the Political Agent.

It is urged that the error committed was one not affecting the jurisdiction over the case, or its merits. As to jurisdiction, the Court, to which a plaint was presented by a person *capax sui*, certainly had jurisdiction, in the first instance, to receive it. Whether it set forth a cause of action, or presented some defect which would prevent the suit from being maintained, was a question to be answered in the exercise of its jurisdiction. But the second question, of whether the Political Agent could maintain the suit, was one affecting the merits of the case as between him as plaintiff and the defendants. If he was not properly representing the Chief, he had no "merits," no right as against the defendants at all. The Subordinate Judge ought to have rejected the plaint, or the claim on this ground; the District Judge has done so, and we must confirm his decree with costs.

Decree confirmed.