

1886.  
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 v.  
 BÁI VAKHAT.

ings in the two suits against Bái Vakhat were collusive, and that the sale in the second suit was in fraud of plaintiff's rights.

The decree of the lower Court will, therefore, be reversed. The plaintiff is entitled to a decree declaring that he is not bound by the sale of the 3rd November, 1875, in the suit, No. 230 of 1875, brought by the defendant Jagannáth against the defendant Bái Vakhat, as representative of her deceased husband, Odhav Tuljá. Whether the plaintiff is entitled, also, to immediate possession of the property in the suit, must depend on the question whether Bái Vakhat's life-estate was defeasible on her remarriage. She belongs to a caste in which remarriage is permitted. The provisions of section 3 of Act XV of 1856 have, therefore, no application to the case. The question whether, by the usage of the country, similar provisions are enforced in her caste, was not raised or considered at the trial. We must, therefore, send down the following issue for the lower Court to try and determine on such evidence as may now be adduced by the parties:—

“Whether, by the usage of the country, the rights and interest of Bái Vakhat, by inheritance, in her deceased husband's property, the subject of this suit, ceased and determined on her remarriage with Kuber, on the 4th May 1876, as if she had then died.”

The Subordinate Judge to forward his finding on the above issue, with the evidence, within three months.

*Issue sent down accordingly.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánabhái Haridás.*

1886.  
 November 21.

VISHNU KESHAV, (ORIGINAL PLAINTIFF), APPELLANT, v. RA'MCHANDRA BHA'SKAR, (ORIGINAL DEFENDANT), RESPONDENT.\*

*Limitation Act XV of 1877, Sch. II, Art. 12—Minor, when bound by proceedings against him—Minor's Act (XX of 1864,) Sec. 2—Suit by a minor, one year after attaining majority, to recover property sold in execution of a decree obtained against him during minority.*

In 1870 a creditor of the plaintiff's father brought a suit (No. 573 of 1870) against the plaintiff, and obtained a money decree against him. The plaintiff was

\* Second Appeal, No. 153 of 1884.

then a minor, and his estate was administered by the Collector of Ratnágiri. In this suit he was represented by his mother and guardian. At the sale held in 1871, in execution of the decree, the property in question was purchased by the defendant, who obtained possession in 1876. In 1879 the plaintiff attained majority, and in 1882 he brought the present suit to recover the property from the defendant. The lower Courts, regarding the suit as one to set aside the sale to the defendant, held that it was barred by limitation under article 12 of Schedule II of the Limitation Act XV of 1877.

On appeal by the plaintiff to the High Court,

*Held*, that article 12 of the Limitation Act XV of 1877 did not apply, and that the suit was not barred. That article applies only to cases in which the plaintiff would be bound by the sale if he did not succeed in getting it set aside; but in the present case the plaintiff was not bound by the proceedings in Suit No. 573 of 1870, as he had not been properly represented, as required by section 2 of Act XX of 1864.

THIS was a second appeal from a decision of G. Jacob, Assistant Judge of Ratnágiri.

The plaintiff's father having died during the minority of the plaintiff, his estate was placed under the administration of the Collector of Ratnágiri. The administration commenced on the 30th October, 1869, and continued down to September, 1879, in which year the plaintiff attained his majority. During the administration by the Collector, a creditor of the plaintiff's father obtained a money decree against the plaintiff, who was represented in the suit (No. 573 of 1870) by his mother and guardian and the property in question was sold in 1871 in execution of that decree. The defendant purchased it, and was put into possession in 1876. In 1882 the plaintiff brought the present suit to recover possession of the property.

The defendant contended that the sale could not be set aside, and alleged that since the purchase he had paid off a mortgage, to which the property had been subject.

The Subordinate Judge of Dápoli, regarding the plaintiff's claim as one to set aside a sale, held that it was barred by limitation—the plaintiff having omitted to take proceedings for that purpose within a year after he had attained his majority, and he dismissed the suit.

On appeal, the Assistant Judge confirmed the lower Courts' decree.

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The plaintiff preferred a second appeal to the High Court.

*Yashvant Vāsudev Athlyé* for the appellant:—The plaintiff's suit is not barred. In the former suit the plaintiff's mother having had no certificate, could not be treated as representing her minor son—*Jathá Náik v. Venktápá*<sup>(1)</sup>; *Mrinomoji Dabia v. Jogodishuri Dabia*<sup>(2)</sup>. In order that a minor may be bound, he must be properly represented—*Vāsudev Vishnu v. Nārāyan Jagannáth*<sup>(3)</sup>. Article 12 of the Limitation Act (XV of 1877) applies to cases where the plaintiff would be bound if he does not set aside the sale within one year—*Sadágopá v. Jamunábhai*<sup>(4)</sup>.

*Dáji Abáji Khare* for the respondent:—No objection was taken when the mother was joined as guardian, and it cannot now be taken here. Section 2 of the Minor's Act (XX of 1864) does not bar the mother from suing on behalf of the minor: so she may represent him as well when he is sued.

SARGENT, C. J.:—The lower Courts are wrong in holding that the plaintiff's suit was barred, not having been brought within a year of his majority. Article 12, Schedule II of the Limitation Act applies only to cases in which the plaintiff would be bound by the sale if he did not succeed in getting it set aside. See remarks of Innes, J., in *Sadágopá v. Jamunábhai*<sup>(5)</sup>, in which we entirely concur. In the present case, however, the plaintiff is not bound by the proceedings in Suit No. 573 of 1870, not having been properly represented, as required by section 2 of Act XX of 1864. It would, however, be inequitable to allow him to recover possession of his property without paying to the defendant such sum as he paid to the plaintiff in that suit, and also such further sum as he subsequently paid to the mortgagee, Ganesh Sakháram Joshi, not exceeding what was legally due on that mortgage.

We must, therefore, reverse the decree of the Court below, and send back the case for a fresh decision, having regard to the above remarks. Plaintiff to have his costs of this appeal.

*Decree reversed.*

(1) I. L. R., 5 Bom., 14.

(3) 9 Bom. H. C. Rep., 289.

(2) I. L. R., 5 Calc., 450.

(4) I. L. R., 5 Mad., 54.

(5) I. L. R., 5 Mad., at p. 58.