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which he passed the bond charging his property with Rs. 600. This transaction the lower Court held to be a fraudulent preference; and we would not be justified in interfering with the lower Court's decision, unless we were satisfied to the contrary. We must, therefore, confirm the order of the Subordinate Judge.

Order confirmed.

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12 B. 427.

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Before Mr. Justice West and Mr. Justice Birdwood.

HARI (*Assignee of Decree-holder*), *Appellant v.* NARAYAN *alias* SAMBHOJI, A MINOR, BY HIS GUARDIAN CHIMABAI (*Judgment-debtor*), *Respondent.**

[17th August, 1887.]

Execution of decree—Limitation—Application for execution in accordance with law—Limitation Act (XV of 1877), sch. II, art. 179—Decree against a minor—Application for execution against minor's mother personally, but not as his guardian.

On the 31st July, 1879, a decree was passed against N., a minor, represented by his mother and guardian C. In December, 1880, the first application for execution was made. Through mistake execution was sought against C. herself, as 'widow of B.' and not as guardian of the minor N. That application was granted, and [428] certain property belonging to the minor was attached. On the 29th November, 1883, the second application for execution was made against the minor as represented by his guardian C. The present application for execution was made on the 3rd December, 1884. This application was rejected as time-barred by the District Court in appeal, on the ground that the first application having been made against a wrong person, could not be taken into account; that, therefore, it could not keep the decree alive, and that the present application was barred.

Held, reversing the decision of the lower Court, that the decree-holder ought not to be deprived of the fruit of his decree on account of a technical defect in his application of 1880. The minor was substantially and for all practical purposes represented by his mother.

[R., 32 A. 404=7 A.L.J. 542 (583)=6 Ind. Cas. 38; 20 B. 534 (536); 12 M. 90 (91); 13 Bom. L.R. 22=9 Ind. Cas. 349.]

THIS was an appeal from the order of C. G. W. Macpherson, Acting District Judge of Satara, in Appeal No. 279 of 1885.

On the 31st July, 1879, the plaintiff Vithoba bin Malapa obtained a decree against Narayan Babaji, a minor, represented by his mother and guardian, Chimabai.

On the 1st December, 1880, Vithoba applied for execution of the decree against Chimabai herself, describing her as "widow and heir of Babaji, deceased," and not as guardian of the minor Narayan. The Court issued a notice to Chimabai, but she did not appear to contest the application. The Court accordingly ordered execution to issue.

On the 29th November, 1883, the decree-holder presented a second *darkhast* for execution. On this occasion he did not omit to put the minor on the record. Nothing, however, was done on this application.

On the 3rd December, 1884, the present application for execution was made by Hari bin Irapa, to whom the decree had been assigned.

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* Second Appeal. No. 117 of 1887.

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The application was resisted, on the ground that it was time-barred. It was contended, on the minor's behalf, that as the decree-holder had ignored him, and proceeded against a wrong party under his first *darkhast*, that application should be treated as a nullity, and, therefore, was of no effect in keeping the decree alive.

The Court of first instance held, on the authority of the rulings in *Syud Mahomed* v. *Syud Abedoollah* (1) and *Fuzloor Ruhman* v. [429] *Altaf Hassen*(2), that though the first application for execution was defective and informal, it could not be treated as a nullity, and that, therefore, it was sufficient to keep the decree alive. The Court accordingly ordered execution to issue.

On appeal, the District Judge was of opinion that the first *darkhast* was not an application for execution "in accordance with law," as the minor had been ignored, and execution sought against a wrong person.

He, therefore, rejected the present *darkhast* as time-barred.

Against this decision a second appeal was preferred to the High Court.

Telang (with him *Manekshah Jehangirshah* and *Daji Abaji Khare*), for the appellant.—The first *darkhast* was not correctly worded. There was a mistake in the description of the widow. But that was a mere irregularity. The minor was effectively represented by his mother and guardian. She represented her son as well as the estate fully and for all practical purposes. The proceedings taken against her are binding on the minor—*Ishan Chunder Mitter* v. *Buksh Ali Soudagur*(3); *The General Manager of the Raj Durbhunga under the Court of Wards* v. *Maharaja Coomar Ramaput Sing*(4).

Macpherson (with him *Ganesh Ramchandra Kirloskar*) for the respondent:—Schedule II, art. 179 of Act XV of 1877 requires an application for execution to be made "in accordance with law." The execution must be sought against the judgment-debtor alone. He must be put on the record. Otherwise proceedings taken against a third party will not bind him. In the present case the minor, against whom the decree was passed, was ignored. Execution was sought against his mother, not as his guardian, but in her own right. The first application for execution is, therefore, not "in accordance with law." It, therefore, does not save limitation—*Denonath Chuckerbutty* v. *Lallit Coomar Gangopadhya*(5); *Ramasami* v. *Bagirathi* (6); *Akoba Dada* v. *Sakharam* (7),

JUDGMENT.

[430] WEST, J.—The decree in this case having been obtained against the infant Narayan, son of Babaji, represented in the case by his mother Chimabai, the judgment-creditor in 1880 sought execution for the costs awarded to him by the decree. Through error, however, he sought that execution against Chimabai herself, instead of merely as guardian of her son. There was another application, in 1883, against Narayan, but nothing was done on it. It would prevent the bar of limitation if the earlier application could be considered as a sufficient one for the purposes of Act XV of 1877, sch. II, art. 179, but not otherwise. The District Judge has thought that the earlier application was no to be taken into account at all; but, having regard to the case of *The General Manager of the Raj Durbhunga under the Court of Wards* v. *Maharaja Coomar Ramaput*

(1) 12 C.L.R. 279. (2) 10 C. 541. (3) Marsh, 614. (4) 14 M.I. A. 605.
(5) 9 C. 633. (6) 6 M. 180. (7) 9 B. 429.

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Sing (1), we are of opinion that the mortgagor need not and ought not to be deprived of the fruit of his decree on account of the technical defect in his application of 1880. There was at that time no one to think or act for the infant Narayan except his mother Chimabai. What was brought home to her consciousness was, for all practical purposes, brought home to the consciousness of her son, and the execution in 1880 was not resisted by her. It proceeded against the property held by her then, as now, really for her son.

We, therefore, reverse the decree of the District Court, and restore that of the Subordinate Judge in execution. Each party to bear his own costs throughout.

Decree reversed.

12 B. 431=13 Ind. Jur. 226

[431] APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

NARAYANRAV DAMODAR (*Original Plaintiff*), *Appellant v.* JAVHERVAHU (*Original Defendant*), *Respondent.**

[21st, 22nd and 29th September, 1887.]

Hindu law—Joint family—Mortgage by a father—Decree against father on mortgage giving possession with interest and costs—Son's liability to satisfy the decree as to interest and costs—Practice—Amendment of plaint,

The plaintiff's father mortgaged certain ancestral property for a limited term. A suit was brought on the mortgage against the father, and a decree was passed, directing the mortgaged property to be handed over to the mortgagee for a certain time, and awarding payment of interest and costs by the father.

In execution of this decree, the mortgagee sought to recover the costs by sale of the property in question.

Thereupon the plaintiffs sued for a declaration that the property was not liable to be sold in execution of the decree against the father, on the ground that the debts contracted by the father were for immoral purposes, and that, therefore, the estate could not be bound by the decree at all. The Court of first instance found that the debts had not been incurred for any immoral purpose, and dismissed the suit. On appeal to the High Court,

Held, that under the decree passed against the father the interest and costs became a debt upon the whole estate, from which it could not escape, unless it was clearly made out that the debt was the result of fraud or immorality. Although the father alone was primarily liable for the fulfilment of the decree, still the debt was one which was rightly chargeable to the whole estate, and the sons would be liable, just as they would have been liable if the father had compromised the suit, unless the transaction were tainted with fraud or immorality. In a united family the father is capable of acting as the representative of the family, except in the case of borrowing for fraudulent or immoral purposes. In this case he entered into litigation, which resulted in loss to himself and the family which he represented, and he could make the family responsible for any loss so incurred. The judgment-creditor could also make them liable.

Although where the father desires to represent the whole estate he can do so, yet he is not necessarily bound to do so, nor is the whole estate liable where he explicitly or impliedly binds only his own portion.

At the hearing of the appeal it was alleged that the plaintiffs had separated from their father before the mortgage decree was passed against him, and an application was made on their behalf that the plaint in this case should be amended by inserting an allegation to that effect.

Held, that the amendment could not be allowed. Such an amendment would entirely alter the points of contention between the parties. In suing in the form

* Appeal, No. 30 of 1885.

(1) 14 M. I.A. 605.