

and in that case the mortgagee was restrained by the Court from executing it pending an enquiry directed as to how the debt should be apportioned. The principle of equity upon which that case proceeds, and which we think is a correct one, more especially in this country, is applicable to the present case, where the mortgagee has himself become interested in the equity of redemption, and as all the parties are present, there is no reason, why a similar inquiry should not be made in this suit to determine the sum on payment of which the third defendant is to be allowed to redeem, and in default of which the property should be sold. The case of *Gaya Prasad v. Salik Prasad*; *Gaya Prasad v. Gaya Prasad* (1) cited by Mr. Apte differs from the present, inasmuch as there the sale was by private contract and there was nothing to show that the mortgagee did not pay the full value of the land without regard to the mortgage-debt.

We must, therefore, reverse the decree of the Court below, and refer it to the Court below to determine how the mortgage-debt, Rs. 280-11-9, as found by the Assistant Judge, should be apportioned between the property, the subject of the suit, and the property purchased by the plaintiff, and what portion of it should be charged upon the former property. In the event of the [50] defendants not paying the amount so found within six months after the Court below has recorded its finding, the property in suit to be sold and proceeds applied in or towards the payment of the sum so found, and in the event of the proceeds of the sale not being sufficient to satisfy the same, the first and second defendants to be personally liable for the balance of the debt. The defendants to have their costs of this appeal. Parties under the special circumstances of the case to pay their own costs in the Courts below.

13 B. 50.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.*

HANMANT LAKSHMAN (*Plaintiff*) v. JAYARAO NARSINHA (*Defendant*).\*  
[19th March, 1888.]

*Minor—Contract Act IX of 1872, ss. 10 and 11—Suit on a bond passed to a minor.*

A money bond taken by a minor is good in law, and may be sued on.

[D., 19 B. 697; 20 C. 508; R., L.B.R. (1893—1900) 398; U.B.R. (1897—1901) 313.]

THIS was a reference from Rav Sahab Venkatrav R. Inamdar, Subordinate Judge of Bijapur, under s. 617 of the Code of Civil Procedure.

One Hanmant Lakshman alleging that he was nineteen years old sued to recover Rs. 32 with costs on a bond for Rs. 23-1-0, dated 24th July, 1883. When the case came on for hearing, the Court found him to be a minor much less than nineteen years of age, and allowed Bhimaji, his undivided uncle, to continue the suit on his behalf as his next friend. The bond sued on was passed in the name of the minor plaintiff himself, and he said that he himself obtained it from the defendant, to secure an old debt due by the latter to his deceased father.

\* Civil Reference, No. 5 of 1888.

(1) 3 A. 682.

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The Subordinate Judge referred the following question to the High Court for its decision:—

Whether effect should be given to the bond in question, having regard to the provisions of ss. 10, 11 of Act IX of 1872?

[51] The Subordinate Judge's opinion on the point was in the affirmative.

There was no appearance for the parties.

#### OPINION.

PER CURIAM.—We are of opinion that the Subordinate Judge is right in holding that the bond executed to the minor is good in law, and may be sued upon.

13 B. 51.

#### APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.*

RAGHO VINAYAK (*Original Plaintiff*), Appellant v. SHEIKH DAUD AND ANOTHER (*Original Defendants*), Respondents.\* [30th April, 1888.]

*Mortgage—Redemption suit—Parties to such suit—Equity of redemption, interest in, of persons related to the mortgagor.*

The plaintiff sued the defendant to redeem certain *khoti* lands mortgaged by the plaintiff's father to the defendant's uncle. The defendant objected that the separated uncle and cousins of the plaintiff should be made co-plaintiffs in the suit. These relations of the plaintiff were not joint members of the plaintiff's family at the time of the mortgage, nor did they claim any interest in the equity of redemption.

*Held*, that the plaintiff's uncle and cousins were not necessary parties. In the absence of evidence to the contrary it must be presumed that the mortgage was made by the plaintiff's father in his individual capacity. If the defendant had shown that at the date of the mortgage the plaintiff's father and uncles were undivided, it might have been presumed that the mortgage was on their behalf as well as in his own. But this the defendant had failed to do. The mortgage did not purport to have been made by the plaintiff's father as manager of the family, nor did it appear that the plaintiff's uncle and cousins claimed any interest in the equity of redemption. The mere fact of their relationship gave them no interest in it.

SECOND appeal from a decision of G. McCorkell, Assistant Judge of Ratnagiri, reversing the decision of Rav Sahab B. S. Joshi, Subordinate Judge of Dapoli.

This was a suit brought by the plaintiff against the defendant to redeem certain *khoti* lands mortgaged by the plaintiff's father in 1854-55 to the uncle of the defendant Sheikh Daud.

[52] The defendant contended (*inter alia*) that the plaintiff could not sue alone, as there were eight co-sharers of the plaintiff who ought to be made co-plaintiffs. These co-sharers were the plaintiff's uncle and the sons of another uncle, who had ceased to be members of the undivided family of the plaintiff at the time the plaintiff's father executed the mortgage of 1854-55. It did not appear that these relations ever claimed any interest in the equity of redemption.

\* Second Appeal, No. 120 of 1886.