

1888

13 B. 234.

APRIL 30.

APPELLATE CIVIL.

APPEL-
LATE*Before Mr. Justice Birdwood and Mr. Justice Parsons.*

CIVIL.

AMICHAND TALAKCHAND (*Applicant*) v. THE COLLECTOR OF
SHOLAPUR (*Opponent*).* [30th April, 1888.]

13 B. 234.

Costs—Minor-Minor not represented by a next friend or guardian—Costs against such minor's estate—Application for leave to sue as pauper—Civil Procedure Code (Act XIV of 1882), ss. 409, 412, 441, 442, 444—Award of costs to Government;

Neither s. 441 nor 442 of the Code of Civil Procedure (Act XIV of 1882) gives any authority to a Court to make a minor's estate liable for costs.

A applied for leave to file a suit in *forma pauperis* against B. B. resisted the application, on the ground that A. was a minor. The Government Pleader also resisted, on the ground that A. was not a pauper. The Court without inquiring [235] into A.'s pauperism rejected the application solely on the ground that A. was a minor and that he was not properly represented by a next friend or guardian. The Court ordered all costs to be paid out of the minor's estate. The minor died soon afterwards. The Collector then applied to the Court to attach certain property in B's hands which was alleged to form a part of the minor's estate. B. objected, but the attachment was allowed.

Held, that the order for costs, as well as the attachment that followed thereon were illegal and *ultra vires*. The order was clearly opposed to the provisions of s. 444 of the Code of Civil Procedure (Act XIV of 1882), under which no order affecting a minor can legally be made without such minor being represented by a next friend or guardian *ad litem*.

Held, also, that no inquiry having been made into A.'s pauperism, and no order passed such as is contemplated in ss. 409 or 412 of the Code, the Collector was not entitled to costs.

[R., 1 L.B.R. 38 (39) ; D., 20 B. 85 (98).]

THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882) for a revision of an order for costs against a minor's estate made by T. Moore, First Class Subordinate Judge of Sholapur, in application No. 202 of 1885.

The facts of this case are fully stated in the judgment of the Court.

Branson (with him *Goverdhan M. Tripati*), for the applicant.

Rav Saheb V. N. Mandlik, Government Pleader, for the opponent.

JUDGMENT.

PARSONS, J.—In this case, the Collector of Sholapur claims the right to attach a house, which now belongs to the applicant Amichand, in the execution of an order for costs passed by the Subordinate Judge of Sholapur under the following circumstances :—

One Nanchand made an application to be allowed to sue his brother Amichand as a pauper. Amichand stated that the applicant was a minor. The Government Pleader, to whom notice had been given, also appeared, and stated that the applicant was not a pauper. Two issues were framed by the Subordinate Judge, *viz.*, (1) Is the applicant a minor? (2) If a major, is he a pauper? He found on the first issue only, that the applicant was a minor; and then passed the following order :— As the applicant is not represented by a next friend or guardian, I reject this application under ss. 441 and 444 of the Civil [236] Procedure Code. Under the circumstances of the case, I think it proper to throw all the costs on the minor's

* Application under Extraordinary Jurisdiction, No. 96 of 1887.

share of the estate." Nanchand died soon after this order was passed, and his estate vested in his brother Amichand. The Collector of Sholapur then applied to the Court to attach a share of a house which, he alleged, had formed a part of Nanchand's estate. The attachment was resisted by Amichand, but was allowed by the Subordinate Judge. The proceedings have now come before this Court on the application of Amichand for a revision of the order as to costs. We think that the order is clearly illegal. Neither s. 441 nor 442 of the Code gives any authority to a Court to make a minor's estate liable for costs. On the contrary, under s. 442, a Court can only order costs to be paid by the pleader or other person by whom a plaint is presented by, or on behalf of, a minor, without a next friend. Section 444 shows that no order by which a minor is in any way concerned or affected can legally be made without such minor being represented by a next friend or guardian for the suit. Again, Government can only be awarded costs in certain cases where an enquiry has been held under chap. XXVI. In the present case, no inquiry under that chapter has been held, and no order has been passed such as is contemplated in ss. 409 or 412. The order made, does not even purport to be made under chap. XXVI. It was, therefore, clearly made without jurisdiction; and, in the exercise of our extraordinary jurisdiction, we annul it, and with it all the proceedings in execution which followed it. All costs in the execution proceedings in the lower Court and in this application to be paid by the Collector.

Order reversed.

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[237] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

PANDARINATH BAPUJI (*Original Defendant*), *Appellant v.*
LILACHAND HATIBHAI (*Original Plaintiff*), *Respondent.* *

[13th June, 1888.]

Limitation Act (XV of 1877), art. 179, cl. (4)—Execution of decree—Application for execution—Application for a relief outside the decree—"Step in aid of execution."

The application for execution contemplated in cl. (4) of art. 179 of sch. II of the Limitation Act (XV of 1877) must be one made in accordance with law, and asking to obtain some relief given by the decree, and to obtain it in the mode that the law permits.

A decree provided that the defendant should pay the plaintiff Rs. 156 within one month, and that on receipt of this sum the plaintiff should execute a deed of sale to the defendant. The decree was dated 26th January, 1881.

The first application for execution was made on the 24th January, 1884, but dismissed for plaintiff's default.

The plaintiff made a second application dated 22nd January, 1887, praying to be put in possession of a certain house which was not awarded by the decree. This application was rejected.

On the 23rd June, 1887, the plaintiff made a third application for execution of the decree.

Held, that this application was barred by limitation, having been made more than three years after the date of the first application. The intermediate application was not an application for execution, nor a step in aid of execution, of the decree,

* Second Appeal, No. 108 of 1888.

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