

of the debt, took the account, and amended the Subordinate Judge's decree by awarding to the plaintiff Rs. 19-8-2.

Against the decree of the District Court the plaintiff appealed to the High Court.

*Ganesh Krishna Deshmukha*, for the appellant.

*Shamrav Vitthal*, for respondent No. 1.

*Narayan Vishnu Gokhale*, for the respondents Nos. 2 and 3.

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#### JUDGMENT.

SARGENT, C. J.—It is admitted or at any rate not in dispute that the defendants apportioned their liability between themselves for the debt found due to the plaintiff in December 1882, when the account was settled between the plaintiff and the three brothers. No doubt plaintiff was not bound to recognize this arrangement between the brothers; but the evidence shows that he thought proper to do so, as is plain from the bonds passed by defendants 2 and 3 to the plaintiff, which recite the division and the acceptance by the plaintiff from defendants 2 and 3 of Rs. 315-13-4 in discharge of their shares in the *khata*. It was for him, in the absence to any special directions from defendants 2 and 3, to appropriate the sum so paid as he thought proper to the defendants 2 and 3's shares in the several debts which made up the Rs. 450 found due in 1882—Lindley on Partnership, p. 227. This he has practically done (and that, too, in a manner which was most equitable to the defendants 2 and 3) by appropriating so much as was necessary to pay off their shares of the mortgage-debt. Under these circumstances he is now entitled to recover the remainder of the mortgage-debt by sale of the defendants' one-third share of the mortgaged lands.

[259] We must, therefore, reverse the decree of the Court below and restore that of the Subordinate Judge, but substituting Rs. 119-10-2 for Rs. 126-0-0, with costs on respondents.

*Decree reversed.*

15 B. 259.

#### APPELLATE CIVIL.

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

HONAPA BIN NARASHINVHA SHETTI (*Original Plaintiff*),  
*Appellant v. MHALPAI BIN BABPAI AND OTHERS*  
(*Original Defendants*), *Respondents*.  
[1st September, 1890.]

*The Bombay Minor's Act (XX of 1864), alienation by a person not holding a certificate under—Natural or de facto guardian—Charge of minor's person and property—Jurisdiction of Courts—Bengal Act (XL of 1858).*

The Bombay Minor's Act (XX of 1864) does not forbid the natural or *de facto* guardian of a minor not holding a certificate under the Act from disposing of property belonging to a minor.

\*Second Appeal No. 747 of 1889.

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The meaning of the first section of the Act is that the care of the persons of all minors and the charge of their property shall be, as is expressly provided in the Bengal Act (XL of 1858), subject to the jurisdiction of the Court.

[R., 20 B. 286 (289); 12 Ind. Cas. 568 = 21 M.L.J. 1077 = 10 M.L.T. 385 = (1911) 2 M. W.N. 461; 7 O.C. 181 (184).]

THIS was a second appeal from the decision of Gilmour McCorkell, District Judge of Kanara.

Suit to recover the amount of a *hundi*.

Defendant No. 1, Mhalpai, drew a *hundi* in favour of one Mhalapashetti, who died without having presented the *hundi* for payment. After Mhalapashetti's death his widow, Padmavatibai, presented the *hundi* for payment, and the drawee dishonoured it. Subsequently Padmavatibai, as the natural guardian of her minor sons, sold the *hundi* to plaintiff, who sued to recover the amount thereof, namely Rs. 576-6-8, from the defendants (the drawer).

The defendants admitted execution of the *hundi*, but contended that Padmavatibai not having obtained a certificate under Act XX of 1864, she was not competent to sell it.

The Court of first instance allowed the plaintiff's claim.

[260] Defendant No. 1 appealed to the District Court, and the District Judge reversed the decree of the Subordinate Judge and rejected the plaintiff's claim.

The District Judge in his judgment remarked as follows:—

“ Act XX of 1864 distinctly forbids any person not holding a certificate under the Act from disposing of property belonging to minors. Under certain circumstances, in cases relating to immoveable property, the High Court has ordered an equitable repayment. Now in the present case I am unable to find any circumstances which call for condonation of the conduct of the widow. It has not been shown that there was any necessity for disposing of the *hundi*; the present defendants were not asked to take it up. The conduct of Padmavatibai is utterly inexcusable. The fact that Padmavatibai is willing that plaintiff should recover, cannot affect the position of the present defendants. Possibly, if the plaintiff sues Padmavatibai and the minors, the Court may order an equitable repayment. But in this case the Court has no authority whatever to validate the illegal act of Padmavatibai.”

The plaintiff appealed to the High Court.

*Narayan Ganesh Chandvarkar*, for the appellant.

*Shamrao Vithal*, for the respondents.

#### JUDGMENT.

SARGENT, C.J.—The District Judge has dismissed the plaintiff's claim, because he considered that Act XX of 1864 forbids any person not holding a certificate under the Act from disposing of property belonging to a minor. The Judge had probably in his mind the case of *Bai Kesar v. Bai Ganga* (1). That case, however, was considered by Sir M. Westropp in *Shivji Hasam v. Datu Mavji Khoja* (2), where it was pointed out that it is the charge of the minor's property, and not the property itself, which is vested in the Court and the conclusion is arrived at that upon the proper construction of the Act the meaning of the first section was that the care of the persons

(1) 8 B.H.C.R. A.C.J. 31.

(2) 12 B.H.C.R. 281 (289).

of all minors and the charge of their property shall be, as is expressly provided in the Act for Bengal (Act XL of 1858), "subject to the jurisdiction of the Court." In that view of the Act, which has been since uniformly followed, the reason for the [261] decision in *Bai Kesar v. Bai Ganga* fails, and every case of alienation by a natural or *de facto* guardian as distinct from one appointed under the Act is left to be decided by the Court upon the general principles applicable to such cases, as was decided in *Ram Chunder Chuckerbutty v. Brojonath Mozumdar*(1), followed by this Court in *Manishankar Pranjivan v. Bai Muli* (2).

The only question, therefore, for the Court in dealing with the third issue was whether the sale of the *hundi* to the plaintiff was for the benefit of the infant, and on this the Court has not expressed any distinct opinion. We must, therefore, reverse the decree of the Court below, and send back the case for the Court, to record a finding on the third issue, and to pass a fresh decision. Costs to abide the result.

*Decree reversed.*

15 B. 261.

APPELLATE CIVIL.

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

LAKSHMAN VINAYAK KULKARNI (*Original Plaintiff*), Appellant  
v. BISANSING VALAD MANIRAM AND ANOTHER (*Original Defendants*),  
*Respondents*.\* [3rd September, 1890.]

*Sale in execution of a decree—Suit to recover possession of property sold in execution—Possession of a person having no title—Limitation Act (XV of 1877), arts. 136, 137, 138, 144, s. 28.*

K. obtained a decree against G. and in execution purchased G.'s property on the 9th August, 1872. Plaintiff obtained a decree against K., and in execution purchased the property on the 21st August, 1882. On plaintiff's going to take possession, defendant No. 1 obstructed him, on the ground that he had purchased the property from K. at a private sale, dated the 1st September, 1876. The plaintiff thereupon, on the 6th September, 1886, brought the present suit to recover possession of the property.

*Held*, that arts. 136 and 137 of sch. II of the Limitation Act (XV of 1877) apply to suits brought by purchasers against third persons in possession of the land in whose favour limitation runs against purchaser, in the same way as it would against the owner with whose rights the purchaser is clothed.

*Held*, also, that the title of defendant No. 1 to the land in dispute being not proved, art. 144 of the Limitation Act (XV of 1877) was applicable to the [262] plaintiff's claim, and that the suit being brought within twelve years from the date of the purchase set up by defendant No. 1 (which was held by the lower Courts not proved), the claim was not barred.

Want of possession for twelve years after the date of purchase would extinguish the purchaser's title.

*Ram Prasad v. Lakhi Narain Pradhan* (3) and *Sheo Prasad v. Udai Singh* (4) referred to.

[R., 16 B. 722 (726); 18 B. 37 (40); 19 B. 620 (625); 12 C.L.J. 378=6 Ind. Cas. 467 (471); 5 Ind. Cas. 273.]

\* Second Appeal No. 444 of 1889.

(1) 4 C. 929.

(2) 12 B. 686.

(3) 12 C. 197.

(4) 2 A. 718.