

v. *Hiró Lal* ⁽¹⁾. In the judgment of Oldfield, J., it is pointed out that the decision of the Privy Council in *Zain-ul-abdin Khán v. Ahmad Raza Khán* ⁽²⁾; to which the Calcutta Court refers, is only a decision on the words of section 111 of Act VIII of 1859, and has no bearing on the point in question. In this view of section 157, Civil Procedure Code (Act XIV of 1882), the Small Cause Court has wrongly refused to exercise the power given it by that section, and it is, therefore, a proper case for the exercise of our extraordinary jurisdiction.

We must discharge the order refusing the application, and send back the case for a decision on the merits. Costs to be costs in the application.

Order discharged.

⁽¹⁾ L. R., 7 All., 538.

⁽²⁾ L. R., 5 I. App., 233.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Fulton.

GOVINDRAM AND OTHERS, DECREE-HOLDERS, v. TATIA,
JUDGMENT-DEBTOR.*

Limitation Act (XV of 1877), Secs. 7 and 8, and Art. 179—Decree—Execution—Joint decree-holder—Minority of joint decree-holder—Application for execution after attaining majority—Civil Procedure Code (Act XIV of 1882) Sec. 231.

Govindram and his two minor nephews, Shankarlál and Davlatram, obtained a decree on 1st December, 1885. Govindram applied for execution on the 24th November, 1886, and died in May, 1887. Shankarlál attained majority on the 15th December, 1891, and on the 24th July, 1894, applied for execution, no application having been made since May, 1886.

Held, that the application was not barred by limitation. Under section 231 of the Civil Procedure Code (Act XIV of 1882), Shankarlál was entitled equally with the other judgment-creditors to apply for execution of the whole decree for the benefit of all the decree-holders; and as he was a minor when the decree was passed, and when the last application for execution was made, he was entitled to the benefit of section 7 of the Limitation Act (XV of 1877), and could apply for execution within three years of attaining majority. Section 8 of the Limitation Act (XV of 1877) applies only to those cases in which the act of the joint owner is, *per se*, a valid discharge. Section 7 applies where only some of the judgment-creditors, and not all, are affected by a legal disability.

* Civil Reference, No. 1 of 1895.

1895.

R. A.
HILDEETH
v.
SAYAJI
PIRAJI
CONTRACTOR.

1895.

March 12.

1895.
 GOVINDRÁM
 v.
 TÁTIA.

THIS was a reference made by Ráo Sáheb Ezra Reuben, Acting Subordinate Judge of Ráhuri, in the Ahmednagar District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

One Govindrám and his two minor nephews, Shankarlál and Davlatrám, obtained a decree against Tátia on the 1st December, 1885. Govindrám died on the 21st May, 1887, leaving a minor son. Shankarlál attained majority on the 15th December, 1891, and on the 24th July, 1894, applied for the execution of the decree. The last preceding application for execution having been made on the 24th November, 1886, the question now arose whether the application was time-barred. The Subordinate Judge, therefore, referred the following question to the High Court:—

“Whether the minority of one of several judgment-creditors saves the execution of the decree from being time-barred during the period of minority of the minor *plus* three years?”

The opinion of the Subordinate Judge was in the affirmative.

Shivrám V. Bhandárkar (amicus curiæ), for the decree-holders, relied on *Anando Kishore Dass v. Anando Kishore Bose*⁽¹⁾.

H. C. Coyaji (amicus curiæ), for the judgment-debtor, cited *Seshan v. Rájagópála*⁽²⁾.

SARGENT, C. J.:—The facts of this case are stated to be as follows:—

The decree, of which execution is now sought by an application dated 24th July, 1894, was passed on the 1st December, 1885, in favour of Govindrám and his undivided minor nephews Shankarlál and Davlatrám. The last preceding application for execution was made on the 24th November, 1886. Govindrám died on the 21st May, 1887, leaving a minor son. Shankarlál came of age on 15th December, 1891, and within three years of that date presented the application for execution now under consideration. The question referred is—whether the minority of one of several judgment-creditors saves the execution of the decree from being time-barred during the period of minority of the minor *plus* three years?

⁽¹⁾ I. L. R., 14 Cal., 50.

⁽²⁾ I. L. R., 13 Mad., 236.

To this question the answer must be in the affirmative, in the circumstances of the case now before us. Under the provisions of section 231 of the Civil Procedure Code, Shankarlál was entitled equally with the other judgment-creditors to apply for execution of the whole decree for the benefit of all the decree-holders; and as he was a minor when the decree was passed, and when the last application for execution was made, he is entitled to the benefit of section 7 of the Limitation Act, and can apply for execution within three years of attaining majority.

We agree with the opinion expressed in *Seshan v. Rájágo-pála*⁽¹⁾ that section 8 of the Limitation Act applies only to those cases in which the act of the adult joint owner is, *per se*, a valid discharge. But we are unable to hold that section 7 does not apply where only some of the judgment-creditors, and not all, are affected by a legal disability. The reasoning in *Perry v. Jackson*⁽²⁾ referred to by the Madras High Court does not really touch the point under consideration, inasmuch as section 7 applies to an application like the present one, which any one of the judgment-creditors may present by himself under the provisions of section 231 of the Civil Procedure Code.

For these reasons, we agree with the Subordinate Judge in holding that Shankarlál is, in the circumstances, entitled to obtain execution of the decree. This is also the view of the Calcutta High Court in *Anando Kishore Dass v. Anando Kishore Bose*⁽³⁾.

Order accordingly.

(1) I. L. R., 13 Mad., 236.

(2) 4 T. R., 519.

(3) I. L. R., 14 Cal., 50.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Fulton.

UMED HATHISING (ORIGINAL OPPONENT), APPLICANT, *v.* GOMAN BHÁJI, MINOR, BY HIS GUARDIAN AND NEXT FRIEND HIS WIDOWED MOTHER CHAN-DA (ORIGINAL APPLICANT), OPPONENT.*

1895.

March 12.

Hindu law—Joint family—Money decree against father—Execution against son after the death of the father—Ancestral property in the hands of the son liable—Civil Procedure Code (Act XIV of 1882), Secs. 234, 244 and 278.

* Application No. 72 of 1894 under the extraordinary jurisdiction.