1906.

DAYARAM v. GORDHANDAS.

determinable by the plaintiff in any suit which can be valued lower for the computation of court-fees.

On the other hand section 4 of the Suits Valuation Act seems to me to indicate that the principle adopted by the legislature for valuing a suit mentioned in Schedule II, article 17, which relates to land or an interest in land is that the value of such a suit for purposes of jurisdiction shall be governed by the value of the land or interest in land.

It being nowhere enacted in the Act that where such value is not determined by rules made under section 3, the value shall be such as the plaintiff chooses to adopt, I am of opinion that the value must be (where disputed) determined by judicial decision in the suit, such determination being subject to the provisions of section 11 of the Suits Valuation Act, VII of 1887.

I would therefore confirm the order of the lower Court and dismiss this appeal with costs.

Decree confirmed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Aston and Mr. Justice Heaton.

1906. *October* 10.

SHIVRAM KONDO KULKARNI (ORIGINAL DEFENDANT), APPELLANT, *v.* KRISHNABAI KOM KASHINATH WAMAN AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Indian Majority Act (IX of 1875), section 3—Guardian—Minor—Order making appointment of guardian—Certificate of guardianship not issued—Act XX of 1864†—Period of minority.

Where a person obtains an order for a certificate of guardianship of a minor under the provisions of Act XX of 1864, the minor is deemed to have attained his majority when he shall have completed his age of 21 years by virtue of section 3 of the Indian Majority Act (IX of 1875). It is not necessary for the purposes of the section that any formal certificate of guardianship in pursuance of such order should be obtained.

* Appeal No. 5 of 1906 from order.

† This Act was repealed as to the whole thereof by Act VIII of 1890. [Ed.]

APPEAL from order passed by A. Lucas, District Judge of Sátára, reversing the decree passed by, and remanding the case to, G. B. Laghate, Subordinate Judge at Karad.

Suit to redeem a mortgage.

One Ramchandra Gangadhar died leaving him surviving his widow Sitabai. They had no male issue. Sitabai, therefore, adopted Dattatraya (plaintiff No. 2) as son to her husband.

While Dattatraya was a minor, Sitabai borrowed Rs. 300, on the security of property in dispute, from one Balaji Martand, in 1878 A. D. The deed was passed for an ostensible consideration of Rs. 700.

On the 14th September 1878 Dattatraya's natural father applied to the District Court, under Act XX of 1864, for the administration of the estate of his natural son, who he said was adopted by Sitabai. In this application Dattatraya was described as being of 2 or 3 years of age. This application was opposed by Sitabai and Balaji Martand, both of whom denied that Datto was adopted. The District Judge passed an order granting the certificate of guardianship: and this order was confirmed on appeal by the High Court. The applicant, however, did not actually take out any certificate of guardianship.

Sitabai and Dattatraya then called upon Balaji Martand (the mortgagee represented in this proceeding by the defendants) to render an account of the rents and profits of the mortgaged property. The mortgagee did not accede to the demand. Dattatraya therefore applied for a certificate from a conciliator under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879) in March 1900; and in 1902 brought this suit for redemption of the mortgage.

The defendants contended, among other things, that the suit was barred by limitation.

The Subordinate Judge held that as no certificate of guardianship was actually taken out, the minor did not fall within the purview of section 3 of the Indian Majority Act (IX of 1875), and that he attained his majority when he was nineteen. The suit was, therefore, clearly barred by time.

1906.

SHIVRAM v. KRISHNABAI.

This decree was on appeal reversed by the District Judge. The learned Judge was of opinion that the order directing a certificate to issue was enough, and that the actual issuing of a certificate of guardianship was not necessary to bring a minor within the purview of section 3 of the Indian Majority Act (IX of 1875). The plaintiff therefore attained majority at 21 years. The learned Judge further remarked:

"Plaintiff's age in September 1878 was stated to be about 3 years. If I assume that on 14th July 1898 he had completed three years, his suit would not be in time, because he would have reached majority on 14th September 1896, and under section 7 of the Limitation Act his suit should have been brought within three years from that date, that is, on or before 14th September 1899. But statutes of limitation are not to be harshly construed, and I think I am justified in assuming that on 14th September 1878 plaintiff was somewhere between two and three years of age, say about two and a half years, and that his suit is consequently just in time."

The defendant appealed to the High Court.

S. R. Bakhle, for the appellant:—The plaintiff's age was mentioned in the application of 1878 as 2 or 3 years. The learned District Judge should therefore have taken either of these as plaintiff's age, instead of assuming that the plaintiff's age then was 2½ years. This is a finding which cannot be accepted, for there is no evidence on which it can be based.

The plaintiff's father did obtain an order appointing him a guardian of the property; but he never actually obtained a certificate of guardianship, as contemplated by Act XX of 1864, and under section 3 of the Majority Act (IX of 1875) the period of minority is extended only when the certificate is taken out. See *Yeknath* v. *Warubai.*[1]

B. N. Bhajekar, for the respondent:—It is not necessary to take out a certificate, when once an order of appointment of guardian is made under Act XX of 1864. In a case under the Bengal Minors' Act, which is much in the same terms as the Bombay Act, the Privy Council have come to a conclusion different from that arrived at by this High Court in the case cited for the appellant. See *Mungniram Marwari* v. *Mohunt Gursahai Nund*[2].

(1) (1888) 13 Bom. 285. (2) 1889) L. R. 16 I. A. 195.

The finding as to the minor's age is a finding of fact: and cannot be impeached in second appeal.

ASTON, J.:—The present respondent-plaintiff sued in the character of an adopted son for redemption of a mortgage.

The Court of first instance dismissed the suit, because the fact of the plaintiff's adoption had been disputed more than six years before the date of the suit and in the opinion of the Subordinate Judge Article 119 was applicable, and a suit for declaration contemplated in that Article ought to have been brought within six years of the date when the plaintiff's rights were interfered with as adopted son.

The lower appellate Court reversed the decree and remanded the case for a fresh decision, because it was of opinion that the plaintiff's age was $2\frac{1}{2}$ years at the date when the application was made to the District Court for the appointment of a guardian to administer his estate and the plaintiff did not attain majority till he was 21 years of age if a guardian of his property or person was appointed.

The question of limitation only arises, however, in the form of the contention that if Article 119 of Schedule II of the prior Limitation Act applies, the plaintiff cannot sue in the character of an adopted son, when the suit described in Article 119 has not been brought within the period of limitation prescribed therefor.

In this case, although an application had been made to the Court for the appointment of a guardian of the estate, and the Court had ordered the issue of the certificate of administration, no such certificate was taken out; and no order under section 10 of Act XX of 1864 for the appointment of a guardian of the person was made. But Mr. Lucas has come to the conclusion that it ought to be inferred that such an appointment was in fact made.

An appeal has been preferred to this Court and the grounds urged before us are, that whilst Mr. Lucas was right in following the case of *Yeknath* v. *Warubai*[1] in which it was held, that until the certificate of administration has been issued there is no

(1) (1888) 13 Bom. 285.

1906.

SHIVRAM v. KRISHNAJAI.

such appointment of a guardian of the property as will extend the age of minority, still Mr. Bakhle objects to Mr. Lucas' holding that there was in fact an appointment of the guardian of the person, as to which there is no certificate.

Mr. Bakhle has also objected to the finding as to the age of the plaintiff, a question of fact, with which we see no reason to interfere.

Now appeal is made on the assumption that Article 119, Schedule II, Limitation Act, applies, and that it is necessary for the plaintiff to prove that a guardian of his property or person was appointed in order that he may be treated as a minor until he attained the age of 21 years.

If it were necessary to decide the case on the point, whether a guardian of the person was appointed, there would be considerable difficulty in concurring with Mr. Lucas' view that such an appointment was made.

Mr. Bhajekar has, however, supported the decision of the lower appellate Court on two grounds; first, that there was in fact an appointment of the guardian of the property of the minor, and secondly, that Article 119, Schedule II of the Limitation Act, does not apply to the present suit. Mr. Bhajekar has pointed out that although in *Yeknath* v. *Warubai*[1] it was decided that when no certificate has actually issued as to the administration of the estate of the minor, it cannot be held that there has been an appointment of the guardian of the person within the view of section 3 of the Indian Majority Act; the decision was arrived at upon the construction of the words "until he shall have obtained such certificate," which occur in section 2 of Act XX of 1864, and that the decision in *Yeknath* v. *Warubai*[1] is superseded by a decision of the Judicial Committee of the Privy Council in *Mungniram* v. *Mohunt*[2], where with regard to similar words in an analogous Act 40 of 1858, Bengal Minors Act, their Lordships remaked as follows:—

"Now the words are 'until he shall have obtained such certificate.' The section provides that the person who claims a right to have charge of the property may apply to the Civil Court for a certificate. The Court is to

(1) (1888) 13 Bom. 285.

(2) (1889) L. R. 16 I. A. 195 at p. 200.

exercise a discretion, or at least is to inquire whether the person making the application is entitled to have the certificate. Their Lordships are of opinion that when the Court makes that inquiry, and comes to a decision that the application should be allowed, that is doing all that is substantially necessary in the matter; and when the order is made that the applicant shall have his certificate, the applicant really then obtains his certificate. All is done at that time which is necessary to show that he is the person who should have the certificate. He then, by getting that order, substantially obtains the certificate, although the officer of the Court, whose duty it would be to draw up the certificate, and prepare it for the signature of the Judge, or the seal of the Court to be attached to it, may not do that for some time afterwards, on account of the course of business, or the party not applying to him for it. When a man obtains an order for a certificate he does in substance comply with the terms of this Act, in the same way as when a person has the judgment of the Court that he shall have a decree in his suit it may be said that he then obtains his decree. The decree, when it is drawn up afterwards, relates back to that time; and so would the certificate in this case relate back; and the terms of the Act that he shall have obtained such certificate are complied with."

We think we are bound by that decision and it follows that there was in fact, within the meaning of section 3 of the Indian Majority Act, an appointment of the guardian of the property of the plaintiff when he was a minor.

On the second point on which Mr. Bhajekar seeks to uphold the decree of the Court of first instance remanding the case for fresh decision, we think it is sufficient to look to the actual words of Article 119, Schedule II of the Limitation Act, and to the case of *Ningawa* v. *Ramappa* [1], where it was held "that Article 119 is to be applied only where the question is not as to the *factum* but the validity of an adoption." That authority supports Mr. Bhajekar's second contention.

We accordingly confirm the order of the lower appellate Court with costs on the appellant.

Decree confirmed.

R. R.

(1) (1903) 28 Bom. 94 : 5 Bom. L. R. 708.