

1911.

BHIWA  
v.  
DEVCHAND  
BECHAR.

parties to a suit, in which minors are interested, shall not bind the minor unless leave was obtained. See the observations of the Privy Council in *Manohar Lal v. Jadu Nath Singh*<sup>(1)</sup> and *Virupakshappa v. Shidappa and Basappa*<sup>(2)</sup>. The compromise must be set aside as not binding the plaintiff. The lower appellate Court having disposed of the case on a preliminary point, we must reverse the decree and remand the appeal for a fresh hearing on the merits. Costs of this appeal on the respondent. Other costs to be costs in the appeal in the lower Court.

*Decree reversed. Case remanded.*

R. R.

(1) (1906) L. R. 33 I. A. 128.

(2) (1901) 26 Bom. 109.

## APPELLATE CIVIL.

*Before Mr. Justice Chandavarkar and Mr. Justice Heaton.*

1911.  
March 21.

GANPATSING HIMATSING (ORIGINAL JUDGMENT-DEBTOR), APPELLANT,  
v. BAJIBHAI MAHMAD ASMAL (ORIGINAL DECREE-HOLDER),  
RESPONDENT.\*

*Gujarāt Tālukdār's Act (Bombay Act VI of 1888), section 29E†—Tālukdār's Settlement Officer managing a Tālukdār's estate—Creditor submitting his claim—Time taken up before the Tālukdār's Settlement Officer—Exclusion of time—Limitation Act (XV of 1877).*

B obtained a decree for money against G, a Tālukdār, on the 22nd February 1903, and presented his first *darbhāst* for execution on the 8th December 1903. On the 21st September 1905, G's estate came by notice to be in the manage-

\* Second Appeal No. 591 of 1910.

† The section runs as follows:—

29E. (1) On the publication of a notice under section 29B, sub-section (1), no proceeding in execution of any decree against the Tālukdār whose estate is taken under management or his property shall be instituted or continued until the decree-holder files a certificate from the managing officer that the decree-claim has been duly submitted, or until the expiration of one month from the date of receipt by the managing officer of a written application for such certificate, accompanied by a certified copy of the decree.

ment of the Tálukdári Settlement Officer under section 29B of the Gujarát Tálukdárs' Act, 1888. B submitted his claim to the officer on the 6th March 1906; but it was rejected on the 12th August 1908. B then applied to the Civil Court on the 12th March 1909, and sought to bring it within time, by claiming to exclude the period taken up before the Tálukdári Settlement Officer:—

*Held*, that the period in question could not be excluded in computing the time for the *darkhást*, for section 29E of the Act placed no absolute bar on B's right to apply to the Court for execution by reason of the submission of his claim to the Tálukdári Settlement Officer.

PROCEEDINGS in execution.

The decree in question was a money decree obtained by one Bajibhai on the 22nd February 1903 against Gambhirsingji Hamirsingji, a Tálukdár. Bajibhai first applied on the 8th December 1903 to execute the decree.

On the 21st September 1905, the Tálukdári estate of Gambhirsingji passed into the management of the Tálukdári Settlement Officer, who published a notice under section 29B of the Gujarát Tálukdárs' Act, 1888, calling upon all persons having claims against the Tálukdár or his property, to submit the same in writing to him within six months of the notice.

Bajibhai submitted his claim to the Tálukdári Settlement Officer on the 7th March 1906; but it was rejected on the 12th August 1908.

On the 12th March 1909, Bajibhai filed in the Civil Court the present *darkhást* to execute the decree; and sought to bring it within time by excluding the period of two years and five months taken by the Tálukdári Settlement Officer in considering his claim.

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(2) Any person holding a decree against such Tálukdár or his property shall be entitled to receive from the managing officer, free of cost, the certificate required by sub-section (1).

(3) In computing the period of limitation prescribed by the Indian Limitation Act, 1877, or by section 230 of the Code of Civil Procedure for any application for the execution of a decree, proceedings in which have been stayed or temporarily barred by reason of the claim not having been duly submitted, the time from the date of the notice published under section 29B, sub-section (1), or of the decree if it was passed subsequently to the publication of the notice, to the date of due submission shall be excluded.

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The Subordinate Judge held that no exclusion could be allowed and rejected the *darkhást* as barred by time.

On appeal the District Judge came to the conclusion that the period should be excluded in computing time and held that the *darkhást* was in time.

Gambhirsingji appealed to the High Court.

G. S. Rao, Government Pleader, for the appellant.

G. K. Parekh, for the respondent.

CHANDAVARKAR, J.:—The learned District Judge has gone beyond the plain language of section 29E of the Gujarát Tálukdárs' Act in differing from the Subordinate Judge and holding that the present *darkhást* of the respondent for execution of his decree is not barred by limitation. The facts are as follows. The respondent obtained his decree for money against the appellant, a Tálukdár, on the 22nd of February 1903 and presented his first *darkhást* for execution on the 8th of December 1903. It is admitted that from the 21st of September 1905 the Tálukdári estate of the appellant came by notice to be in the management of the Settlement Officer under section 29B of the Act; and, as required by the provisions of that section, the respondent submitted his claim under the decree in dispute for the consideration of the Officer on the 7th of March 1906. The respondent could not after that proceed with the execution of his decree through the Court without complying with the provisions of section 29E. Under that section he had to do one of two things before he could ask the Court to execute his decree. He had either to produce a certificate from the Officer that the claim had been duly submitted or to apply in writing to the Officer for such certificate accompanied by a certified copy of the decree and wait for the expiry of one month from the date of receipt by the Officer of the application. If the Officer gave no certificate within that month, the respondent's right to apply to the Court for execution revived.

There was, therefore, no absolute bar placed upon the right of the respondent to apply to the Court for execution by reason of the submission of his claim to the Settlement Officer.

The District Judge thinks that the respondent is entitled to deduct the whole of the time from the date of the submission to the Officer to the date on which the claim was considered and rejected by the latter, because submission, in the learned Judge's opinion, means "an attempt to explain and press the claim or an effort to settle it," which in the present case was made, says the learned Judge, when the Officer rejected the respondent's claim on the 12th of August 1908. He relies in support of that view on a dictum in the judgment of the learned Chief Justice of this Court in *Purushottam v. Rajbar*<sup>(1)</sup>. That dictum bears no such meaning as the District Judge attributes to it.

The decree must, therefore, be reversed and the *darkhast* disallowed with costs throughout on the respondent.

*Decree reversed.*

R. E.

(1) (1903) 34 Bom. 142.

## PRIVY COUNCIL.

MADAPPA HEGDE AND OTHERS (PLAINTIFFS) v. RAMKRISHNA  
NARAYAN BHATTA AND OTHERS (DEFENDANTS).

[On appeal from the High Court of Judicature at Bombay.]

*Mortgage—Construction of mortgage—Mortgage with interest partly in kind and partly in cash—Interest when payable—Suit for arrears of interest—Words amounting to covenant to pay year by year.*

In this case their Lordships of the Judicial Committee held (reversing the decision of the High Court) that on the true construction of the mortgage there was clearly a personal covenant to pay interest on the mortgage-money from year to year, and that the suit, which was for arrears of interest, was therefore maintainable.

APPEAL from a judgment and decree (22nd January 1908) of the High Court at Bombay, which reversed a decree (23rd December 1905) of the Subordinate Judge of Karwar.

\* Present :—Lord Macnaghten, Lord Shaw, Lord Mersey and Mr. Ameer Ali.

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1911.

June 13.