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repealed to that extent, the law now is that no Hindu can make a will who is less than eighteen years of age.

This is in accordance with the decision of the Allahabad High Court in *Harduari Lal v. Gomi*⁽¹⁾. We must confirm the order with costs.

Order confirmed.

R. R.

(1) (1911) 8 All. L. J. 385.

APPELLATE CIVIL.

*Before Sir Narayan Chandavarkar, Kt., Acting Chief Justice,
and Mr. Justice Batchelor.*

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June 25.

EKNATH PANDOBA KOSTI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS,
v. DAGADURAM SAMBHURAM AND OTHERS (ORIGINAL PLAINTIFFS 1-4 AND
DEFENDANT 3), RESPONDENTS.*

Dekhan Agriculturists' Relief Act (XVII of 1879), sections 47 and 48(1)—Transfer of Property Act (IV of 1882), section 85—Limitation Act (IX of 1908), Schedule II, Article II—Agriculturist Mortgagor—Suit—Conciliator's certificate—Mortgagor necessary party along with other persons interested—Exclusion of time spent in obtaining conciliator's certificate—Limitation.

Defendants 1 and 2 brought a suit on a mortgage against defendant 3 and while the suit was pending, defendant 3 mortgaged the same property, namely, a house

* Second Appeal No. 403 of 1911.

(1) Sections 47 and 48 of the Dekhan Agriculturists' Relief Act (XVII of 1879) are as follows :—

47. No suit, and no application for execution of a decree passed before the date on which this Act comes into force, to which any agriculturist residing within any local area for which a conciliator has been appointed is a party, shall be entertained by any Civil Court unless the plaintiff produces a certificate in reference thereto obtained by him under section 46 within the year immediately preceding.

Explanation.—The expression "Civil Court" in this section does not include a Mamlatdar's Court under Bombay Act No. III of 1876 (to consolidate and amend the law relating to the powers and procedure of Mamlatdars' Courts).

48. In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section 39 and the grant of the certificate under section 46 shall be excluded.

along with other properties to the plaintiffs. Defendants 1 and 2 having obtained a decree, they applied for execution and sought to recover the decretal debt by sale of the house. Thereupon, the plaintiffs intervened and applied that the house should be sold subject to their mortgage lien. The plaintiffs' application being disallowed they brought a suit against defendants 1, 2 and 3 to establish their right founded on their mortgage. The suit was brought within one year of the order rejecting their application after the exclusion of the time taken up in obtaining the Conciliator's certificate under sections 47 and 48 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), defendant 3 being described in their mortgage as an agriculturist. Defendants 1 and 2 contended that defendant 3 being not a necessary party, the Conciliator's certificate was unnecessary and the suit was time-barred.

Held, that under the provisions of the Transfer of Property Act (IV of 1882) defendant 3 was a necessary party to the suit which was brought on the strength of the mortgage and he being an agriculturist, the Conciliator's certificate was necessary and the suit was, therefore, not time-barred.

SECOND appeal against the decision of C. C. Boyd, District Judge of Ahmednagar, confirming the decree of L. G. Dhekne, Subordinate Judge of Rahuri.

The facts were as follows :—

The property in suit, a two storeyed house, belonged to Rajmal Manikchand, defendant 3, and he had mortgaged it to Eknath Pandoba and Ramchandra Eknath, defendants 1 and 2. On the 17th February 1904 the mortgagees brought a suit, No. 59 of 1904, against Rajmal to recover the mortgage-debt. While the said suit was pending, Rajmal mortgaged the said house along with four other properties to the plaintiffs under a deed, dated the 1st July 1904. The suit brought by the mortgagees Eknath and Ramchandra against Rajmal was decreed in their favour on the 6th February 1905. They applied for the execution of their decree and sought to recover the mortgage-debt by the sale of the house. In the meanwhile the plaintiffs intervened and applied that the attached property, namely, the house should be sold subject to their mortgage lien. The plaintiff's application was registered as Miscellaneous No. 13 of 1906. The Subordinate Judge investigated the plaintiffs' claim and, on the 19th June 1907, he rejected their application. Defendant 3, Rajmal, being described in the plaintiffs' mortgage-deed as an agriculturist, they on the 8th June 1908, applied for a conciliator's certificate under sections 47 and 48 of the Dekkhan Agriculturists' Relief Act (XVII of

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1879) to enable them to file a suit against defendant 3 along with defendants 1 and 2. They obtained the conciliator's certificate on the 15th July 1908 and on the same day filed the present suit against defendants 1, 2 and 3 under Order XXI, Rule 63 of the Civil Procedure Code (Act V of 1908) and prayed for the setting aside of the order passed against them in the Miscellaneous Proceeding, No. 13 of 1906, and for a declaration that the mortgage-deed executed in their favour by defendant 3 was a true and genuine transaction. Though the suit was apparently filed one year after the date of the order in the miscellaneous proceeding, the plaintiff sought to bring it within the period of one year by deducting the time taken up in the conciliation proceeding.

Defendants 1 and 2 contended that the plaintiffs' mortgage was a fraudulent transaction entered into for the purpose of establishing the status of defendant 3 as an agriculturist while he was not an agriculturist and for delaying and defeating the execution of their decree against him, that defendant 3 was not a necessary party and that the claim was time-barred.

Defendant 3 did not file any written statement.

The Subordinate Judge found that the plaintiffs' mortgage was a genuine and *bonâ fide* transaction and was valid against defendants 1 and 2, that defendant 3 was not a necessary party but he was a proper party to the suit, that defendant 3 was an agriculturist and that the suit was in time. He, therefore, made the declaration sought for by the plaintiff.

On appeal by defendants 1 and 2 the decree was confirmed.

Defendants 1 and 2 preferred a second appeal.

P. P. Khare for the appellants (defendants 1 and 2).

Coyaji, with C. A. Rele, for the respondents (plaintiffs).

CHANDAVARKAR, ACTING C. J. :—It is contended in support of this second appeal that the presence of the mortgagor as a party-defendant was not necessary, and that, therefore, the conciliator's certificate does not avail the plaintiffs to bring the suit within the period of limitation under Article 11 of Schedule II to the Limitation Act.

This point is urged on the following facts: Defendants Nos. 1 and 2, the present appellants, obtained a decree upon their mortgage against their mortgagor, defendant No. 3. The present plaintiffs were not parties to that suit. Having obtained a decree upon the mortgage, the said defendants sought to sell the property in satisfaction of their decree. Thereupon the plaintiffs intervened, claiming a lien upon the property in virtue of a mortgage in their favour subsequent to the mortgage of defendants 1 and 2. In the miscellaneous proceedings in which they intervened, the Court held their mortgage not proved and their application that the property should be sold in satisfaction of the mortgage-decree of defendants Nos. 1 and 2 subject to their own mortgage was rejected. That was on the 19th of June 1907. The present is a suit to establish their right founded on that mortgage and its object is to get rid of the order passed against them in the miscellaneous proceedings. Ordinarily the suit should have been brought under Article 11 of the Limitation Act on or before the 19th of June 1908. But it was filed on the 15th of July 1908. *Prima facie*, therefore, the suit was barred by limitation.

The plaintiffs, however, seek to bring the suit within the period of limitation under Article 11 on the ground that as their mortgagor, defendant No. 3, was an agriculturist, they had to apply for a certificate from the conciliator under the Dekkhan Agriculturists' Relief Act. They claim deduction of the period occupied in obtaining the certificate.

It is conceded by Mr. P. P. Khare for the appellants that, if the period occupied by the application for the conciliator's certificate is excluded, the present suit is in time. But it is argued that that period should not be deducted, because, defendant No. 3 was not a necessary party to the suit. Mr. Khare contends that the suit was merely to set aside the order passed on the 19th of June 1907 in the miscellaneous proceeding. To that order, it is true, defendant No. 3 was not a party, but, whether he was a party to that order or not, the present suit is one brought on the strength of a mortgage, and the Transfer of Property Act directs that all persons

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interested in mortgaged property should be made parties to a suit on the mortgage. Therefore defendant No. 3 was a necessary party and the suit must be held to have been in time.

The decree is confirmed with costs.

Decree confirmed.

G. B. R.

APPELLATE CIVIL.

*Before Sir Narayan Chandavarkar, Kt., Acting Chief Justice, and
Mr. Justice Batchelor.*

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June 26.

SHIDAPPA VENKATRAO (ORIGINAL PLAINTIFF), APPELLANT, v. RACHAPPA
SUBRAO (ORIGINAL DEFENDANT), RESPONDENT.*

Court Fees Act (VII of 1870), section 17—Suit to obtain a declaration as adopted son and to establish title to property—Injunction with respect to a house—Declaration with respect to other property—Valuation of the plaint—Valuation for pleader's fees—Special jurisdiction of the First Class Subordinate Judge—Appeal to the District Court—Second Appeal—Return of the memorandum of appeal for presentation to the High Court—Jurisdiction.

In a suit for a declaration that the plaintiff was the adopted son of V., and as such was entitled to his property, the plaint was valued at Rs. 120 for a declaration of the rights and at Rs. 69,016-9-0 for pleader's fees. The plaintiff prayed for an injunction restraining the defendant from interfering with plaintiff's rights in respect of a house which was already in his possession and the injunction was valued at Rs. 5. With respect to the other property which was attached by the Collector after V.'s death, the plaintiff sought for a bare declaration of his rights as V.'s adopted son. The suit was tried by the First Class Subordinate Judge of Belgaum in his special jurisdiction and he allowed the claim.

The defendant appealed to the District Judge and he, notwithstanding the plaintiff's preliminary objection that the appeal lay to the High Court and not to his Court, held that the First Class Subordinate Judge had no jurisdiction to try the suit under his special jurisdiction because the suit was for a declaration and consequential relief which was valued at Rs. 5 for the purposes of Court-fees, and the valuation for the purposes of jurisdiction being the same as for the purposes of Court-fees, that valuation was less than Rs. 5,000. The District Judge, therefore, entertained the appeal and having found that the plaintiff's adoption was not proved, disallowed the claim.

* Second Appeal No. 152 of 1911.