

the present applicant cannot come forward as a friend of the minor to seek the protection of the Court for the minor. It must depend upon the facts and circumstances of a particular case. But in the present case the grounds alleged are based more or less upon broad considerations concerning the practice and custom in a particular community; and it seems to me that it would be very unsafe to accept them as justifying an interference with the right of the father to the custody and guardianship of his minor daughter. The Court should require very clear and strong grounds to hold that it is for the welfare of the minor girl that she should be separated from her father and left under the care of a stranger.

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Decree confirmed.

J. G. R.

 APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

NARAYAN LAXMAN AGHARKAR AND OTHERS (ORIGINAL DEFENDANTS),
 APPELLANTS v. CHAPSI DOSA AND ANOTHER (ORIGINAL PLAINTIFFS);
 RESPONDENTS*.

1921

August 30

Khatas—Several Khatas between the same parties—All Khatas are to be amalgamated for purposes of limitation—Dekhan Agriculturists' Relief Act (XVII of 1879), section 13.

The defendants had business dealings with the plaintiffs in the course of which they opened five accounts (Khatas). The first three Khatas were operated upon up till 1908; but after that date the remaining two Khatas alone recorded transactions between the parties. In 1913, the plaintiffs totalled the credit and debit entries in all the five Khatas at the foot of which defendant No. 2 affixed his signatures to signify that the entries were correct. Even after this, transactions continued between the parties. The plaintiffs having sued in 1916 to recover the balance due on all the Khatas,

* First Appeal No. 278 of 1920.

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the defendants contended that no amounts due under the first three Khatas could be recovered for those Khatas were not operated upon since 1908 :—

Held, overruling the contention, that since the business transactions between the parties continued after 1908 and were recorded in the remaining two Khatas, the total effect was that what was due to the plaintiffs was the balance on the five accounts.

However many accounts may be opened regarding transactions between two parties, they must be treated as one account for the purposes of limitation.

Quære.—Whether an acknowledgment given after the period of limitation has expired is sufficient to form the basis for a new action on the ground that it implies a promise to pay.

Chunilal v. Lazman Govind⁽¹⁾, considered.

It appears inequitable but it is the law that, if the defendants are agriculturists, the accounts, even though they relate to trading transactions, must be taken under Dekkhan Agriculturists' Relief Act.

FIRST appeal from the decision of G., G. Nargund, First Class Subordinate Judge at Thana.

Suit to recover a sum of money.

The defendants carried on business at first with one Ramchandra in the course, of which they opened three accounts (Khatas) with the plaintiffs. Ramchandra died in 1908, since when the three Khatas were not operated upon.

In and after 1908 two new Khatas were opened between the parties. All subsequent transactions were entered in the new Khatas.

On the 8th August 1913, the plaintiffs totalled up the credit and debit entries in all the five Khatas and at the foot of the totals defendant No. 2 affixed his signature to signify their correctness. Even after this, transactions continued between the parties.

On the 7th August 1916, the plaintiffs sued to recover the balance due on all the five Khatas.

The defendants contended *inter alia* that since the first three Khatas were not operated upon from 1908 all items due under them were barred by limitation.

The trial Court overruled the defendants' contention and passed a decree in plaintiffs' favour for a sum arrived at by deducting the admitted total on the credit side from the admitted total on the debit side. The Court also allowed compound interest on the following grounds :—

"The taking of accounts in this case under the Dekkhan Agriculturists' Relief Act has importance only with respect to the question whether compound interest should be allowed I think that defendants are not such agriculturists as to be given that concession. In the other accounts in which they are creditors they are given compound interest by the plaintiffs. They are not therefore entitled to claim simple interest in the accounts in which they find themselves to be debtors."

The defendants appealed to the High Court.

P. B. Shingne, for the appellants:—The claim is time-barred. The signature of defendant No. 2 was taken at a time when a suit against the defendants for recovering the debt then due would have been barred by limitation. Defendant No. 2 has signed below the credit and debit entries without acknowledging his liability. The mere signature cannot imply a promise to pay, and inasmuch as the whole thing took place after the expiry of the period of limitation, the provisions of section 19 of the Indian Limitation Act cannot apply.

[*SHAH J.* referred to the case of *Maniram Seth v. Seth Rupchand*⁽¹⁾,]

[*MACLEOD C. J.*—We have recently considered the point in *Chunihal v. Laxman Govind*⁽²⁾.]

In those cases, the acknowledgment was in time. In this case, there is no acknowledgment of liability and, even if there is, it cannot imply a promise to pay within the meaning of section 23 of the Indian Contract Act. The promise must be expressed in writing.

⁽¹⁾ (1906) 33 Cal.

⁽²⁾ (1921) 46 Bom. 24.

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The signature was taken at a time when defendant No 2 had no other course open. Promissory notes of considerable value were withheld by the respondent. Finally compound interest ought not to have been allowed, as the defendants are agriculturists.

G. S. Mulgaokar, for the respondents, was called upon to reply on the point as to compound interest :— The defendants are also traders. The loan was contracted for trade. Hence, compound interest was rightly allowed.

MACLEOD, C. J. :—The plaintiffs sued to recover Rs. 5,407-11-7 as principal and Rs. 248-12-0 as interest from the 1st and 2nd defendants. The 1st and 2nd defendants and one Ramchandra, brother of the 1st defendant, were a joint Hindu family carrying on business in groceries, and in the course of that business had dealings with the plaintiffs. There were various Khatas, five in all, representing the transactions between the parties. Before 1913 Ramchandra separated, but the business was carried on by the 1st and 2nd defendants. In August 1913 the amounts to the debit and credit of the various five Khatas were totalled, credits on one side and debits on the other, and the 2nd defendant signed both the debits and credits as correct. Thereafter the account continued, and this suit is brought within three years of the signatures placed by the 2nd defendant in the plaintiffs' books on the 8th August 1913.

The 1st defendant is now dead and the 2nd defendant disputes the plaintiffs' claim which was allowed by the Court below. The decree directs the 2nd defendant personally and as representative of the deceased defendant No 1, to pay to the plaintiffs Rs. 5,273-15-0 and proportionate costs with further interest at six per cent. The first question to be decided on appeal is a question

of limitation. It was argued that three of the Khatas, which were amalgamated in 1913, had not been operated upon since 1908, and therefore, any acknowledgment of what was due by the defendants to the plaintiffs on these Khatas was barred by limitation. That is an ingenious but a dishonest defence, because it is clear that the business transactions between the parties continued after 1908, and were recorded in Khatas Nos. 4 and 5, and the total effect was that what was due to the plaintiffs was the balance on the five accounts, and it was not open to the defendants to say that the amounts appearing to be due by them on the first three Khatas were barred, while the amounts which were due to them from the plaintiffs on the later accounts were not barred. Obviously, however many accounts might be opened recording the transactions between A and B, they must be treated as one account for the purposes of limitation.

Then it is not necessary to deal with the question, which is still open, whether an acknowledgment given after the period of limitation has expired is sufficient to form the basis for a new action on the ground that it implies a promise to pay. In *Chunital v. Laxman Govind*⁽¹⁾ we held that a Rujukhata would form the basis of a fresh action. But in that case the Rujukhata was within the period of limitation and it may be said that we would be going further if we hold that even if it is signed after the period of limitation, it would still afford the basis for a fresh action. But unfortunately the learned Judge has fallen into an error in refusing to take the account according to section 13 of the Dekkhan Agriculturists' Relief Act. We feel considerable sympathy with him, because it has always appeared to us inequitable that a trader

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should be entitled to the advantages of the Act because he happens in conjunction with his trading transactions to carry on agricultural business, so that, if the income from agriculture is more than the income from his trading transactions, he can ask to have the accounts of trading transactions taken under the Dekkhan Agriculturists' Relief Act. That is the law, and, as the defendants are agriculturists, these accounts, though recording trading transactions, should be taken according to the Act. The case must, therefore, go back to the Subordinate Judge for an account to be taken of all the five Khatas under section 13 of the Dekkhan Agriculturists' Relief Act, and the result must be certified to us within three months.

Case sent back.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

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September 2.

ZIPRU CHINDU SHIMPI (ORIGINAL PLAINTIFF), APPELLANT v. BOMTYA DAGDU KUMBHAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

Hindu law—Illegitimate son—Collateral succession—Sudras.

A Sudra died leaving a legitimate son and an illegitimate son.

Held, on the death of both the above sons, that the son of the legitimate son could not inherit the property of the illegitimate son.

Dharma v. Sakharam⁽¹⁾, applied.

SECOND appeal from the decision of Dadiba C. Mehta, Acting District Judge of Khandesh, reversing the decree passed by G. L. Dhekne, Subordinate Judge at Dhulia.

* Second Appeal No. 7 of 1921.

(1) (1919) 44 Bom. 185.