
(1906) 10 BOM CK 0009
In the Bombay High Court
Case No : Appeal No. 5 of 1906

Shivram Kondo Kulkarni

APPELLANT

Vs

Krishnabai Kashinath

RESPONDENT

Date of Decision : 10-10-1906

Acts Referred:

Majority Act, 1875 — Section 3

Citation : (1906) 8 BOMLR 897

Hon'ble Judges : Heaton, J;Aston, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

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

2. 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 plaintiffs rights were interfered with as adopted son.

3. The lower appellate Court reversed the decree and remanded the case for a fresh decision, because it was of opinion, that the plaintiffs age was 2 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 twenty-one years of age if a guardian of his property or person was appointed.

4. 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.

5. 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 u/s 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.

6. 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* (1888) ILR 13 Bom. 285 in which it was held, that until the certificate of administration has been issued there is no 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.

7. 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.

8. 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.

9. 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.

10. 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* 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* is superseded by a decision of the Judicial Committee of the Privy Council in (1889) ILR 17 347 (P.C.) (Privy Council) where with regard to similar words in an analogous Act 40 of 1858-Bengal Minors Act-their Lordships remarked 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 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 enquiry, and comes to a decision that the application shall 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.

11. We think we are bound by that decision and it follows that there was in fact, within the meaning of Section 30 of the Indian Majority Act, an appointment of the guardian of the property of the plaintiff when he was a minor.

12. 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. Bomappa (1903) 5 Bom. L.R. 708 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 the adoption." That authority supports Mr. Bhajekar's second contention.

13. We accordingly confirm the order of the lower appellate Court with cost, on the appellant. Order confirmed.