

We therefore allow the appeals, set aside the order of the High Court and restore that of the Custodian dated December 2, 1952. This of course will not take away the right if any of the respondents to approach the Custodian-General, for we have not considered the merits of the order of December 2, 1952. In the circumstances of this case we pass no order as to costs.

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Custodian of
Evacuee Property,
Bangalore
v.
Khan Sahib Abdul
Shukoor

Wanchoo J.

Appeals allowed.

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SARDA PRASAD AND OTHERS

v.

LALA JUMNA PRASAD AND OTHERS.

(P. B. GAJENDRAGADKAR and K. C. DAS GUPTA, JJ.)

Limitation—Execution—Decree for joint possession in favour of Hindu father and minor sons—Failure of father to execute within the period of limitation—Right of sons, if barred—Indian Limitation Act, 1908 (9 of 1908), s. 7—Code of Civil Procedure, 1908 (5 of 1908), O. 32, rr. 6, 7.

A decree dated September 2, 1938, in a suit for partition of joint Hindu family property awarded a house to the share of one J and his four minor sons. J failed to execute the decree. On November 23, 1949, an application was made by the appellants, the four sons of J, for execution of the decree stating that three of them had been minors till then and one of them was still a minor and so no question of limitation arose. The respondent objected that the application was barred under s. 7 of the Indian Limitation Act. The appellants contended that s. 7 did not apply to a partition decree and that s. 7 was no bar as J could not have given a valid discharge of the liability under the decree in view of the provisions of O. 32 of the Code of Civil Procedure.

Held, that the application for execution was barred by limitation. J, the managing member of the family could have given a discharge of the liability under the partition decree by accepting possession on behalf of his minor sons without their consent and so time ran against them under s. 7 from the date of the decree. Order 32, rr. 6 and 7 were no bar to J giving a discharge of the liability under the decree as it was neither a case of receipt of any money or movable property nor was there any question of entering into an agreement or compromise on behalf of the minors.

Ganesha Row v. Tuljaram Row, (1913) L.R. 40 I.A. 132, *Parmeshwari Singh v. Ranjit Singh*, A.I.R. 1939 Pat. 33 and *Letchmana Chetty v. Subbiah Chetty*, (1924) I.L.R. 47 Mad. 920, referred to.

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CIVIL APPELLATE JURISDICTION: Civil Appeal
No. 276 of 1956.

Sarda Prasad

v.

Lala Jumna Prasad

Appeal from the judgment and decree dated October 15, 1954, of the Allahabad High Court in Execution First Appeal No. 224 of 1951.

S. P. Sinha and Tiryugi Narain for the appellants.

G. C. Mathur, for respondent No. 1.

1961. February 20. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA, J.—This appeal raises a question of limitation in execution proceedings. The decree sought to be executed was made by the Civil Judge, Kanpur, on September 2, 1938, in a suit for partition brought by two brothers Jumna Prasad and Devi Prasad and two minor sons of Jumna Prasad, against Gajju Lal, his son Jawala Prasad, the four minor sons of Jawala Prasad—Sharda Prasad, Dharam Pal, Ram Pal and Krishna Pal, and one Smt. Sundari. By the decree one of the properties, a house formerly bearing No. 36/22 and now 36/58, Etawa Bazar, Kanpur, was awarded along with other properties to the defendants in the suit. The present application for execution was made by the four brothers, Sharda Prasad, Dharam Pal, Ram Pal and Krishna Pal on November 23, 1949. The prayer was that these applicants may be delivered possession over this Etawa Bazar house along with Gajju Lal, Jawala Prasad and Smt. Sundari on dispossession of Jumna Prasad and Devi Prasad. It is stated in the application that all these applicants had “up till now been minors and one of them is still a minor and so no question in respect of time arises.” This, it is important to note, was the first application for execution of the partition decree.

A number of objections were raised; but the principal objection and the only one with which we are concerned in this appeal was that the application was barred by time. The decision of this question depended on the answer to the question raised on behalf of the opposite parties that Jawala Prasad one of the persons entitled jointly with these applicants to make an application for the execution of the decree could have

given a discharge of the liability under the decree without the concurrence of his minor sons and so time ran under s. 7 of the Limitation Act against them also from the date of the decree.

The Trial Court did not feel satisfied that Jawala Prasad could give a valid discharge and held accordingly that the application was within time.

On appeal the High Court held that Jawala Prasad as the Karta of the Hindu joint family could act on behalf of the entire joint family in taking possession of the house allotted to the defendants and delivery of such possession could discharge the liability qua the entire joint family and held accordingly that the application was barred by limitation. The High Court however granted a certificate under Art. 133(1)(c) of the Constitution and on that certificate this appeal has been filed by the applicants for execution.

Two contentions were raised on behalf of the appellants in support of the plea that the High Court erred in holding that the application for execution was barred by limitation. First, it is urged that s. 7 of the Limitation Act does not apply at all to a partition decree. The second contention is that in any case Jawala Prasad could not give a valid discharge of the liability under the decree in view of the provisions of O. 32 of the Code of Civil Procedure.

On the first contention the argument is that the word "discharge" is appropriate only in respect of a monetary claim and is wholly inappropriate in respect of any decree for possession whether on partition or otherwise. There is, in our opinion, no substance in this argument. The mere fact that the two illustrations to s. 7 are in respect of debts is no ground for thinking that the provisions of s. 7 are limited to suits or decrees on monetary claims only. Nor can we see any reason to think that the word "discharge" can refer only to debts. Discharge means, to free from liability. The liability may be in respect of monetary claims, like the debts; it may be in respect of possession of property; it may be in respect of taking some order as regards property; it may be in respect of many other matters. Except in the case of declaratory decrees or

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decrees of a similar nature, the decree in favour of one person against another requires the person against whom the decree is made liable to do something or to refrain from doing something. This liability is in a sense a debt which the party is in law bound to discharge. The ordinary use of the word "judgment-debtor" to denote a person against whom a decree has been made makes a clear recognition of this. It is worth mentioning in this connection that the Code of Civil Procedure itself defines "judgment-debtor" to mean "any person against whom a decree is passed or an order capable of execution has been made."

It is helpful to notice in this connection the provisions of s. 8 of the Limitation Act that "nothing in s. 6 or s. 7 applies to suits to enforce rights of pre-emption." If s. 7 had been applicable merely to litigation for monetary claims it would have been unnecessary and indeed meaningless to take the special step of exempting suits to enforce rights of pre-emption from the operation of s. 7. This is a further reason in support of the conclusion that the word "discharge" in s. 7 is not limited to discharge of monetary claims only but also to discharge or satisfaction of all other liabilities as well. We therefore hold that the first argument raised on behalf of the appellants has no substance.

Equally untenable is the second argument that the provisions of O. 32 of the Code of Civil Procedure debar the manager of a Hindu joint family from giving discharge in respect of a liability to deliver properties. Under the Hindu Law the Karta of a Hindu joint family represents all the members of the family and has the power and duty to take action which binds the family in connection with all matters of management of the family property. Clearly, therefore, when in respect of a transaction of property possession has to be received by the several members of the family, it is the Karta's duty and power to take possession on behalf of the entire family, including himself, the members of the family who are *sui juris* as well as those who are not.

When any minor member of a joint family is a party to a proceeding in a court he has however to be represented by a next friend appointed by the court and where somebody other than the managing member of the family has been appointed a guardian *ad litem* there might be difficulty in the way of the managing member giving a discharge on behalf of the minor. Where however the managing member himself is the guardian *ad litem* the only difficulty in the way of action being taken by him on behalf of a minor is to the extent as mentioned in O. 32, rr. 6 and 7. In *Ganesha Row v. Tuljaram Row* (1) the Judicial Committee pointed out that:—

“No doubt a father or managing member of a joint Hindu family may, under certain circumstances and subject to certain conditions, enter into agreements which may be binding on the minor members of the family. But where a minor is party to a suit and a next friend or guardian has been appointed to look after the rights and interests of the infant in and concerning the suit, the acts of such next friend or guardian are subject to the control of the Court.”

In that case their Lordships held that in view of the provisions of s. 462 of the then Code of Civil Procedure (which corresponds to O. 32, r. 7 of the present Civil Procedure Code) the managing member who had been appointed a guardian in the suit had no authority to enter into any compromise or agreement purporting to bind the minor. This principle has been applied also to cases where the provisions of O. 32, r. 6 would apply and so it has been held in numerous cases in India that the Karta of a Hindu joint family though guardian in the suit cannot give a valid discharge in respect of a claim or a decree for “money or other movable property.” (*Parmeshwari Singh v. Ranjit Singh* (2) and *Letchmana Chetty v. Subbiah Chetty* (3)).

In the present case however there is no scope for the application of either the provisions of O. 32, r. 6 or O. 32, r. 7 of the Code of Civil Procedure. Neither is

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Das Gupta J.

(1) (1913) L.R. 40 I.A. 132, 138.

(2) A.I.R. 1939 Pat. 33.

(3) (1924) I.L.R. 47 Mad. 920.

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this a case of a receipt of any money or movable properties ; nor is there any question of entering into an agreement or compromise on behalf of the minor. For, clearly acceptance of delivery of possession of property in terms of the decree in a partition suit can by no stretch of imagination be considered entering into any "agreement or compromise."

We are therefore of the opinion that Jawala Prasad, the managing member of the family could have given a discharge of the liability under the partition decree by accepting delivery of possession on behalf of his minor sons without their consent and so time ran against them also under s. 7 of the Limitation Act from the date of the decree. The High Court was therefore right in its conclusion that the application for execution was barred by limitation.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

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February 21.

HARIDAS MONDAL

v.

ANATH NATH MITTRA.

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Money lending—Reopening of transactions—Successive suits by borrower for relief—Maintainability—Res judicata—Bengal Money-lenders Act, 1940 (Ben. X of 1940), s. 36—Code of Civil Procedure, 1908 (Act V of 1908), s. 11, O. 2, r. 2.

The appellant obtained a preliminary and then a final mortgage decree against the respondent and thereafter a personal decree for the debt remaining due to him after sale of the property mortgaged. The appellant applied for execution of the personal decree and thereupon the respondent sued for relief under s. 36 of the Bengal Money-lenders Act, 1940, by reopening the personal decree. In the suit relief for reopening the preliminary decree and final decree was not claimed. The personal decree was reopened in that suit and an instalment decree for a smaller amount passed instead, which was ultimately upheld by the High Court. The respondent failed to pay the instalments and the appellant applied for executing the decree. The respondent then filed another suit under s. 36 of the Act for reopening the preliminary and final decrees. The Subordinate Judge dismissed the suit holding that it was barred as *res judicata* and the District Judge on appeal affirmed that decision. But the