

(1945) 09 BOM CK 0014

Bombay High Court

Case No: Appeal from Order No. 53 of 1943

Shriniwas Abaji Desai

APPELLANT

Vs

Damodar Appaji

RESPONDENT

Date of Decision: Sept. 12, 1945

Acts Referred:

- Limitation Act, 1908 - Section 6
- Majority Act, 1875 - Section 3

Citation: (1946) 48 BOMLR 244

Hon'ble Judges: Lokur, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Lokur, J.

This is an appeal from an order passed by the District Judge of Bijapur remanding the respondent's darkhast to the executing Court. The respondent Damodar Pote is a subject of Jamkhandi State and is domiciled in that State. He was born on June 29, 1916, and during his minority, the Court of Wards, Jamkhandi, took over superintendence of his estate, and obtained a mortgage decree in the Court of the First Class Subordinate Judge at Bijapur against the appellants in Suit No. 69 of 1929 on July 24, 1930. The Court of Wards then gave a darkhast to execute the decree in 1932, but it proved infructuous and the darkhast was disposed of on January 31, 1934. The provisions of the Indian Majority Act, 1875, having been adopted by the Jamkhandi State, the respondent attained majority at the age of twenty-one on June 29, 1937, The Court of Wards then withdrew its superintendence on July 1, 1937, and the respondent presented this darkhast on February 9, 1940, to recover the decretal amount by sale of the mortgaged property. Although the decree itself showed that it had been obtained by the Court of Wards, the executing Court did not apply its mind to the question whether the respondent attained majority at the age of eighteen or twenty-one, and dismissed the darkhast as time-barred, with the bare

remark that " it was not shown how the darkhast was in time." The respondent appealed against that order and the learned District Judge held that the darkhast would be in time if the superintendence of the decree-holder's estate was assumed by the Court of Wards of Jamakhandi State before he attained the age of eighteen years, and if the darkhast was presented within three years of his having attained the age of twenty-one years. The respondent has put in an extract from the birth register to show that he was born on June 29, 1916, but as these questions were not considered by the executing Court, the darkhast was remanded for disposal according to law.

2. It is now urged on behalf of the appellants that even assuming that the respondent was born on June 29, 1916, he should be deemed to have attained majority on June 29, 1934, since he, not being domiciled in British India, is not entitled to the benefit of Section 3 of the Indian Majority Act, 1875. There is no doubt that the Indian Majority Act, 1875, is intended "to prolong the period of non-age" and fix the age of majority " in the case of persons domiciled in British India." Hence the Act is not applicable to those who, though residing or having dealings in British India, are not domiciled there. In the case of such persons the age of their majority is to be determined by the law of their domicile. In *Udny v. Udny* (1669) L.R.441 decided by the House of Lords in 1869, Lord Westbury observed (p. 457):

The political status may depend on different laws in different countries; whereas the civil status is governed universally by one single principle, namely that of domicile, which is the criterion established by law for the purpose of determining civil status. For it is on this basis that the personal rights of the party, that is to say, the law which determines his, majority or minority, his marriage, succession, testacy, or intestacy, must depend.

3. In *Rokilkhand and Kumaun Bank v. Row* ILR (1885) All. 490 it was held that the Indian Majority Act, 1875, being not applicable to European British subjects not domiciled in India, the law of their domicile determined their age of majority, and that in spite of Section 3 of the Act, they did not attain majority till the age of twenty-one. It obviously leads to inconvenience and confusion if a person be a minor in one place and a major in another. Hence the civil status is always to be determined by unless there is any statutory provision to the contrary. The benefit of the Extended period of limitation u/s 6 of the Indian Limitation Act can be claimed by a "minor" and under that section read with Section 8 he can file a darkhast within three years after attaining majority. The word " minor " is not defined in that Act. Those sections do not specify the age of majority, and if the Indian Majority Act, 1875, is not applicable, the age of majority must be determined according to the law of domicile. Mr. Gumaste for the appellants contends that since the respondent cannot claim the benefit of the first part of Section 3 of the Indian Majority Act, he must be deemed to have attained his majority at the age of eighteen under the second part of that section, whatever be his age of majority in the Jamakhandi State.

If the respondent's, age of majority be twenty-one in the place of his domicile, the Indian Majority Act, 1875, is not intended to reduce the period of non-age of foreigners not domiciled in British India. If the first part of Section 3 is not applicable to the respondent, the second part also is equally inapplicable. It is, therefore, necessary to see what is his age of majority according to the law of his domicile. In the Allahabad full bench case cited above, Oldfield J. observed (p. 501):

.. the Legislature would appear, - by limiting the operation of the [Indian Majority] Act (Act IX of 1875) to persons domiciled in British India, to have intentionally excluded, from its operation persons not domiciled there, and to have left such persons to be governed by the law of their domicile.

4. The same principle was laid down by this Court in *Kashiba v. Shrifiat Narshiv* ILR (1894) Bom. 697 where it was held that the question of the capacity of a person to enter into a contract is decided by the law of his domicile.

5. Jamakhandi State, where the respondent is domiciled, has adopted the Indian Majority Act, 1875, as well as the Bombay Court of Wards Act. The respondent is, therefore, governed by both those Acts, and his age of majority is extended from eighteen to twenty-one years, if his estate was taken by the Court of Wards under its superintendence before he was eighteen.

6. It is pointed out that the decree which is sought to be executed was passed in respect of mortgaged property in Bijapur District and therefore the Court of Wards in Jamakhandi State could not take that property under its superintendence. But that does not alter the age of majority of the respondent, As soon as his estate, whatever it was, was taken over by the Court of Wards of Jamakhandi State, he became entitled to the benefit of Section 3 of the Indian Majority Act as it was made applicable to all the subjects of Jamakhandi State. Hence according to the law of his domicile he was a minor until he attained the age of twenty-one. He would, therefore, be entitled to the benefit of Section 6 of the Indian Limitation Act and could file the darkhast within three years after he attained the age of twenty-one years. Hence arises the necessity of the two issues framed by the lower appellate Court.

7. The respondent has made an application (No. 695 of 1945) requesting that he should be allowed to put in certain documentary evidence with regard to the two issues sent down by the lower appellate Court. But those issues cannot be disposed of merely on documentary evidence and the judgment-debtor also would require an opportunity to meet them. Hence the question of limitation cannot be disposed of without a remand as ordered by the lower appellate Court.

8. I, therefore, dismiss the appeal with costs and I dismiss the application summarily.