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for the payment of rent at the faisal rate. The defendants pleaded that they were only liable to pay rent at a lower rate in accordance with a cowle, to which it was not alleged that the plaintiff had been a party.

The District Munsif, and, on appeal, the Subordinate Judge, decreed in favor of the plaintiff. The following cases were alluded to in their judgments:—*Ramchandra Mankeshwar* v. *Bhimrav Ravji*(1), *Adimulam Pillai* v. *Kovil Chinna Pillai*(2), *Venkatagopal* v. *Rangappa*(3).

The defendants preferred this second appeal.

Sadagopacharyar for appellant.

Bhashyam Ayyangar and *Desikacharyar* for respondent.

JUDGMENT.—It is argued that the lower Court is wrong in holding that, as purchaser at the revenue sale, respondent is entitled to demand the faisal rate. Having regard to section 12 of Regulation XXV of 1802 and to the provisions of sections 32 and 41 of the Revenue Recovery Act, the purchaser at a revenue sale is *primâ facie* entitled to demand the faisal rate. In the present case the tenant (now appellant) has cited no evidence to show the circumstances under which the lower rent was accepted, or that the purchaser was under any legal obligation to accept such lower rate.

This second appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

1890. Mar. 20, 21. May 8.

NATESAYYAN (PLAINTIFF), APPELLANT,

v.

NARASIMMAYYAR (DEFENDANT), RESPONDENT.*

Minor—Suit against guardian of a minor—Immaterial irregularity—Minor's interest bound.

In a suit by an adopted son, after the death of his adoptive father, to recover ancestral land sold in execution of a decree against his adoptive mother therein

(1) I.L.R., 1 Bom., 577. (2) 2 M.H.C.R., 22. (3) I.L.R., 7 Mad., 365.

* Appeal No. 182 of 1888.

described as the guardian of the present plaintiff, who was then an infant, it appeared that the decree had been passed on a bond executed by the then defendant in respect of a debt due by her late husband:

Held, that the plaintiff should be regarded as a party to the suit in which the decree executed against the land had been passed, and that the present suit should be dismissed.

APPEAL against the decree of T. Ganapati Ayyar, Subordinate Judge of Kumbakonam, in original suit No. 28 of 1887.

The plaintiff sued to recover possession from the defendants of certain land, part of the property left by his adoptive father, Mahalinga Ayyar, who died in August 1869. It appeared that, on the death of Mahalinga Ayyar, his wife, Seshi Ammal, took the management of the property, the plaintiff being a minor. Seshi Ammal in 1870 executed a bond in favor of one Subramanya Sastri, who, in 1872, brought a suit upon it against her and obtained a decree and in execution brought the land now in question to sale. The plaint and the decree in that suit described the defendant as "Seshi Ammal, guardian and mother of Natesan (the present plaintiff), 11 years old, adopted son of Mahalinga Ayyar deceased, residing at Veppattur," and the sale certificate issued to the execution-purchaser from whom the present defendant derived title described her in similar language.

In the present suit the plaintiff's case was that Seshi Ammal's debt did not bind him and that the decree against her and the proceedings taken in execution of it could not affect his title to the land.

The Subordinate Judge held that Seshi Ammal's bond was executed in respect of a debt due by her late husband and that the plaintiff was to be regarded as a party by his guardian to the suit brought upon it, notwithstanding the informality in the description of the parties, which was found not to have prejudiced the plaintiff: he accordingly dismissed the suit.

The plaintiff preferred this second appeal.

Bhashyam Ayyangar and *Pattabhirama Ayyar* for appellant.

Ramachandra Rao Saheb and *Mahadeva Ayyar* for respondent.

MUTTUSAMI AYYAR, J.—The property in dispute originally belonged to one Mahalinga Ayyar, who died in August 1869, leaving him surviving a widow, named Seshi Ammal, and the appellant, his adopted son. The appellant was then a minor and attained his majority only in 1879. During his minority

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it would seem his adoptive mother was in management of the property. In 1872 one Subramanya Sastri instituted original suit No. 119 on the file of the District Munsif of Kumbakonam upon a bond executed in his favor by the guardian in 1870 and it resulted in a money decree in his favor in July 1872. In execution of that decree the property in dispute was put up to sale and Subramanya, the then plaintiff, became its purchaser. In consequence of other transactions, which it is not necessary to mention here in detail, the property passed from him to the respondent, who entered into possession in 1875. It is not disputed that the decree passed in original suit No. 41 of 1875 for Rs. 8,500 and odd created a valid charge on the property in question and that Subramanya Sastri satisfied the charge before he resold the property to the respondent. The appellant's case was that he was not properly made a party to original suit No. 119 of 1872, that the debt which was decreed in that suit was fictitious, or even if real, not binding upon him, and that he was entitled to set aside the Court sale as fraudulent and to recover back the property subject to payment of what might be found due on account of the charge created by the decree in original suit No. 41 of 1875. The Subordinate Judge has found that the bond, which was the basis of original suit No. 119 of 1872, was executed by Seshi Ammal for a debt due by Mahalinga Ayyar and not either for money raised for her own purposes or without consideration.

The oral evidence as to the nature of the debt was conflicting and satisfactory reasons are given by the Subordinate Judge in support of his finding. The admission before us that exhibit III is genuine and the appellant's omission to produce the list of debts attached to his father's will appear to me also to turn the balance of testimony against him and I see no ground for disturbing the finding of the Subordinate Judge; but the substantial question for decision is whether the appellant was a party to original suit No. 119 of 1872. The plaint in that suit (exhibit F) described the defendant in the following terms:—Seshi Ammal, guardian and mother of Natesan, 11 years old, adopted son of Mahalinga Ayyar deceased, residing at Veppattur, Kumbakonam taluk. The decree passed in that suit described the defendant in the same terms.

The sale certificate (exhibit VII) described the defendant, whose right, title and interest was sold, as Seshi Ammal, guardian and

mother of Natesan, 11 years old. It is urged, for the respondent, that the appellant was the real defendant in the suit and that the execution sale binds him. Our attention is also drawn to the fact that the decree-debt was one which was binding on the appellant and that the description disclosed, according to the practice of the Courts prior to 1869, an intention to make the appellant liable by suing his natural guardian in her capacity as his guardian.

On the other hand, it is contended, for the appellant, that he was not a party to the suit of 1872 and that the sale is not binding on him. It is argued that the description was not in accordance with the rule of practice prescribed by the High Court on the 23rd July 1869 and that there is also no trace of Seshi Ammal's appointment as guardian *ad litem*. It is also said that, as the guardian, who executed the bond, she would not be eligible for appointment as guardian *ad litem* if the debt was to be disputed. The omissions, to which the appellant's pleader draws attention, are no doubt errors of procedure, but there remains the fact that the debt was binding upon him and there was the intention, as disclosed by the description in the plaint, decree and sale certificate, to make him liable, however defective that description might have been. In cases like this, where a Court sale is sought to be set aside nearly twelve years after it had taken place, I think we should look at the substance of the plaint and the decree and the sale certificate, and, if, by doing so, the intention to make the minor the responsible defendant is clear and the errors of procedure have in no way prejudiced him, we ought not to set aside the sale. The same principle was laid down by the Full Bench of this Court in *Ittiachan* v. *Velappan*(1) with reference to sales in execution of decrees against persons, who appear, from the proceedings in the suit, to have been sued as karnavans of Malabar tarwads. In *Suresh Chunder Wum Chowdhry* v. *Jugut Chunder Deb*(2) it was held by the Full Bench of the High Court at Calcutta that, when the suit was substantially brought against the minor, the error of description was one of form and could not without proof of prejudice invalidate a decree against him. The real question is whether the appellant was substantially a party to the suit. Having regard to the description of the defendant in exhibits F, VI and VII and to the fact that the plaint of 1872 was framed in

(1) I.L.R., 8 Mad., 484. (2) I.L.R., 14 Cal., 204.

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accordance with the practice prior to 1869, I am unable to hold that the minor was not the real defendant in original suit No. 119 of 1872. The pleader for the appellant lays stress on the omission to appoint the natural guardian as guardian for the suit, but I fail to see how it has prejudiced him when the decree-debt was one which he was bound to pay. He had an opportunity in the present suit to show that the debt was not binding upon him, but he has failed to show it.

Reliance is placed on the case of *Ganga Prosad Chowdhry* v. *Umbica Churn Coondoo*(1), in which it was said that the Full Bench decision referred to an affidavit by the guardian. In the case before us the plaint stated that Seshi Ammal was the guardian and it was verified. In 1872, the present Procedure Code was not in force and the error of description was a mere irregularity or error of form. The plaint impugned the decree and the purchase as fraudulent, and no fraud being made out, the appellant's pleader falls back on errors of procedure, whereby he has not been prejudiced.

I do not consider that the appeal can be supported and I would dismiss it with costs. As regards the memorandum of objections we have already disposed of the question of jurisdiction, and, in the view, which I take of the merits of the appeal, it is unnecessary to discuss the other questions. It is also dismissed.

SHEPHARD, J.—I felt some difficulty in the case owing to the fact that there was no evidence that Seshi Ammal was appointed guardian to defend the suit of 1872 or that the plaintiff's interests were properly represented in that suit; but seeing that Seshi Ammal was admittedly guardian of the plaintiff and was treated as such in the proceedings in the former suit, and, moreover, that the plaintiff had no real defence, I do not think that he can now take advantage of the irregularity. In other respects I agree with the judgment of Muttusami Ayyar, J.

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(1) I.L.R., 14 Cal., 754.