

for declaration of the plaintiff's right, to re-hear the appeal on the merits, having regard to the above observations. We make no order as to the costs of this appeal, but the other costs must be provided for in the revised decree.

NARASIMEHA  
v.  
SURYA-  
NARAYANA.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.*

CHENGAL REDDI AND OTHERS (DEFENDANTS), APPELLANTS,

v.

VENKATA REDDI (PLAINTIFF), RESPONDENT.\*

1889.  
March 27.

*Oaths Act—Act X of 1873, s. 9—Civil Procedure Code, s. 462—Consent by guardian of a minor defendant to accept the oath of the plaintiff.*

It was agreed by the defendants who were majors and by the father and guardian of a minor defendant on his behalf, that one of the issues in a suit should be determined under Oaths Act, s. 9, by the oath of the plaintiff. The oath was taken and a decree was passed accordingly :

*Held*, that the minor defendant was bound by the consent of his guardian since there was no evidence of fraud or gross negligence on the part of the latter, although the Court had not sanctioned the agreement under s. 462, Civil Procedure Code.

APPEAL against the decree of C. S. Crole, District Judge of Chittoor, in original suit No. 20 of 1887.

Suit for partition of family property. In the written statement of the defendants it was alleged that a partial partition had already taken place and the first issue was framed upon this allegation. The District Judge said :—“ This issue was by consent left to abide the taking of an oath by plaintiff in a temple at Chittoor which he has done. So the family is found to be undivided and the plaintiff to be entitled to half the total property belonging to it.” A decree was passed accordingly.

The defendants preferred this appeal, on the ground, *inter alia*, that defendant No. 4, who was a minor, was not bound by the decree passed under the above circumstances.

Mr. Ramasami Raju for appellant.

Mr. Subramanyam for respondent.

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\* Appeal No. 21 of 1888.

CHENGAL  
 REDDI  
 v.  
 VENKATA  
 REDDI.

The further facts of the case and the arguments adduced on this appeal appear sufficiently for the purpose of this report from the judgment of the Court (Muttusami Ayyar and Parker, JJ.).

JUDGMENT.—This appeal arises from a suit for partition instituted by the respondent. One of the matters in dispute was whether there was a prior division as alleged by the appellants; and they agreed, under section 9 of the Indian Oaths Act, to accept the respondent's oath in regard to it in a certain temple as conclusive. The respondent took the prescribed oath and the Judge passed a decree in his favor on the footing that there was a subsisting co-parcenary. It is urged in appeal that the appellant No. 4 is a minor, that the appellant No. 1, his guardian, was not competent to consent to the claim against the minor being settled by the oath of the respondent, at least without the previous sanction of the Court. We are referred in support of this contention to section 462 of the Civil Procedure Code and to two decisions—*Rajugopal Takkaya Naiker v. Muttupalem Chetti*(1), and *Sharat Chunder Ghose v. Kartik Chunder Mitter*(2). The conduct of the suit was in the hands of the guardian, and it was for him to produce such evidence as was likely to support the contention and to decide what was best to do in the circumstances of the case. It is not shown that other evidence was available in proof of the prior partition, and that in agreeing to accept the plaintiff's oath, the guardian acted prejudicially to the minor's interest. The step taken by the father affected not only the minor's interest, but also his own interest, and it was concurred in by two of his adult sons. It is noteworthy that this appeal is preferred not only on behalf of the minor, but also on behalf of his father and brothers, and that the objection is pressed upon us by the very parties who entered into the agreement in the Court below. The minor might not be bound by the act of his guardian if it were tainted with fraud or gross negligence savouring of fraud, but we cannot say, in the absence of any evidence, that the father's act was either fraudulent or manifestly unreasonable. Neither section 462 nor the decisions under it have any application to this case.

(1) I.L.R., 3 Mad., 103.

(2) I.L.R., 9 Cal., 810.