

have held that the decree of the Judge has dealt with matters extraneous to the suit.

VENKATAPPA
NAYANIM
v.
THIMMA
NAYANIM.

The appeal must be allowed and the decree modified by striking out the directions given in clauses 2, 3, 8, 9, 11, 12, 13 and 14 of the decree. As the appellant has been only partially successful, we direct that he be allowed half costs from respondents Nos. 1 and 2.

The seventh respondent will bear his own costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

KRISHNASAMI AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

1894.
December 5.

SUNDARAPPAYYAR (PLAINTIFF), RESPONDENT.*

Contract Act—Act IX of 1872, s. 11—Specific Relief Act—Act I of 1877, s. 28—Contract relating to the property of an infant—Decree for specific performance—Insufficient payment of Court fees, procedure to be adopted on.

The mother and guardian of a Hindu minor entered into a contract for the sale of his land. The vendee sued the minor by his mother and guardian *ad litem* for specific performance of the contract and for possession. It was found that the contract was binding on the minor :

Held, that the suit was maintainable.

The plaintiff not having in the first instance paid the full Court fees he should have been called upon to do so. As this was not done, the Court of first appeal was not in error in entertaining the appeal which was preferred by the plaintiff ; but he should have passed no decree until the fees due had been paid, and if they were not paid he should have dismissed the suit.

SECOND APPEAL against the decree of C. Venkobachariar, Subordinate Judge of Tanjore, in appeal suit No. 230 of 1893, reversing the decree of V. T. Subramania Pillai, District Munsif of Kumbakonam, in original suit No. 3 of 1892.

Suit to enforce specific performance of a contract for the sale of land and for possession of the property to which it related. The first defendant was a minor who was sued by his mother and guardian. The fact of the contract alleged was put in issue,

* Second Appeal No. 1080 of 1894.

KRISHNASAMI and it was pleaded that it was not enforceable against the infant.
 v. It was also alleged, *inter alia*, that the plaint was insufficiently
 SUNDARAP- stamped. The second defendant was a subsequent vendee from the
 PATTAR. guardian of the minor.

The District Munsif dismissed the suit. On appeal the Subordinate Judge reversed the decree and passed a decree for the execution of a conveyance by the infant's mother on his behalf, and further decreed that, if the deficient Court fees were paid, possession of the property should be delivered to him, but that on his failure to do so, his claim for possession should be dismissed.

The defendants preferred this second appeal.

Pattabhirama Ayyar for appellants.

Subramania Ayyar and *Ayya Ayyar* for respondent.

JUDGMENT.—Several objections have been argued in support of this appeal.

The first of them is that specific performance cannot be decreed against a minor. Section 28 of the Specific Relief Act mentions the persons against whom specific performance cannot be decreed and a minor is not mentioned as one of them.

No doubt section 11 of the Contract Act mentions persons who have attained majority as persons competent to enter into contracts. But this does not exclude the power of a guardian of a minor to represent him and enter into contracts on his behalf either beneficial or necessary to the minor.

The English law is, it is true, that a minor cannot claim specific performance, and this proceeds on the ground of want of mutuality. It is on this ground that Mr. Justice Norris acted in *Fatima Bibi v. Debnauth Shah*(1) citing as his authority *Flight v. Bolland*(2). But there is reason to believe that *Flight v. Bolland*(2) was a case in which the contract was made with the minor himself who was also himself seeking to enforce it. In *Fatima Bibi v. Debnauth Shah*(1), the Judge has not noticed the provision of Hindu law that a guardian is competent to act for a minor and bind him by contract within certain limits.

Moreover, as pointed out by Mr. Whitley Stokes, the doctrine of mutuality on which *Flight v. Bolland*(2) proceeded has no application in this country.

(1) I.L.R., 20 Cal., 508.

(2) 4 Russ., 298.

We agree with the ruling in *Mahamed Arij v. Saraswati Debya*(1) that a contract with a minor is merely voidable by him and that this principle is not affected by section 11 of the Indian Contract Act.

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The next objection is that there is no finding that the contract now sought to be enforced is binding on the minor. This is a mistake. The Subordinate Judge has found the contract to be both true and valid.

The third objection pressed upon us is that, as plaintiff did not pay the deficient Court fees as soon as the first issue was decided against him, the Subordinate Judge should have held that the suit had been properly dismissed. The District Munsif ought to have called upon the plaintiff to pay the deficient Court fee; as he failed to do so, the Subordinate Judge was not in error in entertaining the appeal and dealing with it. It appears that the requisite Court fees have since been paid. We do not, therefore, think this objection is entitled to weight. We have to observe, however, that the Court fees should have been collected before passing the decree, and the decree is clearly irregular in directing that, in default of payment of the fees, the prayer for possession alone would be disallowed instead of saying that the suit would stand dismissed.

As to the last objection, viz., misjoinder of parties, we do not consider it to be well founded. The cause of action, namely the right to obtain a sale-deed and possession of the property purchased, concerns both the defendants and entitles plaintiff to relief against both.

The case *Luckumsey Ookerda v. Fazulla Cassumbhoy*(2) is distinguishable in that unity of title did not exist in that case. A case more in point is to be found in *Mokund Lall v. Chotay Lall*(3).

We dismiss this appeal with costs.

(1) I.L.R., 18 Calc., 259.

(2) I.L.R., 5 Bom., 177.

(3) I.L.R., 10 Calc., 1061.