APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1911. March 3, 6, 20.

BHOGARAJU VENKATRAMA JOGIRAJU AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

ADDEPALLI SESHAYYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Hindu Law—Widow and Reversioner—Debt contracted by widow for constructing buildings not binding on estate—Compromise by widow not binding on reversioners when advantage is secured at serious risk to estate—Decree on such compromise stands on no higher footing than the compromise—Dealing by reversioner with his reversionary right during life of widow invalid—Minor not bound by admissions of guardian not connected with management of estate—Decree on compromise cannot be assumed to direct anything forbidden by law.

Where a Hindu widow borrows money for constructing a house, which is not necessary for the management of the estate and which is situate outside the premises of the estate, the debt will not be binding on the reversion.

The question whether the holder of a woman's estate will be justified in building a house so as to bind her reversioners, assuming that she could do so at all, will depend on the income of the estate and her means of repaying the debt so as not to injure the reversion.

A compromise by a widow of a valid claim against the estate will not bind the reversioners when a larger amount than is due, is agreed to be paid in instalments, the whole of the larger amount however being payable on default of any instalment.

An adjudication against a widow after a fair contest with respect to a matter relating to the estate represented by her, will be binding on those who succeed her as owners: but a decree passed on a compromise into which she enters will have no higher effect against her successors than a contract entered into by her.

The reversioner, during the life of the female heir, has only a *spes successionis* or chance of succeeding if he survive her. Any transfer by him of such interest, is invalid.

The power of a guardian is restricted to the management of the minor's property and he cannot bind the minor by admissions which have no connection with the present management of the property, especially when made without receipt of any consideration on behalf of the minor.

It cannot be assumed that a court in sanctioning a compromise and passing a decree in pursuance of it, intended to do what was unlawful. Where such all decree directs the sale of a minor's property in which the minor had only a *spes*

* Appeal No. 121 of 1908.

successionis as reversioner, it must be assumed that it directed the scale only of such interest as the minor then possessed in the property, *which in the eye of law* was *nil*.

APPEAL against the decree of N. Lakshmana Row, the Subordinate Judge of Kistna at Ellore in Original Suit No. 39 of 1906.

The facts of this case are fully set out in the judgment.

V. Ramesam for appellants.

P. Narayanamurti for first to fifth respondents.

JUDGMENT.—The plaintiffs who have preferred this appeal against the decision of the Subordinate Judge's Court of Ellore, are the sons of the sixth defendant who inherited the lands in suit and other property from her father Ramjogi, after the death of her mother Seshamma, in 1883, Ramjogi himself having died in 1873. The suit is for a declaration that the decree in Original Suit No. 540 of 1903 on the file of the District Munsif of Ellore was not binding on the first plaintiff who was the second defendant in that suit, and for a declaration that in any event, the decree and the Court sale in execution thereof of the land in suit could not affect the reversionary right of the plaintiffs after the death of the sixth defendant. Original Suit No. 540 was instituted by the first defendant against the sixth defendant, her husband Venkiah and her elder son the present first plaintiff on a bond (Exhibit II, dated 6th October 1902) which was itself a renewal of an earlier bond (Exhibit III, dated 3rd April 1894). Exhibit III was executed by the sixth defendant for Rs. 1,200 mortgaging about 98 acres of land as security for its repayment with interest at $1\frac{1}{8}$ per cent. per mensem, in eight instalments before 10th March 1902. The purpose of the loan was stated to be for erecting a house (Rs. 1,035) and the discharge of sundry small debts Exhibit II was executed by the sixth defendant and by the first plaintiff who was then a minor and was represented by his father. The rate of interest provided was seven-eighths per cent. per mensem, and repayment was to be made within a year after the date of the bond. Default having been made in payment, the first defendant sued both these executants. An *ex parte* decree was first passed in first defendant's favour, but it was subsequently set aside and finally the case was compromised between the parties. Exhibit B was the razi petition put in by all the parties to that suit. Although the amount claimed in

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the suit was only Rs. 2,098-1-7 the compromise provided for the payment of Rs. 3,600, but it was to be made in 18 years in equal instalments without interest, on the 15th February of each year, it contained, however, a provision that "in case of default of payment of any one or two of the instalments the plaintiffs should recover the whole amount remaining due at the time through Court irrespective of the instalments that have yet to expire, by means of sale of the said mortgage properties, by means of other property belonging to the defendants and on their own personal liability, together with costs of sale." None of the instalments was paid and the first defendant brought part of the mortgaged property to sale. 26½ acres out of it realised Rs. 1,635, the first defendant himself being the purchaser. The remainder of the mortgage property had not been sold at the date of this suit.

The plaint alleges that the compromise and the decree in pursuance of it were the result of collusion between the first defendant and one Venkataramiah, the plaintiff's third witness, who acted as first plaintiff's next friend in that suit.

Defendants Nos. 2 to 5 are impleaded as the undivided brothers of the first defendant. The first defendant contended that there was no collusion between him and Venkataramiah, that the compromise was a fair settlement of the suit and beneficial to the first plaintiff and was sanctioned by the Court. He alleged that the debt itself was binding on the estate represented by the sixth defendant as it was borrowed for the payment of Rs. 200 kist due on the suit lands and for the reconstruction of a house which belonged to the plaintiff's maternal grandfather, and in which the plaintiffs were residing.

The third issue framed by the lower Court refers to the question of the binding character of the debt on the estate; and the first issue refers to the question whether the decree in Original Suit No. 540 was bad on account of fraud or gross negligence on the part of Venkataramiah. The Subordinate Judge decided both these issues against the plaintiffs and dismissed their suit.

The appeal has been argued by the learned Vakil for the appellants on the assumption that the decree in Original Suit No. 540 was not invalid on account of any fraud or collusion as alleged by the plaintiffs. The position of the two plaintiffs in this suit is not exactly similar as the first plaintiff was a party defendant to Original Suit No. 540, while the second plaintiff was

not. Both of them are still minors and have instituted this suit through their next friend. As far as the second plaintiff is concerned, the question is whether the bonds (Exhibits III and II), are binding on the reversioners of the sixth defendant and whether, assuming them to be so, the compromise decree is binding on them. We are of opinion that both these questions must be answered in the negative. There is absolutely no evidence on record to show that there was any necessity for borrowing this sum of Rs. 1,200 at the time of Exhibit III. The defendant's fifth witness, who is a relation of sixth defendant's husband, said that at the time of Exhibit III Ramjogi's estate was yielding an income of Rs. 200 or 300 a year and that the present income would be Rs. 700 or 800 a year. The sixth defendant had succeeded to the estate more than ten years before the execution of Exhibit III. What portion of the income that was received during that period had been spent and whether there were any savings on the date of Exhibit III, there is absolutely no evidence to show. There is no satisfactory evidence as to whether the sixth defendant's husband had any means of his own. It is stated, no doubt, by one of the witnesses that he had given up his share in his own family property and taken up his residence in his father-in-law's house where he continued to live until that house became dilapidated and unfit for occupation. But we cannot accept this evidence as sufficient to show that he had no means of his own, or to justify the inference that the whole of the income from Ramjogi's property had been spent by the sixth defendant for the maintenance of her family. Mr. Ramesam contends that even if her husband was without means the sixth defendant would not be entitled to borrow so large a sum as Rs. 1,000 for the purpose of building a house so as to bind the reversioner, though she might be entitled to rent a house for the residence of the family. We are inclined to agree with his contention. Some attempt was made to show that the old house of Ramjogi was in a state of disrepair and that it was the duty of the sixth defendant to repair it and to put it in a tenantable condition. But there is no good evidence to support this view. The defendant's own witnesses support the appellant's contention that the house had completely fallen down and that there was only a vacant site in existence. The question whether the holder of a woman's estate would be justified in building a

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house so as to bind her reversioners, assuming that she could do so at all, would depend on the income of the estate and her means of repaying the debt so as not to injure the reversion. Mr. Narayanamurti contends that as the house would belong to the reversion the reversioners are bound by the debt borrowed for building it ; but the limited owner has no right to force the house on her reversioners at the risk of the estate itself, or a portion thereof, being brought to sale for discharging the debt. The construction of the house cannot be said to be an act necessary for the management of the estate. There is no evidence in this case that it was required for its proper management, nor was it built within the premises of the estate. It is urged that the plaintiffs have taken the benefit of the building and that they are still residing in the house. There is no evidence, however, that they were doing so at the time of the suit. The plaintiffs are, moreover, minors and cannot, therefore, be held to have elected to keep the house for their own benefit. They would not, of course, be entitled to do so, as they repudiate the debt. A person in the position of the sixth defendant is not entitled to incur debts for an object which may be intended to be beneficial but is risky in its character. See *Indar Kuar* v. *Lalta Prasad Singh* (1), *Radha Pershad Singh* v. *Mussamut Talook Raj Kooer* (2), *Raj Lukhee Dabea* v. *Gokool Chunder Chowdhry* (3). Of course, the sixth defendant was at liberty to make use of the income during her life for building a house or for any other purpose she pleased and she might be entitled to charge her future income for any such purpose ; but we cannot hold that she was justified in mortgaging the estate so as to bind her reversioners.

We must also hold that even if the bond itself could bind the reversioners the compromise decree could not be held to do so. It secured the payment of a much larger sum than was due on the mortgage in order to give the defendants in Original Suit No. 540 the benefit of paying the amount by instalments ; but this advantage was secured at the very serious risk of making the whole of the large amount payable at once in case of default in the due payment of the instalments with the result that the whole of the mortgage property became saleable for the very large sum which the first defendant obtained under the compromise decree. A decree passed against the holder of a woman's estate on compromise

(1) (1882) I.L.R., 4 All., 532. (2) (1873) 20 W.R., 38.
(3) (1869) 13 M.I.A., 209.

between her and her creditor would be binding on the reversioners only in cases where the contract of compromise itself entered into by her would bind them. An adjudication against her by a Court, after a fair contest, with respect to a matter relating to the estate represented by her would no doubt be binding on the estate and all who succeed her as its owners : but a decree passed upon a compromise into which she enters can have no higher effect against her successors than a contract entered into by her ; *Timmaji Amma* v. *Javvajee Subbaraju* (1), *Subbammal* v. *Avudaiyammal* (2), *Roy Radha Kissen* v. *Nauratan Lal*(3) ; Appeal 193 of 1907 decided by this bench. We are therefore of opinion that neither the decree in Original Suit No. 540 of 190 3 nor the sale in execution of it, is binding on the second plaintiff.

We have now to consider the case of the first plaintiff who was a party both to Exhibit II, the mortgage bond of 1902, and to the decree in Original Suit No. 540. It is contended by the learned vakil for the respondent that the first plaintiff is bound by the decree and the sale. We have come to the conclusion that he is not. Exhibit II was executed on his behalf by his father. He had then no interest in the property but merely a *spes successionis* or chance of succeeding to the estate if he survived his mother the sixth defendant. That it cannot have the effect of binding his reversionary interest must now be regarded as well established. See *Ramasami Naik* v. *Ramasami Chetti* (4), and was really not denied for the respondent. It cannot have the effect of estopping him from contending that the debt is not binding on the estate, for a guardian has no right to make such an admission on behalf of his ward ; see *Aliyamma* v. *Kunhammed* (5). The power of a guardian must be laken to be restricted to the management of the minor's property and it would be dangerous to hold that he has a right to bind the minor by admissions made by him, which have no connection with the present management of the property in his charge. He, moreover, received no consideration in this case on behalf of the minor for doing so. It may be that he was actuated by a desire to enable the sixth defendant his own wife to get

(1) (1910) 20 M.L.J., 204.
(2) (1907) I.L.R., 30 Mad., 3.
(3) (1907) 6 C.L.J., 490.
(4) (1907) I.L.R., 30 Mad., 255.
(5) (1910) 20 M.L.J., 946.

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further time for discharging the debt which she had already contracted under Exhibit III. It remains to consider the effect of the compromise decree as against the first plaintiff. The plaint in Original Suit No. 540 has not been filed as evidence in this case. We are not in a position to know whether the first defendant sought in that case to bring the first plaintiff's reversionary interest to sale for the realisation of his debt. The compromise agreement (Exhibit B) throws no light on the question. We cannot assume that the Court in sanctioning the compromise and passing a decree in pursuance of it intended to do what was unlawful, by directing the sale of a *spes successionis*. As observed in *Ramasami Naik* v. *Ramasami Chetti*(1), it is a sound rule that decrees should be considered so far as possible, as being in accordance with law." For aught we know, the first defendant may have been under the impression that the first plaintiff had some sort of present interest in the property in the possession of his mother, and this may have been the reason also why he took Exhibit II from the first plaintiff as well as from his mother. It would be incorrect in our opinion to assume that it was brought to the notice of the Court in the previous case that a part of the terms of the compromise was unlawful and such as could not be recorded by it, especially when nothing of the sort appears in Exhibit B, the razi petition. We must, therefore, hold that the razi decree directed the sale of any such interest in the suit lands as first plaintiff then had and that interest was 'nil' in the eye of the law. The decree and the sale, therefore, do not carry the case of defendants Nos. 1 to 5 as against the first plaintiff any further than Exhibit II itself does.

The result is that the decree of the lower Court must be reversed and the plaintiffs must be given a declaration that the mortgage bond Exhibit II, the decree in Original Suit No. 540 of 1903 on the file of the District Munsif of Ellore and the sale of the suit lands in execution thereof cannot affect the rights of the plaintiffs as reversioners of the sixth defendant on her death. Defendants Nos. 1 to 5 must pay the plaintiff's costs both in this Court and in the subordinate Court.

(1) (1907) I.L.R., 30 Mad., 255.