PRIVY COUNCIL.

GANESHA ROW (PLAINTIFF),

v.

TULJARAM ROW AND ANOTHER (DEFENDANTS).

[On appeal from the High Court of Judicature at Madras.

Civil Procedure Code (Act XIV of 1882), sec. 462—Compromise of decree made in partition suit by guardian ad litem without leave of Court—Suit by minor on attaining his majority to set it aside—Father of Hindu joint family made guardian ad litem of his son, being also himself a defendant in partition suit—Powers of head of Hindu joint family—Decree in partition suit in favour of father—Form of decree in setting aside compromise.

Section 462 of the Civil Procedure Code (Act XIV of 1882) provides that "no next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian."

Where in a suit for partition by a member of a joint family, the father was made third defendant, and his son, a minor, was made sixth defendant, and the Court appointed the father guardian *ad litem* of the minor.

Held (reversing the decisions of the Courts in India) that the powers of the father were controlled by the provisions of section 462 of the Code, and he could not, without leave of the Court, do any act in his capacity of father, or managing member of the joint family which he was debarred from doing as guardian *ad litem*. To hold otherwise would be to defeat the object of the enactment.

A compromise made, without the leave of the Court, by the father with the second defendant, of a decree passed against the latter, was held therefore, in a suit brought by the minor on attaining his majority, to be not binding on him.

The fact that the money was by the decree made payable, not to the minor, but to the father who was admittedly representing the family, made no difference in the duty which lay on him to obtain the leave of the Court to an agreement which was clearly intended to affect the rights and interests of the minor.

The decree made by Their Lordships was to the effect that the compromise was not binding on the minor, and he was remitted to his original rights under the decree in the partition suit.

Manohar Lal v. *Jadunath Singh*, [(1906) I.L.R., 28 All., 585 at p. 589: s.c., L.R., 33 I.A., 128 at p. 131], followed.

APPEAL from a decree (28th September 1909) of the High Court at Madras, in its Appellate jurisdiction which affirmed a decree (2nd September 1908) of the same Court in the exercise of its original civil jurisdiction.

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* *Present* :—Lord MOULTON, Sir JOHN E

...e to this appeal was brought on 7th ... one appellant to recover from the first respond... Rajaram Row the sum of Rs. 1,60,205 with interest and for relief. The plaintiff was the undivided son of Rajaram Row ... second respondent who was a brother of the first respondent. The two respondents with two other brothers Ramachandra Row and Latchmana Row at one time formed a joint family with their father one Venkata Row who died in 1871. In 1881 his four sons agreed to divide the family property, but only a partial division was made, a large proportion of the family assets being left in the possession and control of Tuljaram Row as manager. In 1886 Athmaram Row the son of Latchmana Row brought a suit for partition against his father and uncles, and joined as sixth defendant the present appellant born in 1887 and then a minor, and his father Rajaram Row was appointed by an order of Court to be his guardian *ad litem*. In the present suit his cause of action was that after a decree had been passed in the partition suit of 1886 against Tuljaram Row and in favour of Rajaram Row as representing himself and his branch of the family, which decree ordered Tuljaram Row to pay a sum of Rs. 86,000 odd with interest to Rajaram Row, the latter entered into a compromise dated 21st November 1897 with Tuljaram Row and in pursuance of such compromise entered up satisfaction of the decree in respect of the abovementioned sum.

The facts of the case leading up to the compromise are sufficiently stated in the judgment of their Lordships of the Judicial Committee.

In the plaint it was alleged that the plaintiff having been an infant at the date of the compromise was not bound thereby; that the agreement was not *bonâ fide*; that the entering up of satisfaction by Rajaram Row was fraudulent without consideration, made without due regard to the interests of the plaintiff, and without the sanction of the Court as required by section 462 of the Civil Procedure Code, 1882. He prayed for a decree for Rs. 88,731, with interest at 9 per cent. making a total amount of Rs. 1,60,000.

The defendant Tuljaram Row defended the suit denying the ... of the plaintiff charging want of *bonâ fides* and fraud ... the compromise, which he contended was valid ... and repudiating all liability to him.

of the joint properties belonging to them including the Kottapally business. On 20th June 1890 the appellants and Subanna, the father of the first defendant, appointed by deed one Venkatrazu as arbitrator to effect the partition, and a partition was eventually made by him in 1891 of the Kottapally properties amongst the members of the joint family, with the exception of some of those properties and the half share of the Akuvidu properties and business which remained undivided: and after that partition the Kottapally business was closed. Throughout the partition proceedings, Venkanna, though fully aware of them, never made any demand or claim for a share of the Kottapally properties or business, nor suggested that any share should upon the partition be set apart for him. He contributed no capital to the Kottapally business, was not consulted about it and did no work for it; he never made any adjustment or settlement of accounts in connection with it in the books of the Kottapally business, and had no right of any sort in it.

The partnership business at Akuvidu was from and after the last adjustment in April 1891, and the partition abovementioned, continued as before under the management of Venkanna, and the appellants, Subanna, and the first defendant were kept informed of and consulted from time to time by him as to its affairs.

It was also alleged that certain of the land mentioned in the plaint was subject to a usufructuary mortgage in favour of the appellants' joint family, the mortgage deed being in the name of Subanna. The annual income therefrom was collected on behalf of the Kottapally branch by Venkanna and was utilised by him in the Akuvidu branch up to 1900-1901 when the mortgage came to an end. These amounts were in the Akuvidu books of account credited to Subanna, and in the Kottapally books up to 1891 were debited to Venkanna. A decree had been obtained by Subanna in the Court of the Munsif of Ellore for money due to the Kottapally business; and after the death of Subanna the first defendant was substituted on the record as decree-holder. Venkanna up to 1903 executed that decree, realised the decretal money, used it for the purpose of the Akuvidu business, and credited it in the books of account of the business.

On various occasions from and after 1891, namely (*inter alia*) in 1893, 1895 and 1901, the appellants endeavoured to have the

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Akuvidu properties divided and the business wound up and closed, but without success; and on 19th December 1902 the appellants instituted the suit out of which the present appeal arose against the first defendant Ramamurthi, Venkanna (since deceased) and Lakshmanaswamy the second respondent, his adopted son, now sole respondent.

The plaint prayed as against Venkanna and Lakshmanaswamy that the Akuvidu partnership should be dissolved and wound up, that an account should be taken of its dealings and assets, including an enquiry as to the properties purchased out of the funds thereof, that the half share of the Kottapally branch should be ascertained, and that three shares thereof should be made over to the plaintiffs with costs, and for further and other relief.

As against the first defendant there was a prayer that the properties of the plaintiffs and himself still remaining joint and undivided should be partitioned, but that claim was compromised.

Venkanna and Lakshmanaswamy in their written statements (so far as is now material) alleged that thirty years previously an agreement had been come to between the Kottapally branch on the one side and Venkanna on the other, whereby each party was to have a half share in the two businesses: and that in 1890 or thereabouts an arrangement was come to between the two parties whereby the Kottapally branch were to take as their share of the two businesses the Kottapally business, and that Venkanna was to have as his share the Akuvidu business; that since then Venkanna had been enjoying the property of the latter business separately; that the Akuvidu partnership ceased at that time (1891) and that the suit was therefore barred by limitation.

The Subordinate Judge held that Venkanna had no interest in the Kottapally properties and business, and that the Kottapally branch of the family had owned a half share of the Akuvidu business and properties; that there was no arrangement in 1890 or 1891 that the Kottapally branch were to take the Kottapally properties and business, and that Venkanna was to take the Akuvidu business and properties; that Venkanna had produced no accounts of the Akuvidu business prior to 1894 although

he admitted that he had them; that the plaintiffs continued to possess their interest in the Akuvidu business and properties, and that subsequently to 1891 there had been various attempts made by them to obtain a division of those properties; that no question of limitation therefore arose, and that the plaintiffs were entitled to a share in the Akuvidu business.

The Subordinate Judge made a decree for dissolution of the partnership, and for accounts to be taken.

The defendants Venkanna and Lakshmanaswamy appealed to the High Court against the decree of the Subordinate Judge and the appeal was heard by SANKARAN NAIR and PINHEY, JJ., who reversed the decision of the Subordinate Judge and dismissed the suit as barred by limitation. SANKARAN NAIR, J., said after stating the facts:—

"On the facts stated above it must be found that the partnership was dissolved in 1891. The partnership is not one for any period of time. It was a partnership at will. It might be dissolved at any time by any one of the parties. Exhibit A 12 was prepared with a view to divide the properties at Akuvidu. There was no intention, it is clear, at that time of the plaintiffs carrying on the Akuvidu business as before." And after dicussing the evidence at some length his judgment on this point concluded as follows:—"We are therefore of opinion that the partnership must be treated as having been put an end to in 1891, that the plaintiffs were not treated as partners subsequent to that date, and therefore their claim to recover the amount due to them is barred by limitation." And in that decision PINHEY, J., concurred.

On this appeal,

A. M. Dunne, for the appellants, contended that the Akuvidu partnership business had not, in fact, been dissolved by agreement as alleged, or in any way that was definitely proved. The arrangement alleged by the defendants by which Venkanna was said to have taken the Akuvidu business and the appellants' joint family the Kottapally business was found by the Subordinate Judge not to have been proved. That finding had not been traversed on appeal to the High Court, but the case there set up and argued was that the suit was barred by limitation because the conduct of the parties showed that the appellants had not been treated as partners in the Akuvidu business and that the partner-

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ship must therefore be taken to have been dissolved in 1891. There was, however, nothing in the Limitation Act or elsewhere which prevented a partner [until he had been declared to be not a partner] from bringing a suit for an account against his co-partners: no limitation, it was submitted, could run against him unless the partnership has been definitely dissolved. But what definite act of the parties or any of them had caused a dissolution of the partnership? The decision of the High Court amounted merely to an inference or presumption from certain circumstances that it had been dissolved in 1891; but that it was contended was not sufficient. The partnership was admitted, and it presumably continued until put an end to by some definite act. There was no such act proved, nor was any precise date shown when it became dissolved, and the appellants were justified in presuming that their interest and rights therein had never ceased or been put an end to. No case of estoppel by conduct had been established against the appellants. On the contrary they were after 1891 continually pressing the defendants in order to obtain a division of the Akuvidu properties, and get the business wound up, particularly in 1893, 1895 and 1901, as had been held by the Subordinate Judge.

Dr. Gruyther, K. C. and Kenworthy Brown, for the respondent, asked by their Lordships to go into the evidence of the acts and conduct of the parties to show whether from them an inference could be drawn that there was really no partnership existing in the Akuvidu business after April 1891, pointed out the nature of the accounts rendered by Venkanna to the appellants' joint family prior to 1891, and up to the alleged adjustment of that year, and the fact that after that adjustment no such accounts were continued as had been previously rendered, and contended that the account rendered on 12th April 1891 contemplated a division of the Akuvidu properties with a view to dissolution, [LORD MOULTON.—Division of the assets is practically notice of dissolution] and that after that date the appellants were not treated as co-partners; that their division of the Kottapally properties and business among themselves lent some probability to the existence of the alleged arrangement that that business should belong to the appellants, and the Akuvidu business to the defendants, and estopped the appellants from claiming any interest in the latter business; that their

view was confirmed by the letter of the 3rd May 1901; and that from what occurred in 1891 there must have been a termination of the partnership, and the High Court was right in so presuming. There were concurrent findings as to the fact of the dissolution of the partnership in 1891, the Subordinate Judge finding that "Exhibit A was kept from 1868 when the business was started, and continued to 12th April 1891, when the business ceased to exist as a joint business at Akuvidu": and "the adjustment of account in Exhibit A 12 was made with a view to division." And the High Court had made concurrent findings(1).

Dunne replied.

The judgment of their Lordships was delivered by

Lord SHAW.—This is an appeal against a decree of the High Court of Judicature at Madras, dated the 10th December 1908, which reversed a judgment of the Subordinate Judge of Rajahmundry, dated the 16th September 1905. The suit as brought included a claim for partition of certain family property. That part of the suit has been settled. What remains constitutes the subject of the present appeal. The assertion is that the plaintiffs' family has a half share, along with the defendant (the present respondent) in a partnership business carried on in Akuvidu. The High Court has held that this claim is barred by limitation and has dismissed the suit.

It is unnecessary to refer to various other pleas in the case, including those founded on an alleged misjoinder of causes of action, because, in the opinion of their Lordships, the conclusion reached by the High Court on the plea of limitation was clearly correct.

In or about the year 1868 a partnership business was started in Kottapally. At a later date a business was started at Akuvidu. This latter was throughout under the management of one Venkanna, the adoptive father of the respondent. The position of Venkanna (who was the second defendant in the suit) was this: he maintained that in both businesses he had a half share; that in, or shortly before, the year 1891, an arrangement was made under which the joint family represented by the appellants made a partition of their family property; and it cannot be denied that,

(1) See extracts from High Court judgment *ante* p. 189.

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with regard to the Kottapally business, this partition became an accomplished fact. Venkanna, however, further maintained that there were cross-claims; that he was entitled to a certain share of the assets of the Kottapally business; that, on the other hand, the joint family was entitled to a certain share in the Akuvidu business; that these claims were set against each other, and that from 1891 the joint family has had no share in the Akuvidu business.

It has to be admitted that, if a partition has taken place of the joint family property, it is at least not unlikely that that would have extended to all the businesses which the joint family shared; and it must further be conceded that, if the joint family's interests were divided, a dissolution of the Akuvidu partnership with Venkanna was naturally incident to the situation thus created. Different *personæ* had arisen in law, and with these it was open to Venkanna to say whether he should be allied in partnership or not. What Venkanna does say is, that the dissolution —thus not unnatural in the situation of the joint family affairs in 1891—did in fact take place. If this is so, the suit, which was initiated eleven years after that event, is, of course, barred by the three years' limitation established by article 106 of schedule II of the Limitation Act.

In the opinion of their Lordships, the High Court has come to a correct conclusion, and it is quite unnecessary to enter upon the details of the case, which, in the view taken by the Court, amply confirm the result which has been reached.

Four salient points may simply be noted: (1) Prior to 1891, and year after year, detailed accounts, suitable as those of a current partnership business, were rendered as between the joint family, on the one hand, and Venkanna on the other. After that year these accounts entirely ceased. But (2) in the year 1891 an account was furnished of a different character. That account, in their Lordships' opinion, was to all intents and purposes not a revenue but a capital account, showing a complete division of the partnership shares. It was, in short, in form and in substance an account entirely suited to the event and purposes of a dissolution of partnership. (3) From that time forward Venkanna managed the Akuvidu business without any interposition or interference by the joint family or any representative thereof in their interest. It is true that certain requests were made to Venkanna for pay-

ment, but these were requests, not for a share of profit, but for the payment of the balance due upon the dissolution account. Finally (4) Venkanna having been apparently throughout maintaining that his liabilities under the Akuvidu business were balanced by his share of the assets in the Kottapally business, the dispute was arranged by a letter of the 3rd May 1901, the authenticity and importance of which is not denied. It was written to Venkanna by the first three plaintiffs and by Lakshmanaswamy, who is called as the first defendant. In fact, it is the letter of the members of the joint family; and in this letter, signed by them, they admit to Venkanna "you are singly carrying on business," and they refer to the "verbal arrangement before this among ourselves that the property acquired by you by carrying on business at Akuvidu, and the property acquired by us by carrying on business at Kottapally, should be duly divided and taken according to shares." They then narrate their unanimous request for a settlement, and agree to take from Venkanna a sum according to his wishes. Serious questions might be raised as to whether the writers of such a letter were not barred from thereafter instituting the present suit, but for the purpose of the point of this decision it is sufficient to say that it completely confirms the idea of a dissolution of partnership having been effected at a previous date, and it squares with the events on that footing which took place in the year 1891.

Mr. Dunne presented a careful argument, in which he strongly insisted that, as the Akuvidu partnership was one at will, it must be presumed to last till now, unless a definite date of dissolution could be put forward and made out. But, in their Lordships' opinion, this has been done, and in a substantially conclusive manner. When annual accounts ceased, and a final account, showing the division of both capital and revenue was made out, the presumption was for dissolution as at the definite date of the year in account thus closed. The cessation of the annual accounts points to some radical change having taken place, and the other circumstances above noted leave little doubt upon the mind that that change was the dissolution of the firm as in the year mentioned.

All other questions in the case are thus at an end. Their Lordships will humbly advise His Majesty that the appeal should

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be dismissed and the judgment of the High Court affirmed. The appellants will pay the costs of this appeal.

Appeal dismissed.

Solicitors for the appellants: *Sanderson, Adkin, Lee* and *Eddis.*

Solicitor for the respondent: *Douglas Grant.*

J.V.W.

APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Ayling.

1911. September 13 and 20.

MOITHEENSA ROWTHAN AND SEVEN OTHERS (PLAINTIFFS NOS. 1 AND 3 AND THE LEGAL REPRESENTATIVES OF THE DECEASED SECOND PLAINTIFF), APPELLANTS,

v.

APSA BIVI (DEFENDANT NO. 3), RESPONDENT.*

Court sale—Stranger purchaser, bonâ fide effecting improvements—Subsequent eviction—Improvements right to value of.

A purchaser in a Court auction, who was not a party to the decree, is entitled to the value of the improvements *bonâ fide* effected by him, on being evicted from the property owing to some defect or irregularity in the proceedings leading up to the sale. The time of his making the improvements is immaterial, provided he had then an honest belief in the validity of his title. *Bonâ fides* in this connection means only honest belief in the validity of his title and does not extend to the necessity of making proper enquiries as to the title and regularity of the prior proceedings. Section 51 of the Transfer of Property Act is inapplicable to a purchaser at a court sale.

Per curiam. There is a great distinction between stranger purchasers and decree-holder purchasers. The principle of *caveat emptor* has no application to a court purchase.

There is no covenant for title implied in a court sale and the purchaser takes only the right, title and interest of the judgment-debtor.

Quære: Whether *Zain-ul-Abdin Khan* v. *Muhammad Asghar Ali Khan* (1888) I.L.R., 10 All., 166 (P.C.) lays down that stranger purchasers in order to be entitled to protection should make their purchases *bonâ fide?*

Nanjappa Gounden v. *Peruma Gounden* (1909), I.L.R., 32 Mad., 530, *Kundarpa Nath Ghose* v. *Jogendra Nath Bose* (1910), 12 C.L.J., 391, *Stock* v. *Starr* (1870) 1 Sawyer, 15; s.c. 22, (India) Fed. cases, 1084, and *Bright* v. *Boyd* (1841-1843) 1 Story 478 and *Dharma Das Kundu* v. *Amulyadhan Kundu* (1906) and I.L.R., 33 Calc. 1119, followed.

XXIV American Cyclopædia of Law and Procedure, page 70, referred to.

* Second Appeal No. 305 of 1910.