Chandra Jewary(1), show that so long as there is a person on the record as decree-holder, the Court is bound to entertain his application for execution. There has been no order removing Narasayya from this position until March 1916. In my opinion, therefore, the decree was alive in March 1916, and the application of the respondents was in time. Mr. Rama Rao argued that the personal restraint made the applications of Narasayya illegal. To whatever disabilities Narasayya might have exposed himself by applying, certainly the applications made by him were such as the executing Court was bound to entertain; therefore they were not illegal. In my opinion the civil miscellaneous second appeal should be dismissed with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim and Mr. Justice Ayling.

M. P. M. R. M. N. RAMANATHAN CHETTIAR (PLAINTIFF), APPELLANT,

v.

K. R. S. V. MUTHIAH CHETTY AND FIVE OTHERS (DEFENDANTS), RESPONDENTS.*

1919, December, 2 and 3.

Minor—Guardian—Agent appointed by guardian—Liability of agent to account to minor—Settlement of accounts by arbitrator or mediator—Whether liable to be re-opened.

An agent appointed by the guardian of a minor is not liable to account to the minor for his acts even though he received properties belonging to the minor.

A settlement of account by arbitrators or mediators cannot be re-opened except on the ground of fraud.

APPEAL against the decree of K. A. KANNAN, the Temporary Subordinate Judge of Sivaganga, in Original Suit No. 98 of 1914.

The material facts appear from the Judgment of ABDUR RAHIM, J.

The Hon'ble the Advocate-General (*S. Srinivasa Ayyangar*) and *T. V. Muttukrishna Ayyar* for the appellant.

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(1) [1909] 10 C.L.J., 396 at p. 406.

* Appeal No. 97 of 1917.

RAMANATHAN CHETTIAR v. MUTHIAH CHETTY.

K. V. Krishnaswami Ayyar and *C. A. Seshagiri Sastri*, for the first respondent.

E. Vinayaka Rao for *R. Krishna Rao*, for the fifth and sixth respondents.

ABDUR RAHIM, J.

ABDUR RAHIM, J.—There were two brothers belonging to the Nattukottai Chetti community, namely, Narayana Chettiar and Muthia Chettiar. The plaintiff is the son of the former and defendants Nos. 4 to 6 are sons of the latter. The two brothers carried on money lending business in the name of M.P.M.R.M. They had business in various places. Narayana Chettiar died fifteen years ago, and Muthia Chettiar died about ten years previous to the suit. At the time of the latter's death, plaintiff and defendants Nos. 4 to 6 were all minors and the family was undivided. The first defendant in the suit is the maternal uncle of defendants Nos. 4 to 6. He was appointed as agent by the mother of these defendants to manage and look after their share in the family property and the business. The second defendant who is the maternal uncle of the plaintiff was similarly appointed by the plaintiff's mother. The suit was instituted by the plaintiff, who attained majority in 1911, for a decree directing defendants Nos. 1 and 2 to render an account to him of their management of the affairs of the family of the plaintiff and the defendents during his minority and for other reliefs.

The first question that arises is whether the suit is maintainable. It is to be noted that the mothers of plaintiff and defendants Nos. 4 to 6 who appointed defendants Nos. 1 and 2 as agents have not been made parties. It is contended by the learned Advocate-General on behalf of the appellant (plaintiff) that defendants Nos. 1 and 2 must be treated as trustees *de son tort* and as such liable to account to the plaintiff. His argument is that the guardians of the plaintiff and defendants Nos. 4 to 6 occupied the position of trustees and defendants Nos. 1 and 2 having intermeddled with the estate of the minor and having received the properties of the minor are liable to account to him. He has cited a number of rulings, but it is sufficient to point out that all those rulings relate to the liability either of trustees, or of persons accountable as trustees, for intermeddling or for being connected with breaches of trust of the trust property. The leading authority on the point

is the case of *Barnes* v. *Addy*(1). The other cases cited by the Advocate-General, *Mara* v. *Browne*(2), *In re Barney*, *Barney* v. *Barney*(3), simply follow the principle laid down in that case at page 251. There, Lord SELBORNE states the principle in these words :

"Those who create a trust clothe the trustee with a legal power and control over the trust property, imposing on him a corresponding responsibility. That responsibility may no doubt be extended in equity to others who are not properly trustees, if they are found either making themselves trustees *de son tort*, or actually participating in any fraudulent conduct of the trustee to the injury of the *cestui que trust*. But on the other hand, strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, transactions perhaps of which a Court of equity may disapprove, unless those agents receive and become chargeable with some part of the trust property, or unless they assist with knowledge in a dishonest and fraudulent design on the part of the trustees. Those are the principles, as it seems to me, which we must bear in mind in dealing with the facts of this case. But on the other hand, if persons dealing honestly as agents are at liberty to rely on the legal power of the trustees and are not to have the character of trustees constructive imposed upon them, then the transactions of mankind can safely be carried through : and I apprehend those who create trusts do expressly intend, in the absence of fraud and dishonesty, to exonerate such agents of all classes from the responsibilities which are expressly incumbent, by reason of the fiduciary relation, upon the trustees."

And Lord Justice JAMES added :

"I have long thought, and more than once expressed my opinion from this seat, that this Court has in some cases gone to the very verge of justice in making good to *cestuis que trust* the consequences of the breaches of trust of their trustees at the expense of persons perfectly honest, but who have been, in some more or less degree injudicious. I do not think it is for the good of *cestuis que trust*, or for the good of the world, that those cases should be extended."

The learned Advocate-General admitted that there is no authority for the proposition, that an agent appointed by the guardian of a minor is liable to account to the minor as if he was a trustee *de son tort*, because he received property

(1) [1874] 9 Ch., App. 244. (2) [1896] 1 Ch., 199.
(3) [1892] 2 Chan., 265.

RAMANATHAN CHETTIAR v. MUTHIAH CHETTY. — ABDUR RAHIM, J.

belonging to the minor. On the other hand there is a ruling of this Court which seems to be opposed to such a proposition: *Chidambaram Chetty* v. *Pichappa Chetty*(1). There, it was held that an agent appointed by the administrator of an estate as such cannot be proceeded against on such contract of agency by the person entitled to the estate, and it makes no difference that the administrator obtained the grant as the attorney of the mother and guardian of the person entitled.

The learned Advocate-General however drew our attention to a passage in the judgment to the effect that no claim was made against the defendant on the ground of his possession of property belonging to the plaintiff, and he argued that where such an agent is in possession of the property, the law makes a difference. But we do not think that in the absence of any clear authority, it would be safe to hold that an agent appointed by the guardian of the minor is liable to account to the minor for his acts as an agent on the principle applicable to trustees or persons intermeddling with the trust estate. If there were any force in the contention of the appellant, one might reasonably expect that there would have been some authority forthcoming in support of it. It would be unsafe to extend the rule laid down with respect to trustees *de son tort* to the persons in the position of agents of the guardian of the minor. Under the ordinary law an agent is liable to the principal. The state of accounts between an agent and a principal, and the liabilities of the agent to the principal, would be on a very different footing from the account which a trustee or a person intermeddling with the trust estate has to render to the *cestuis que trust*. Besides, as mentioned above, in this case, the mothers who appointed defendants Nos. 1 and 2 agents have not been made parties, and any decree in this case would not exempt the agents from their liability to their principals. The conclusion of the learned Subordinate Judge on this point is right.

The second point relates to a sum of Rs. 14,000 and odd which the plaintiff paid to the first defendant on behalf of defendants Nos. 4 to 6. The Subordinate Judge has found that this was settled by arbitration and the question cannot be reopened.

(1) [1907] I.L.R., 30 Mad., 243.

On the other hand the case of the plaintiff is that it is a matter of stated and settled accounts and if he is able to show errors in the account, he is entitled to reopen the question. Exhibit III makes it clear that the settlement was made by arbitrators or mediators. Such a settlement is not liable to be reopened, except on the ground of fraud which is not alleged in this case.

The appeal fails on all the points and must be dismissed with costs.

AYLING, J.—I agree.

AYLING, J.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Seshagiri Ayyar.

KADIR MASTAN ROWTHER (PLAINTIFF), APPELLANT,

v.

SENGAMMAL (FIRST DEFENDANT), RESPONDENT.*

1919, December 4.

Trust lands—Permanent lease not void ab initio.

A permanent lease of trust lands is not void *ab initio*; it is only voidable.

SECOND APPEAL against the decree of F. A. COLERIDGE, District Judge of Madura, in Appeal No. 316 of 1917 filed against the decree of N. SUNDARAM AYYAR, Principal District Munsif of Madura, in Original Suit No. 656 of 1911.

The facts are given in the judgment.

W. Kodandaramayya for the appellant.

A. Narayanaswami Ayyar for the respondent.

SPENCER, J.—This is a suit brought by the assignee of a permanent lease granted by the trustee of a trust called Lala Dharmam to recover possession of the suit site from the tenant in occupation. The suit was dismissed in the District Munsif's Court, on the ground that the trustee had no power to alienate the trust property and that his alienation was void and conveyed no title to the plaintiff; and on appeal the District Judge has confirmed this decision and dismissed the appeal.

SPENCER, J.

* Second Appeal No. 105 of 1919.