APPELLATE CIVIL.

Before Mr. Justice Srinivasa Ayyangar and Mr. Justice Ananthakrishna Ayyar.

LANKA SANYASI (FIRST DEFENDANT), APPELLANT,

v.

LANKA LAKSHMAN NAIDU AND OTHERS (SECOND DEFENDANT'S AND SECOND PLAINTIFF'S LEGAL REPRESENTATIVES), RESPONDENTS. *

1927, September 30.

Decree passed on compromise effected by guardian ad litem.—*Leave of Court obtained—Minor, attaining majority before compromise entered into and decree—Guardian, not discharged—Decree, whether binding on the defendant—Suit by quondam minor for declaration that the decree is not binding on him—Decree after adjudication by Court, and decree on compromise distinction between—Decree on adjudication, valid.*

Where a decree was passed on a compromise effected by the guardian *ad litem* of a minor defendant who had become a major before the compromise was entered into, but no steps had been taken to discharge the guardian, and leave of Court had been obtained by the guardian for such compromise on behalf of such minor, the decree so passed is not binding on the ward, and he is entitled to sue for a declaration that the decree is not binding on him, and it should be set aside as against him.

But a decree, passed on adjudication by Court against a defendant, who was originally a minor represented by a guardian *ad litem* and had become a major before the decree but had taken no steps to discharge the guardian, is not invalid on that ground: *Seshagiri Rao* v. *Hanumantha Rao*, (1916) I.L.R., 39 Mad., 1031, referred to.

SECOND APPEAL against the decree of the Subordinate Judge of Vizagapatam in Appeal Suit No. 32 of 1923 preferred against the decree of the Court of the Additional

* Second Appeal No. 358 of 1924.

SANYASI v. LAKSHMAN NAIDU.

District Munsif, Vizagapatam, in Original Suit No. 51 of 1921.

The material facts appear from the judgment.

K. Ramamurthi and *K. Kameswara Rao* for appellant.

B. Jagannatha Das for respondents.

JUDGMENT.

This second appeal has arisen from a suit which was instituted by two plaintiffs for a declaration that a decree passed against them in Original Suit No. 461 of 1918 on the file of the District Munsif's Court at Parvathipur was not binding on them and also for possession of the property which under that decree appears to have been obtained by the first defendant in this litigation who was the decree-holder in the previous suit. In the District Munsif's Court the plantiffs' suit was dismissed, but in the lower Appellate Court the learned Subordinate Judge, having arrived at the finding that the first plaintiff at least was a major on the date of the compromise on which the decree was passed, held that the decree was not binding on both the plaintiffs and therefore granted a decree in favour of both the plaintiffs declaring that the previous decree was not binding on them and also for delivery of possession of the property. It has been argued by the learned vakil for the appellant before us that even on the ground on which the lower Appellate Court held that the previous decree was not binding on the plaintiffs, namely, that the first plaintiff at least was a major, the lower Appellate Court was wrong in considering that a decree passed against persons who are on the record as minors in the belief that they continued up to the time of the decree as minors would not be binding on them. For this purpose the learned vakil for the appellant referred to the decision of SADASIVA AYYAR and

NAPIER, JJ., in the case of *Seshagiri Rao* v. *Hanumantha Rao*(1). In that case the learned Judges have clearly pointed out that there are no provisions in the Civil Procedure Code relating to suits by and against minors obliging a plaintiff to apply for discharge of the guardian-*ad-litem* of a defendant who had ceased to be a minor. There are provisions in the Procedure Code for a minor plaintiff on attaining majority electing to go on or not to go on with a litigation. That is obviously in view of the fact that the plaintiff is in a position to elect either to go on or not to go on with a litigation to which he is a party because he is *dominus litus*. No such consideration is available in respect of the defendant. A defendant having been made a party defendant to the action may no doubt confess judgment but has no such right of election as the plaintiff has. That is probably the reason why no provisions have been made in the Procedure Code in respect of a minor defendant attaining majority. Apparently, therefore, we must take it, as found by the learned Judge in that case, that the minor defendant who comes of age may, if he thinks fit, come on the record and conduct the defence himself. If, however, he does not do so and allows the case to proceed as though he was still a minor without bringing to the notice of the Court the fact of his having attained majority, then he must be deemed to have elected to abide by the judgment or adjudication by the Court with respect to the matters in controversy on the basis of the suit at the time. That is how the learned Judges came to the conclusion in that case that a judgment given by a competent Court against a defendant albeit a defendant who had during the pendency of the suit attained majority having ceased to be a minor, is not a nullity. That view is

(1) (1916) I.L.R., 39 Mad., 1031.

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based on sound principle. But the difficulty in this case has arisen from a contention that was put forward by Mr. Jagannatha Dass on behalf of the respondent who drew our attention to the judgment of the same learned Judges on an application for review made to them in that very case. The judgment on review by the learned Judges is reported in *Tanguturi Jaganadham* v. *Seshagiri Rao*(1). At first sight it appeared as though on this decision the learned Judges came to the conclusion that because they discovered that the application to set aside the sale of the property sold in execution was within the time they regarded the judgment itself as either voidable or avoided. But on a closer examination of the case there seems to be no doubt whatever that what the learned Judges did on review was merely to set aside the sale treating it as a separate proceeding and because in respect of that proceeding there was no proper notice served on the party who had by that time become a major. As we respectfully agree with the decision of the learned Judges in 39 Mad., 1031 and also with another judgment of this Court in the case of *Sundararamareddi* v. *Pattabhiramireddi*(2), it follows that the mere circumstance that a minor defendant had attained majority during the pendency of the suit and has not elected to continue the defence himself is not sufficient to enable him to have declared as not binding on him the judgment duly pronounced by the Court. If that were all there would be very little further difficulty in this case. But it turns out that the decree sought to be set aside was not the result of an adjudication by the Court of the matters in controversy in the previous suit between the parties. The ultimate judgment of the Court was based on a

(1) (1916) 20 M.L.T., 479. (2) (1917) 6 L.W., 272.

compromise. That compromise was entered into by the plaintiffs in the previous suit and by the second defendant in this suit acting both for himself and on behalf of his younger brothers, the plaintiffs in this litigation. Whatever may be the principles that are applicable to the binding nature of an adjudication by the Court on a defendant who though he becomes a major does not take the necessary steps to have the guardian-ad-litem discharged, it seems to us that no such considerations are available or applicable to a case where the decree of Court comes to be passed not on adjudication by the Judge but by a compromise on a contract or consent of the parties. It stands to reason and principle that an adjudication by the Court, which, we may take it, in the absence of any fraud, collusion or gross negligence, is an adjudication on the merits of the controversy, need not be set aside as vitiated merely because a certain defendant is found to have attained his majority without the matter being brought to the notice of the Court. But when the decree comes to be passed on a contract it becomes necessary to see whether the contract that was entered into was a contract valid and binding on the party now seeking to set aside the decree. So far, if the plaintiffs had both of them been found to be minors on the date of the compromise then there is the fact that the second defendant in this suit representing them as their guardian-ad-litem entered into such a contract and such contract was sanctioned on behalf of the minor defendants by the Court as being for their benefit. But the law says that such a compromise is binding on a minor if sanctioned by the Court. But when the law says that such a compromise is binding on a minor when the Court sanctions it, what the law has reference to is a contract made only for or on behalf of a minor, and there could be no legal principle or reason

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for holding that, when there is a major capable of entering into a contract, apart from any question of agency, any contract entered into or purported to be entered into on his behalf by some other person can be regarded as binding on him. If therefore the first plaintiff in this suit had become a major by the time the compromise agreement was entered into, it follows that the mere circumstance that the second defendant here was his guardian-ad-litem or had been previously acting as his guardian-ad-litem would not clothe him with the required legal right to enter into a binding contract. There is no provision or principle of the law of contracts which would make such a contract entered into by a previous guardian-ad-litem binding on a party defendant who had become a major. It therefore follows that, so far as the first plaintiff in this case is concerned, who has been found by the lower Appellate Court to have attained majority on the date of the compromise and decree, the lower Appellate Court was right in the conclusion arrived at that the decree was not binding on him, though the grounds on which it came to that conclusion were different. So far as the second plaintiff is concerned, the lower Appellate Court has not recorded any finding with regard to his age. The contention on behalf of the plaintiffs in both the lower Courts has been that both of them had attained majority on the date of the compromise and decree or even on the date of the previous suit itself. The lower Appellate Court has not recorded any finding because in its view it was unnecessary to enquire into the matter in the view it took of the decree being one and single and of its not being binding on, at any rate, one of the plaintiffs. Deeming this sufficient, regarding the decree as one and single, the lower Appellate Court did not record any finding with regard to the actual age of the

second plaintiff. But in the view we have taken of the matter it becomes necessary to consider the actual age of the second plaintiff because if the decree as held by us was ultimately based on contract or consent, the capacity or the power of the second defendant in this case to enter into a valid contract on behalf of the second plaintiff can only be determined by seeing whether as a matter of fact the second plaintiff was on the date of the compromise a minor as he was alleged to be. There are also, as Mr. Jagannadha Das has pointed out, other issues that have not been determined by the Appellate Court and which it would be necessary to decide if the lower Appellate Court should come to the conclusion that the second plaintiff was a minor. If of course the finding of the lower Appellate Court should be that he too had attained majority and become a major the same considerations will apply to him as to the first plaintiff and it must be held that the contract entered into at that time on his behalf would not be binding; but if he should be found to have been a minor, then the other questions raised, such as whether there was collusion between his guardian and the plaintiff in the previous suit or whether the guardian-ad-litem acted with gross negligence as charged might all have to be tried and determined. It therefore follows that so far as the first plaintiff is concerned the decree of the lower Appellate Court will stand confirmed. So far as the second plaintiff is concerned, the judgment and decree of the lower Appellate Court are reversed and the case will be remanded to the lower Appellate Court for disposal having regard to all the points indicated above. As the decree passed in the previous suit against the first plaintiff has been declared not to be binding on him by the lower Appellate Court and that decree has now been confirmed by us, it follows that so far as he is concerned

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the first defendant-appellant will be entitled, if so advised, to require that the previous suit be reopened and adjudicated in accordance with law as against the first plaintiff. The costs of this appeal will be reserved and disposed of by the lower Appellate Court.

K.R

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nayar and Mr. Justice Curgenven.

August 11, 1927.

BODAPATI ADENNA (PLAINTIFF—COUNTER-PETITIONER—FIRST RESPONDENT), PETITIONER,

v.

BODAPATI CHINNA RAMAYYA AND OTHERS (APPELLANTS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), O. XXI, r. 89—Sale of property in court-auction—Lease of property executed prior to sale—Application by lessee to set aside sale under O. XXI, r. 89, whether competent—Auction-sale, subject to lease, whether affects right to apply.

Under Order XXI, rule 89, Civil Procedure Code, a lessee, subject to whose lease immovable property was sold in Court-auction, can apply to have the sale set aside.

The word "property" in rule 89 means the tangible immovable property sold, whether or not persons other than the judgment-debtor have any interest in it, and it does not mean merely the right, title and interest of the judgment-debtor alone.

PETITION under section 115, Civil Procedure Code, and Civil Miscellaneous Second Appeal against the order of the Subordinate Judge of Bapatla, preferred against

* Civil Revision Petition No. 326 of 1925, Appeal Against Order No. 25 of 1925.