

EDGE, C. J., and BLENNERHASSETT, J.—A certificate of guardianship is not evidence of minority when the question of minority is in issue. The same question was decided by the Calcutta High Court in the case of *Satis Chunder Mukhopadhyay v. Mohendro Lal Pathak* (1).

We dismiss the appeal with costs.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.

DAJU MALWAHI (PLAINTIFF) v. PALAKDHARI SINGH (DEFENDANT).*

Execution of decree—Civil Procedure Code, section 257 A.—Agreement as to payment of decretal money—Void agreement.

An agreement between the decree-holder and the judgment-debtor for the satisfaction of a decree by which, any sum in excess of the decretal amount is payable and which has not been sanctioned by the Court which passed the decree cannot be made the basis of a subsequent suit. *Dan Bahadur Singh v. Anandi Prasad* (2), *Ganesh Shivram v. Abdulla Beg* (3), *Davlatasing v. Pandu* (4), *Vishnu Vishwanath v. Hur Patel* (5) and *Swamirao Narayan Deshpande v. Kashinath Krishna Mutalik Desai* (6) referred to.

THE plaintiff in the suit out of which this appeal arose had obtained a decree against the defendant from the Court of the Subordinate Judge of Benares. The decree was transferred to the Gorakhpur district for execution, and ultimately, the property sought to be sold in execution being ancestral, to the Collector. In the Collector's Court the parties entered into an agreement for the payment of the decretal amount by instalments, which the decree-holder, plaintiff, assented to on the condition that the judgment-debtor should pay enhanced interest on the decretal amount at the rate of 1 per cent. per mensem. The judgment-debtor went on paying instalments, but when the decree-holder applied in the execution department for the realization of the excess interest the judgment-debtor refused to pay it, alleging that the agreement was

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Second appeal No. 701 of 1894, from a decree of V. A Smith, Esquire, District Judge of Gorakhpur, dated the 30th May 1894, confirming a decree of Syed Siraj-ud-din, Subordinate Judge of Gorakhpur, dated the 21st November 1893.

(1) I. L. R., 17 Calc., 849.

(2) *Supra*, p. 435

(3) I. L. R., 8 Bom., 538.

(4) I. L. R., 9 Bom., 176.

(5) I. L. R., 12 Bom., 499.

(6) I. L. R., 15 Bom., 419.

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void and not binding on him, being in contravention of section 257A of the Code of Civil Procedure. This objection was decided in favor of the judgment-debtor, and the decision was affirmed on appeal by the High Court.

The plaintiff then brought the present suit to recover enhanced interest alleged to be due under the agreement above referred to, filed and verified before the Court of Revenue, pleading that the defendant had profited by it and therefore could not plead that it was not binding on him.

The defendant pleaded that the agreement was illegal and void for various reasons; *inter alia*, that it was void by reason of section 257A of the Civil Procedure Code.

The Court of first instance held that having regard to the above-mentioned section the suit was unmaintainable and dismissed the suit, and the lower appellate Court affirmed the decree. The plaintiff appealed to the High Court.

Munshi *Ram Prasad* and Pandit *Sundar Lal* for the appellant.

Munshi *Jwala Prasad* for the respondent.

EDGE, C. J., and BLENNERHASSETT, J.—The principle of the decision in *Dan Bahadur Singh v. Anandi Prasad* (1) governs this case. It is supported by the decisions of the Bombay High Court in *Ganesh Shivram v. Abdulla Beg* (2), *Davlatsing v. Pandu* (3), *Vishnu Vishwanath v. Hur Patel* (4) and *Swamirao Narayan Deshpande v. Kashinath Krishna Mutalik Desai* (5). We dismiss this appeal with costs.

Appeal dismissed.

(1) *Supra.* p. 435

(2) I. L. R., 8 Bom., 528.

(3) I. L. R., 9 Bom., 176.

(4) I. L. R., 12 Bom., 499.

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