

1896
July 17.

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

GUNJRA KUAR (PLAINTIFFS) v. ABLAKH PANDE (DEFENDANT).*

'Certificate of guardianship—Minority—Evidence—Act No. XL of 1858 (Minors' Act).

A certificate of guardianship is not evidence of minority when the question of minority is in issue. *Satis Chunder Mukhopadhyaya v. Mohendro Lal Pathak* (1) followed.

THE facts of this case were as follows. One Mahabir died some ten years before suit, possessed of immovable property. He left a widow, Musammat Gunjra, and a minor son, Deo Pande. In 1836, Gunjra obtained a certificate of guardianship to Deo Pande under Act No. XL of 1858, the said certificate showing that Deo Pande's minority would not terminate until 1896. On the 9th of January 1892, Deo Pande made a registered sale-deed of a portion of his property to Ablakh Pande, the defendant, for Rs. 516, out of which Rs. 346 appears to have been set off on account of old debts due to the vendee by the vendor.

In December 1893, Musammat Gunjra filed the present suit for the cancellation of the sale-deed above mentioned, on the ground of Deo Pande's minority at the time of execution. After the suit was filed, Deo Pande applied to be added as a plaintiff, and was so added, under the guardianship of his mother.

The Court of first instance (Munsif of Gházipur), relying on the certificate of guardianship as evidence of Deo Pande's minority, decreed the claim.

The defendant appealed. The lower appellate Court (Additional Subordinate Judge of Gházipur) found that the plaintiff was a major at the time of the execution of the sale-deed, and dismissed the suit. Musammat Gunjra Kuar appealed to the High Court.

Babu *Bishnu Chandar* for the appellants.

Munshi *Gobind Prasad* for the respondents.

* Second Appeal No. 762 of 1894, from a decree of Maulvi Muhammad Ismail Khan, Additional Subordinate Judge of Gházipur, dated the 18th May 1894, confirming a decree of Babu Srish Chandar Bose, Munsif of Gházipur, dated the 1st March 1894.

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

1896

GUNRA
KUAR
v.
ABRAKH
PANDE.

1896

July 18.

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.