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applicable to it is that prescribed for a suit of that description. We are unable to hold that because the title of the parties was declared by an award, the suit is one for the specific performance of a contract. In our opinion, a suit founded on an award is not a suit for the specific performance of a contract, any more than is a suit based upon a sale-deed a suit for the specific performance of the contract of sale. The case of *Sukho Bibi v. Ram Sukh Das* (1) was referred to in the argument on behalf of the respondent. That case is distinguishable from the present, as the award in that case distinctly provided for something to be done. It is unnecessary therefore for us to say whether or not we agree with that decision. The same remarks apply to the later case of *Raghubar Dayal v. Madan Mohan Lal* (2).

The result is that we allow this appeal, set aside the decree of the Court below with costs, and restore the decree of the Court of first instance.

The appellants will have the costs of this appeal.

Appeal decreed.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.

MADAN MOHAN AND ANOTHER (PLAINTIFFS) v. RANGI LAL
(DEFENDANT).*

Guardian and minor—Act No. VIII of 1890 (Guardian and Wards Act), sections 29, 30—Mortgage executed by a minor—Distinction between such mortgage and a mortgage executed by the certificated guardian on behalf of the minor—Act No. XLIX of 1873 (North-Western Provinces Land Revenue Act), sections 203, 205B.

A mortgage executed by a minor is not void, but only voidable, even where the minor has a certificated guardian appointed by the Court. Where, therefore, a person during his minority had mortgaged with possession certain immovable property, and subsequently, after attaining his majority, had sold the same property as unincumbered to a third party, without any notice to the mortgagee of his intention to avoid the mortgage, it was held that the purchaser could not turn the mortgagee out of possession.

THE facts of this case sufficiently appear from the judgment of the Court.

* Second Appeal No. 227 of 1899 from a decree of Manvi Muhammad Mazhar Husain, Subordinate Judge of Moradabad, dated the 6th February 1899, confirming a decree of Munshi Gokal Prasad, Munsif of Moradabad, dated the 28th February 1898.

(1) (1883) I. L. R., 5 All., 263. (2) (1893) I. L. R., 16 All., 3.

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Babu *Jogindro Nath Chaudhri* (for whom Babu *Satya Chandra Mukerji*), for the appellants.

The respondent was not represented.

STRACHEY, C. J. and BANERJI, J.—The plaintiff in this case is the purchaser of a house under a deed of sale executed by one Piare Lal on the 19th April, 1897. In obtaining possession he was resisted as to a portion of the house by the defendant, who claims possession under a mortgage executed in his favour on the 22nd September 1894 by Piare Lal, who was then a minor, and by Musammat Lal Kunwar, Piare Lal's mother, who had obtained a certificate of guardianship under Act No. XI of 1858. By reason of section 2 of the Guardian and Wards Act, 1890, the appointment as guardian of Musammat Lal Kunwar must, so far as may be, be deemed to have been made under the Act now in force. No permission was given by the Court to the mortgage by the guardian of the house in question as required by section 29 of the Act. The lower appellate Court has treated the mortgage as valid, and executed for consideration, and has dismissed the suit. The plaintiff appeals from that decision, and contends that the mortgage is of no effect as against him by virtue of the provisions of sections 29 and 30 of Act No. VIII of 1890. He relies particularly on section 30, which provides that "a disposal of immovable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby." In the view which we take of this case it is not necessary to determine whether the mortgage in favour of the defendant regarded as a mortgage executed by the guardian of the minor without the permission of the Court, is voidable under section 30 at the instance of the plaintiff as a purchaser from the minor after the attainment of the latter's majority. In the present case, as already pointed out, the mortgage was executed, not only by the guardian, but by the minor Piare Lal himself. Sections 29 and 30 have reference exclusively to the disposal of immovable property by the guardian, and there is no express provision in the Act as to the effect of a transfer, not by the guardian, but by the minor himself while under guardianship. So far as the Act is concerned the effect of its provisions appears to be that a person wishing to take a transfer of property belonging to a minor has an

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opportunity of securing himself against the subsequent avoidance of the transfer by seeing that the transfer is duly executed by the guardian with the permission of the Court, but that if it is not so executed he takes the property subject to the risk of the transfer being afterwards avoided. That the effect of the Act is not absolutely to prohibit and to make illegal every transfer by a minor who is under guardianship is a conclusion which is strengthened by the analogous provisions of the North-Western Provinces Land Revenue Act of 1873 as amended by Act No. VIII of 1879. Section 203 of the Act of 1873 gives power to the Court of Wards to sell or mortgage the property of disqualified proprietors whose estates are under its superintendence, and who include minors among various other persons. There was no express provision in the Act of 1873 relating to transfers by disqualified proprietors themselves, and consequently section 205B was inserted in the Act by section 24 of Act No. VIII of 1879. Section 205B provides that "persons whose property is under the superintendence of the Court of Wards shall not be competent to create, without the sanction of the Court, any charge upon, or interest in, such property or any part thereof." There is no similar provision in Act VIII of 1890, and we think that no such prohibition can be implied in that Act. Since, therefore, the Act of 1890 is silent as to transfers by a minor who is under guardianship, the effect of such a transfer must be sought in the general law. Section 7 of the Transfer of Property Act makes competency to transfer dependent upon the competency to contract as defined by the Indian Contract Act. It has been held that a sale as well as a contract by a minor is not void, but only voidable. That was held in *Mahamed Arif v. Saraswati Debya* (1). That was a case, not of a mortgage, but of a sale, and it resembles the present in the circumstance that the transfer was made by a minor while under the guardianship of a guardian appointed under Act No. XL of 1858. Effect was given to the sale, as it had not been avoided by the minor or after his death by his heir. The question therefore is whether the mortgage in this case was ever avoided by the mortgagor Piare Lal. It is not suggested that he has ever done anything to avoid the mortgage, except in so far

(1) (1891) I. L. R., 18 Cal., 259.

as such avoidance may be inferred from the sale to the plaintiff of the 19th April, 1897, shortly after Piare Lal had attained majority. In the deed of sale it is recited that the vendor sells the property free from all incumbrances. In order, however, to constitute an avoidance of a contract, it is necessary that there should be a communication of the intention to avoid the contract made to the other contracting party. There is absolutely nothing to show that any such intention was communicated to the defendant, or that he at any time had knowledge of the expressions in the deed of sale to which reference has been made. As nothing has ever been done by the mortgagor to avoid the mortgage, the mortgage holds good, and the purchase by the plaintiff was subject to the mortgage, and he is not entitled to turn the defendant who is entitled to possession under the mortgage, out of possession. Therefore the decree of the Court below was right and this appeal must be dismissed. We make no order as to costs, as the respondent is not represented.

Appeal dismissed.

FULL BENCH.

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April 3.

Before Sir Arthur Strachey, Knight, Chief Justice, Mr. Justice Know, Mr. Justice Blair, Mr. Justice Banerji and Mr. Justice Aikman.

MUHAMMAD SADIQ AND ANOTHER (DEFENDANTS) v. LAUTE RAM
(PLAINTIFF).*

Act No. XIX of 1873 (North-Western Provinces Land Revenue Act), sections 112, 113, 241(f)—Partition—Trees a proper subject of partition by the Revenue Authorities—Question of title not raised at the time of partition, but subsequently by a suit in a Civil Court—Jurisdiction—Civil and Revenue Courts.

If a party to a partition which is being conducted by the Revenue authorities under Chapter IV of the North-Western Provinces Land Revenue Act, 1873, desires to raise any question of title affecting the partition, he must do so according to the procedure laid down in sections 112 to 115 of the Act. If a question of title affecting the partition, which might have been raised under sections 112 and 113 of the Act during the partition proceedings, is not so raised, and the partition is completed, section 241(f) of the Act debars the parties to the partition from raising subsequently in a Civil Court any such question of

*First Appeal from order No. 89 of 1900 from an order of Pandit Giraj Kishore Dat, Additional Subordinate Judge of Saharapur, dated the 2nd June 1900.