

MANOHAR LAL (DEFENDANT) v. JADUNATH SINGH (PLAINTIFF)  
AND OTHERS (DEFENDANTS).

[On appeal from the Court of the Judicial Commissioner of Oudh,  
Lucknow.]

P. C.  
1906  
May 3.

*Civil Procedure Code (Act XIV of 1882), section 462—Compromise of suit to which minor is a party defendant—Leave of Court to make compromise not obtained—Requisites for setting aside compromise so made—Form of decree setting it aside.*

In a suit to set aside a compromise of a suit on the ground that one of the defendants was a minor, and that the leave of the Court to enter into it had not been obtained under section 462 of the Civil Procedure Code (Act XIV of 1882), in order to show that the exigencies of the provisions of the section had been complied with, there ought to be evidence that the attention of the Court was directly called to the fact that a minor was a party to the compromise; and it ought to be shown on petition, or in some way not open to doubt, that the leave of the Court was obtained. The facts that the minor was so described, and as appearing by a guardian, and that the compromise was before the Court are not sufficient.

Under the circumstances of the case the decree was limited to a declaration that the compromise and decree based on it were not binding on the minor, and that he was remitted to his original rights.

APPEAL from a judgment and decree (May 26th, 1903) of the Court of the Judicial Commissioners of Oudh, which varied a judgment and decree (June 28th, 1901) of the Subordinate Judge of Fyzabad.

The chief question in this appeal was as to the validity and effect of two decrees passed by the Subordinate Judge of Fyzabad on 12th March, 1896, by which effect was given to compromises made on the same date, of certain suits in his Court.

The circumstances under which the decrees were made were that an estate comprising the villages of Bhandsari, Gangapur, Balrampur, and Gonwan Makrand, and a 13-anna 6-pie share in Jamnipur, was owned by one Dalthamman Singh, who died in March, 1877, leaving a widow, Hansraj Kunwar, and two illegitimate sons, Bhabhut Singh and Abdhut Singh. On the 17th December, 1888, Hansraj Kunwar executed a deed of gift of the whole estate to five persons, who represented different branches of her husband's family, namely, Nand Kishore Singh, Bishn Nath Singh, Jai Karan Singh, Jadu Nath Singh, and Balraj Singh, each of them receiving a 3½-anna share, except Balraj

*Present:*—Lord MACNAGHTEN, Sir ANDREW SCOBLE, Sir ARTHUR WILSON and Sir ALFRED WILLS.

1906

MANOHAR  
LAL  
v.  
JADUNATH  
SINGH

Singh, whose share was two annas. Jadu Nath Singh was a minor under the guardianship of his father, Surat Singh.

Basing their title on a will alleged to have been executed by Dalthamman Singh on 22nd February, 1876, Bhabhut and Abdhut Singh claimed the reversion of the whole estate subject to Hansraj Kunwar's life interest in it, and sold their reversion in Jamnipur to one Indarjit Singh for Rs. 4,000 by a deed dated 19th October, 1888. The co-sharers in Jamnipur (other than the 13 annas 6 pies sold) brought a suit for pre-emption against Indarjit Singh and obtained a decree on 22nd September, 1890, conditional on payment by them of Rs. 8,000 before 22nd December, 1890.

On the same date Manohar Lal, the present appellant, lent Rs. 6,000 to the pre-emptors, who executed in his favour a mortgage of Jamnipur: the money was stated in the deed to be "for the purpose of paying the purchase-money of a 13 annas 6 pies share of Jamnipur in respect of which a decree for pre-emption has been passed." At the same time all the donees under the deed of 17th December, 1888, as further security for the repayment of the above sum, with interest of 24 per cent. per annum executed a mortgage to the appellant of Bhandsari and Gangapur, and a further sum of Rs. 5,000 was advanced by him to the same donees, also at 24 per cent. per annum interest, "for the purpose of paying" the pre-emptors "in satisfaction of their pre-emption decree obtained in respect of 13 annas 6 pies share in Jamnipur and for other necessities:" this last sum was advanced on the security of Balrampur, and Gonwan Makrand. In executing the mortgages Surat Singh purported to act as guardian and next friend of his minor son, Jadu Nath Singh.

The time fixed for repayment of the sums due on the mortgages having expired without their having been discharged, Manohar Lal, on 19th November, 1895, instituted two suits (one with respect to the mortgage of Jamnipur, Bhandsari, and Gangapur, and the other with respect to the mortgage of Balrampur and Gonwan Makrand) to foreclose the mortgages, in the Court of the Subordinate Judge of Fyzabad. The minor defendant was sued by his guardian and father, Surat Singh. The suits were compromised in certain terms by the adult parties on 12th March, 1896, and on

1906

---

 MANOHAR  
 LAL  
 v.  
 JADUNATH  
 SINGH.

the same day the terms of compromise were presented to the Subordinate Judge, the fact that Jadunath Singh was a minor being clearly set forth on the face of the papers containing them, and it also appearing thereon that his name as consenting was signed by Surat Singh as his guardian. The Subordinate Judge passed decrees in both suits in accordance with the compromises, which were to the effect that the defendants agreed to pay the amounts due with interest and compound interest at 10 per cent. per annum by instalments with power to the mortgagee to foreclose on failure of the mortgagors to pay any instalment.

Eventually, no payment having been made, decrees absolute for foreclosure were made on 28th January, 1899; and on 9th March, 1899, the suit out of which the present appeal arose was instituted in the Court of the Subordinate Judge by Jadunath Singh represented by his mother as his next friend, to set aside the compromises and decrees on the grounds that the compromises were made without the sanction of the Court, and under circumstances in which the rights of the minor ought not to be prejudiced.

The only material defence was that the compromises having been accepted by the Court, the plaintiff was bound by them and by the decrees passed in accordance with them; and that in any event he was not entitled to have them set aside in their entirety, but, if he was entitled to have them set aside at all, only to the extent of his own share, if any, in the mortgaged property.

The Subordinate Judge held that the compromises not having been made with the sanction of the Court were not binding on the plaintiff nor consequently were the decrees; but that the plaintiff was only entitled to have them cancelled so far as they affected his own (a one-fifth) share in the property. From that decree both parties appealed to the Court of the Judicial Commissioner (Mr. G. T. SPANKIE and Mr. E. CHAMIER), and that Court held that a compromise made without sanction of the Court was voidable at the option of the minor; and that the compromises and decrees ought to be set aside and the parties remitted to the position in which they were before the compromises were made. The Court therefore dismissed Manohar Lal's appeal, and allowed the

1906

MANOHAR  
LAL  
v.  
JADUNATH  
SINGH.

appeal of the plaintiff, decreeing that the compromises and decrees should be set aside in their entirety.

On this appeal,

*W. C. Bonnerjee* for the appellant contended that the Subordinate Judge having accepted the compromises in the mortgage suits with the full knowledge that *Jadu Nath Singh* was a minor, and having obtained due verification of them, they must be taken to have been made with the leave of the Court within the meaning of section 462 of the Civil Procedure Code (Act XIV of 1882); that in any case the compromises and decrees were not void, but only voidable as regarded the adult parties, who took no steps to avoid them and that the Appellate Court was therefore wrong in ordering them to be wholly set aside. The plaintiff was only entitled to have them set aside so far as they affected his own interest in the mortgaged property. There must be common ground amongst defendants before the whole decree can be set aside in the suit of one of them. Reference was made to section 544 of the Code of Civil Procedure.

*DeGruyther* for the respondent, *Jadu Nath Singh*, contended that the compromises and the decrees based on them were not binding on the plaintiff without some express sanction given by the Court. He submitted that the parties ought to be put in the same position as they were in before the compromises were made.

*Bonnerjee* replied.

1906, *May 3rd*.—The Judgment of their Lordships was delivered by LORD MACNAGHTEN:—

The Code of Civil Procedure (section 462) provides that "No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian." It was argued on behalf of the appellant that the exigencies of that provision had been complied with in this case, inasmuch as it appeared that the minor (the first respondent), who was a party to the compromises in question, was described in the title of the suit as a minor suing "under the guardianship of his mother," and the terms of the compromises were, of course, before the Court. In the opinion of their Lordships that is not sufficient. There ought to be evidence that the

attention of the Court was directly called to the fact that a minor was a party to the compromises, and it ought to be shown, by an order on petition, or in some way not open to doubt, that the leave of the Court was obtained. This was the principal question argued before their Lordships, and on it the appellant fails.

The other question had reference to the terms of the decree pronounced by the Court of the Judicial Commissioner on the minor's appeal to that Court. It appears to their Lordships that the terms of that decree are far too wide. The decree orders that the compromises and decrees in the foreclosure suit (which were in question in this suit, be set aside "in their entirety," and goes on to declare that the result would be that those suits would "have to be decided afresh." Their Lordships think (and indeed the learned Counsel on both sides agree) that it will be quite sufficient if there is a declaration that the compromises and decrees are not binding upon the minor, and that he is remitted to his original rights.

Their Lordships will therefore humbly advise His Majesty that the decree in the minor's appeal to the Court of the Judicial Commissioner should be varied in this respect, but otherwise affirmed, and that the decree, in the present appellant's appeal to that Court, should be affirmed. With regard to the costs of the appeal, their Lordships think that the appellant must bear them.

Solicitors for the appellant—*T. L. Wilson & Co.*

Solicitors for the respondent, Jadu Nath Singh—*Watkins & Lempriere.*

J. V. W.

1906

---

MANOHAR  
LAL  
v.  
JADUNATH  
SINGH.