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this view I am supported by a Full Bench decision of the Calcutta High Court in the case of *Bibijan Bibi v. Suchi Bewa* (1). The result is that the order of the lower appellate Court is set aside and that of the Court of first instance restored with costs.

Appeal decreed.

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May 31.

Before Mr. Justice Banerji and Mr. Justice Richards.

ABDUL RAHMAN (DEFENDANT) v. SUKHDAYAL SINGH (PLAINTIFF).^{*}
Act No. VIII of 1890 (Guardians and Wards Act), section 30—Act No. XL of 1858 (Minors Act), section 18—Guardian and minor—Lease by guardian in excess of his powers—Sale of leased property by minor on attaining majority—Suit by purchaser for possession—Limitation—Act No. XV of 1877 (Indian Limitation Act), schedule II, article 91.

The certificated guardian of a minor granted, without previously obtaining the permission of the Court, a perpetual lease of certain immovable property forming part of the minor's estate on the 28th March 1890. The minor came of age on the 7th of December 1901, and on 21st October 1902 sold the property, the subject of the lease mentioned above. On the 22nd of July 1903 the purchaser sued for possession of the property purchased by him, asking for cancellation of the lease if necessary. *Held* that it was not necessary for the plaintiff to ask for cancellation of the lease as a condition precedent to his obtaining a decree for possession, and that the suit was not barred by limitation.

Mauji Ram v. Tara Singh (2), *Girraj Baksh v. Kazi Hamid Ali* (3), *Ramausar Pandey v. Raghuber Jati* (4) and *Unni v. Kunchi Amma* (5) referred to by Banerji, J.

ON the 28th of March 1890, the certificated guardian of one Ibrahim Ali granted a perpetual lease of certain immovable property belonging to the minor to one Abdul Rahman. The lease was granted by the guardian without previously obtaining the permission of the Court. Ibrahim Ali attained majority on the 7th of December 1901, and on the 21st of October 1902 he sold the property which was the subject of the lease to one Sukhdoyal Singh. On the 22nd of July 1903, the purchaser, Sukhdoyal Singh, instituted a suit for recovery of possession of the property purchased by him from Ibrahim Ali "by establishment of the plaintiff's right and declaration of the fact that defendant No. 2 had no right to give a perpetual lease on behalf

^{*} First Appeal No. 58 of 1904, from an order of Maulvi Muhammad Ahmad Ali, Subordinate Judge of Aligarh, dated the 23rd of February 1904.

(1) (1904) I. L. R., 31 Cal., 863. (3) (1886) I. L. R., 9 All., 340.
(2) (1881) I. L. R., 3 All., 852. (4) (1883) I. L. R., 5 All., 490.
(5) (1890) I. L. R., 14 Mad., 26.

of defendant No. 3 a minor" and "by cancelment of the perpetual lease (if any) executed by defendant No. 2 in favour of defendant No. 1." The Court of first instance (Munsif of Khurja) dismissed the suit as barred by limitation. On appeal by the plaintiff the lower appellate Court (Subordinate Judge of Aligarh) reversed the decision of the Munsif on the question of limitation and made an order of remand under section 562 of the Code of Civil Procedure. From this order the defendant appealed to the High Court.

Dr. *Satish Chandra Banerji*, for the appellant.

The Hon'ble Pandit *Madan Mohan Malaviya*, for the respondent.

BANERJI, J.—This appeal arises in a suit brought by the respondent for possession of certain immovable property which originally belonged to one Ibrahim Ali and of which a perpetual lease was granted to the appellant on the 28th of March 1890, during Ibrahim Ali's minority, by his grandmother, who had been appointed his guardian by the Court. The lease was granted by the guardian without previously obtaining the permission of the Court. Ibrahim Ali attained majority on the 7th of December 1901, and on the 21st of October 1902 he sold the property to the plaintiff-respondent. It is by virtue of this sale that the plaintiff claims the property. In his plaint he also asks for the cancelment of the lease.

The Court of first instance held that the claim was barred by limitation, and accordingly dismissed the suit. The lower appellate Court, differing from that Court upon the question of limitation, has set aside its decree and has remanded the case for trial on the merits.

The plea of limitation has been reiterated in this appeal, and it is urged that article 91 of the second schedule to the Indian Limitation Act governs the suit. The contention is that the lease is only voidable under section 30 of the Guardians and Wards Act (VIII of 1890) and that it was essential that it should be avoided by suit before the plaintiff's vendor or the plaintiff could recover the property.

No doubt a voidable act is an act which is valid until repudiated. If the transfer in question had been made by the

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plaintiff's vendor himself or by some one through whom he claimed and effect had been given to it, it would be necessary for him to get the instrument of transfer out of the way before he could recover the property. But where the act is the act of the guardian and not of the owner himself or of his predecessor in title, it is, I think, sufficient for him to repudiate the act and it is not necessary to have the instrument cancelled. The claim to have the instrument cancelled must, in such a case, be deemed to be only ancillary to the substantive claim for possession. As the lease in this case was granted by Ibrahim Ali's guardian on the 28th March 1890, that is, before Act No. VIII of 1890 came into operation, the guardian must have been appointed under Act No. XL of 1858, and in granting a lease for a longer period than five years without the permission of the Court she violated the provisions of section 18 of that Act. It was held by this Court in *Mauji Ram v. Tara Singh* (1) that an instrument executed in contravention of section 18 of Act No. XL of 1858 was *ab initio* void and could not be ratified by the minor on obtaining majority. In the later case, however, of *Girraj Bakhs v. Kazi Hamid Ali* (2) it was held that such a transfer was not illegal or void *ab initio* but that the omission to obtain sanction from the Court relegates the parties to the position in which they would be if no certificate had been granted. In either view it would not be necessary to set aside the transfer made by the guardian, it not being a sale provided for by article 44 of the second schedule of the Limitation Act. It was held by this Court in *Ramausar Pandey v. Raghubar Jati* (3) that a suit for possession of immovable property and to set aside a mortgage made by the plaintiff's guardian on his behalf during his minority was not governed by article 91. The Madras High Court in *Unni v. Kunchi Amma* (4) observed that it had been held, "in the case of the guardian, the manager of a Hindu family, and the Hindu widow wrongfully alienating property that the suit which may be brought to recover it is not governed by article 91 of the Limitation Act." The view of the Court below is therefore fully supported by authority. The present

(1) (1881) I. L. R., 3 All., 852.

(2) (1886) I. L. R., 9 All., 340.

(3) (1883) I. L. R., 5 All., 490.

(4) (1890) I. L. R., 14 Mad., 26.

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case is that of a lease by a person whose authority to make it extended to a lease for a period not exceeding five years. The lease could have operation, if at all, for that period only. After the expiry of that period Ibrahim Ali could elect either to ratify it or to repudiate it. If he had ratified it, he would probably be estopped from questioning its validity: so would the plaintiff who derives his title from him. It is not necessary to decide this question at present. If, on the other hand, he has repudiated it, as he must be deemed to have done by selling the property to the plaintiff, the suit for possession is maintainable. It was not necessary for him to sue to have it cancelled, and article 91 has no application. The appeal, therefore, fails, and must be dismissed with costs.

RICHARDS, J.—The facts of this case so far as they are necessary for the decision of the present appeal are very simple. Ibrahim Ali Khan was the owner of the property the subject of the present suit. During his minority Musammat Faiz-un-nissa, his certificated guardian, executed a perpetual lease of property to the defendant No. 1 without having obtained the sanction of the Court: the lease is dated the 28th March 1890. The minor attained age on the 7th December 1901. On the 21st October 1902, Ibrahim Ali Khan sold the property to the plaintiff, who has now instituted the present suit to recover possession of the property. It may be mentioned that the sale-deed contains no reference to the lease. The defence was raised that the suit is time barred. The Court of first instance dismissed the plaintiff's suit on the ground of limitation, and on appeal the lower appellate Court reversed the Court of first instance and remanded the suit for trial on the merits. The guardian had absolutely no power to make the lease in question, and her action in doing so was in direct contravention of the provisions of section 29 of the Guardians and Wards Act, 1890. Were it not for the provisions of section 30 of the same Act, to which I shall presently refer, the position of the late minor and the plaintiff as his assignee would be very analogous to the position, according to English law, of a remainderman of a settled estate when the tenant for life has made a lease unauthorized by the powers conferred on the life tenant by the terms of the

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settlement or by statute. In such a case it is quite clear that the remainderman could bring a suit for possession on the death of the tenant for life, without instituting any proceeding to set aside the lease. Such a proceeding would be neither necessary or proper. The lease would be a good lease as against the tenant for life. It is, however, argued on behalf of the appellant that section 30 of the Guardians and Wards Act renders the lease binding on the late infant and those claiming under him until a suit is instituted and a decree made setting it aside, and that, inasmuch as an interval of more than 12 years elapsed between the making of the lease and the institution of the present suit, the lease cannot now be set aside by the present plaintiff the assignee of the late infant. No point has been made as to the form in which the plaintiff claims his relief, and in the lower Court and here the suit has been treated as a suit for possession notwithstanding that in the prayer mention is made of setting aside the lease. The plaintiff here does not seek to set aside or cancel the lease in the true and accurate sense of those expressions. When the Court cancels a lease, it places the parties in the position they would have been if the lease had never been executed. The plaintiff does not seek to go behind the lease as regulating the rights of all parties during the minority of Ibrahim Ali Khan. If he did, very different considerations would arise, and it may well be that such a suit could not now be maintained by the present plaintiff. The present suit is simply a suit for possession, in which the plaintiff contends that the unauthorized lease cannot be set up as a defence to this suit for possession. In my opinion the true application of section 30 of the Guardians and Wards Act to the present case is that, the lease of 1890 not having been set aside, the lessee is protected from all claims by the infant or those claiming under him at least in respect of the period covered by the minority, but it does not render a suit to set aside the lease necessary or enable the lessee to set up the lease as a defence in this suit for possession. For these reasons I would affirm the decision of the learned Subordinate Judge and dismiss the appeal.

By THE COURT:—The order of the Court is that this appeal is dismissed with costs.

Appeal dismissed.