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no doubt the terms of the section must be followed. But to read the section as depriving him of a contractual right of interest would be to read into it something which it does not say, and which cannot reasonably be implied from its language.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed. The respondent not having appeared, there will be no order as to costs.

Appeal dismissed.

Solicitors for the appellant—*Morgan, Price, & Mewburn.*

J. V. W.

ALLAHABAD CIVIL.

1906, *July* 7.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Sir George Knox.

AWADH SARJU PRASAD SINGH (PLAINTIFF) *v.* SITA RAM SINGH AND OTHERS (DEFENDANTS).*

Hindu law—Joint Hindu family—Partition—Partition deed giving certain advantages to minor member of family—Right of person so benefited to sue on deed—Act No. I of 1877 (Specific Relief Act), section 23(c).

By a deed of partition executed by the adult members of a joint Hindu family it was agreed that a certain minor member of the family, represented in the execution of the deed by his father, should receive a certain share in a particular village "by right of primogeniture," and the agreement further recited that the member in question had been put into possession of the share allotted to him. It was further agreed that, inasmuch as the property thus dealt with was subject to two mortgages, the other members of the family should be responsible for the payment of the mortgage debts and would indemnify the recipient of the mortgaged property in case of proceedings being taken against such property for satisfaction of the mortgage debts.

Held, on suit by the minor (after attaining majority) to compel reimbursement by the other members of the family, that the partition deed was enforceable in favour of the plaintiff, just as much as, if just and equitable, would have been binding upon him, and that the plaintiff was entitled to sue for any benefit which the deed purported to secure to him. *Annamali Chetty* v. *Murugasa Chetty* (1) and *Gandy* v. *Gandy* (2) referred to.

Held also, on a construction of the partition deed that the plaintiff was so entitled to sue having regard to the terms of section 23 (*c*) of the Specific Relief Act, 1877.

* Second Appeal No. 371 of 1905, from a decree of L. Marshall, Esq., District Judge of Ghazipur, dated the 27th of January 1905, reversing a decree of Manlvi Syed Muhammad Tajammul Husain, Subordinate Judge of Ghazipur, dated the 12th of September 1904.

(1) (1903) L. R., 30 I. A., 220. (2) (1885) L. R., 30 Ch. D., 57.

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THE facts of this case are fully stated in the judgment of t Court.

Maulvi *Muhammad Ishaq*, for the appellant.

Munshi *Gobind Prasad* and Babu *Durga Charan Baner* for the respondents.

STANLEY, C. J., and KNOX, J.—This is an appeal against decree of the District Judge of Ghazipur, reversing the decisi of the Court of first instance and dismissing the plaintiff's clai and arises under the following circumstances. The plaintiff is great-grandson of one Baij Nath Singh who died a number years ago possessed of considerable property. He had two so namely, Ram Narain Singh and the defendant Ram Prasad Sing The parties to the suit are his descendants. Before the executi of the agreement of the 27th of March 1888, to which we sh presently refer, the members of the family of Baij Nath Sin were undivided and joint, but owing to dissensions amongst the it was determined to have a partition of the joint family propert Accordingly an agreement was entered into, of date the 27th March 1888, between the adult members of the two branch namely, Ram Prasad Singh and his sons Ajudhia Prasad Sin and Sita Ram Singh, of the one part, and Ram Pargash Singh a Dwarka Prasad Singh, the sons of Ram Narain Singh, who w then dead, of the other part. It is recited in this agreement th the parties were equal sharers in a number of villages, the nam of which are given, but that in certain other villages the nam of the parties were entered in the jamabandis in respect of t zamindari and cultivatory rights, "contrary to facts and the shar entered in the pattidari khewat." It was then agreed between t parties that they should give the whole of an 8 anna 5 pie 15 ka 5 jau 41¼ til share in a village, named Gauritar, as also an 8 ka 4 jau 6 til share in the same village, which had formerly belong to one Tilhar Rai, to the plaintiff Awadh Sarju Prasad Sing and it is recited that this agreement was carried out and that t plaintiff was put in possession of the same. In the document it stated that this village was given to him "by right of primogen ture." He is the eldest son of Ram Pargash Singh, son of Ra Narain Singh, who was the eldest son of Baij Nath Singh. Th follows a recital that the share in this village jointly with tw

other villages had been hypothecated to Dayal Pande and Sheolojak Pande under two hypothecation bonds, one executed by the first parties to the agreement and the other by the second parties respectively on the 24th of November 1884, and that the executants were liable to pay the amount of their respective bonds. Then follows a provision that "this property (that is, the village of Gauritar) shall be considered free from the said debt as well as every sort of debt due by us (that is, the executants). If the said property be jeopardised on account of the said amount due under the hypothecation bonds executed either by the first or the second parties, Babu Awadh Sarju Prasad Singh aforesaid or his guardian will have power to recover the money from the person and property of that party in a proper way to the extent of the injury done, *i.e.*, the party on account of whose debt secured by the bond executed by him the property in the said Gauritar shall be jeopardised will be liable to pay Rs. 1,250. If the property be jeopardised on account of the amount due under the bonds executed by each of the parties, each of them will be liable to pay Rs. 1,250." The remaining villages were then divided between the two parties to the agreement in equal shares. No reference is made to any disputes between the parties in regard to the joint properties in the earlier part of this agreement, but from a passage which occurs at the end of it we gather that there were disputes pending. The passage is as follows:—"Now there remains no sort of dispute between the parties. The settlement has been made after understanding the account up to 1295 Fasli." The executants of the agreement failed to pay the mortgage debts due to Dayal Pande and Sheolojak Pande, and in consequence two suits were instituted by the mortgagees to enforce payment of the mortgaged debts by sale of the mortgaged property, and the shares in Gauritar which had been settled upon the plaintiff were sold by auction on the 28th of November 1898. Of the defendants' share in that village a 4 anna share had been mortgaged by them to the mortgagees. This left a 3 bie 2 kant and 23¾ til share unincumbered. The plaintiff instituted the present suit against the defendants to recover the loss which he had sustained by reason of the sale of the 4 anna share.

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The Court of first instance decreed the claim, holding that the agreement forming the basis of the suit was a family arrangement and was binding upon all the members of the family.

The learned Subordinate Judge further held that the agreement fell within the purview of the last portion of clause (*c*) of section 23 of the Specific Relief Act, and that according to it the plaintiff, although not a party to the agreement, being beneficially entitled under it, was entitled to sue under that section. Upon appeal the learned District Judge held that the agreement was not "a compromise of doubtful rights," and therefore did not come within the meaning of that section, and that he was therefore "bound to hold that plaintiff has no right to sue." He accordingly dismissed the plaintiff's claim. It appears to us that the decision of the learned District Judge is erroneous, and for these reasons. The agreement of the 27th of March 1888 was not so much a compromise of doubtful rights between members of a family as an agreement entered into by the adult members of a joint Hindu family for the partition of the joint family property. It is settled law that a partition so made during the minority of members of a joint family will be valid, and if just and reasonable will bind the minor members of the family. Of course the interests of minors must be regarded. A minor on attaining full age may sue to have a partition set aside on the ground that the same was fraudulent or prejudicial to his interests. But if the partition be just and equitable it will be binding on him. In this case the plaintiff was represented in the transaction by his father and natural guardian Ram Pargash Singh, and the partition has been acted upon and the property the subject of it, except the village Gauritar, enjoyed in accordance with the rights of the parties as declared in the agreement. Now if a partition so effected is binding upon a minor, it seems to follow that the minor must have the correlative right of enforcing his claims under the partition. The plaintiff was, it seems to us, somewhat in the position of a *cestui que trust* for whom, in satisfaction of his interest in the joint family property, provision was made by the partition.

The rule of the common law that a person who is not a party to a contract cannot bring a suit on foot if it is not universal, as was pointed out by our brothers Blair and Banerji in their order of

remand of the 4th of May 1904. In that order several exceptions o the rule are referred to. At the date of the execution of the greement in question the position of the parties was this:—The arties to the agreement were the adult and managing members f the two branches of the joint family, one of them, the father of he plaintiff, being his natural guardian. As a member of the amily the plaintiff was beneficially entitled to his share in the oint family property. In the recent case of *Annamali Chetty v. Murugasa Chetty* (1) their Lordships of the Privy Council lefined the position of the manager of a joint family in regard to member of that family as follows:—"Such a person is not the gent of the members of the family so as to make them liable to e sued as if they were the principals of the manager. The lation of such person is not that of principal or agent, or of artners, it is much more like that of trustee and *cestui que ust.*" In this view the relation existing between the plaintiff nd the manager or managers who were parties to the partition ould be akin to that of *cestui que trust* and trustee. The case f *Gandy* v. *Gandy* (2) is instructive. The facts of that case ere as follows. By a deed of separation between husband and ife, the husband covenanted with trustees to pay them an nuity for the use of the wife and two elder daughters and lso the expenses of the maintenance and education of two ounger daughters upon certain conditions. On one of the ounger daughters attaining the age of 16 the husband refused ny longer to maintain her; whereupon she brought an action y her next friend against the husband and the trustees of he separation deed to enforce the husband's covenant. The rustees refused to be joined as plaintiffs. Bacon, V.C., gave judgment for enforcing the covenant, but upon appeal it as held that upon the construction of the deed the plaintiff was ot in the position of *cestui que trust* under the covenant so as o entitle her to maintain the action, but liberty was given to her o amend the writ by adding the trustees, the wife and the other aughters, or any of them, as plaintiffs. The trustees refused to oin as co-plaintiffs and the statement of claim was amended by naking the wife a co-plaintiff. It was held that the wife had

(1) (1903) L. R., 30 I. A., 220. (2) (1885) L. R., 30 Ch. D., 57.

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such an interest as entitled her to sue in equity for the enforcement of the covenant. In the course of his judgment Cotton L. J., observed as follows:—"Now of course as a general rule a contract cannot be enforced except by a party to the contract and either of two persons contracting together can sue the other, if the other is guilty of a breach of, or does not perform the obligations of, that contract. But a third person—a person who is not a party to the contract—cannot do so. That rule, however, is subject to this exception: if the contract, although in form it is with A, is intended to secure a benefit to B, so that B is entitled to say that he has a beneficial right as *cestui que trust* under that contract, then B would in a Court of Equity be allowed to insist upon and enforce the contract." Later on he said:—"I think what we have to consider is this—whether these two trustees, who are defendants, did enter into this contract so as to give to these infant children a beneficial right to the consequences of the covenant being performed." He held that that was not so, that the deed was a separation deed and that the parties whose rights had to be provided for were the husband and wife. Bowen, L. J. observed that "whatever may have been the common law doctrine if the true intent and the true effect of this deed was to give to the children a beneficial right under it, that is to say to give them a right to have these covenants performed and to call upon the trustees to protect their rights and interest under it, then the children would be outside the common law doctrine and would in a Court of Equity, be allowed to enforce their rights under the deed. But the whole application of that doctrine of course depends upon its being made out that, upon the true construction of this deed, it was a deed which gave the children such a beneficial right." It was ultimately held in that case that the wife had such an interest as entitled her to sue, the deed being an agreement between her and her husband, and the trustee being introduced on her behalf in order to get over the difficulty that the husband and the wife could not at law sue each other so that the trustees were to be considered trustees for the wife and if they refused to sue, she could sue in equity. Now in the case the daughter was not in the position of a *cestui que trust* under the covenant, but the wife was in that position. Therefore i

was held that the wife could sue upon the covenant. In the case before us the true intent and meaning of the deed of agreement of the 27th of March 1888 was, we think, to give to the plaintiff a beneficial right under it, that is, a right to have the enjoyment of the village which was allotted to him free from incumbrance, or in the alternative in lieu of the village to obtain payment of the sums covenanted to be paid. For these reasons we think that the suit was maintainable and that the decree of the lower appellate Court cannot be supported.

We may add that if the agreement was not enforceable by the plaintiff as a binding agreement entered into by the adult members of a joint family for the partition of the joint family property, it would, we are disposed to think, be enforceable under the provisions of section 23 of the Specific Relief Act as being a compromise of doubtful rights between members of the same family under which the plaintiff was beneficially entitled. It is evident that there were disputes between the members of the family in regard to the family property, and apparently a claim was set up by his father on behalf of the plaintiff to *jethani* rights, for we find in the agreement that the village in question was given to him by reason of his right of primogeniture. That there were disputes is apparent from the passage towards the end of the agreement to which we have already referred, namely, that there remained no sort of dispute between the parties and that the settlement had been made after understanding the account up to 1295 Fasli.

We therefore allow the appeal, set aside the decree of the lower appellate Court, and, inasmuch as that Court decided the appeal upon a preliminary point and we have overruled the decision upon that point, we remand the case under the provisions of section 562 of the Code of Civil Procedure to the lower appellate Court with directions that it be reinstated on the file of pending appeals in its original number and be disposed of on the merits. The appellant will have the costs of this appeal. All other costs will abide the event.

[*Cf.* also *Sarabjit Partap Bahadur Sahi* v. *Indarjit Partap Bahadur Sahi* (1).—Ed.]

Appeal decreed and Cause remanded.

(1) (1904), I. L. R., 27 All., 203; at p. 249.