

operated to create a fresh mortgage. To entertain such a contention would be a very serious extension of the ruling of this Court in *Raghubans Muni Singh v. Muhabir Singh* (1). I also would dismiss the appeal.

BY THE COURT:

The order of the Court is that the appeal be dismissed, but under the circumstances without costs.

Appeal dismissed.

APPELLATE CIVIL.

1908

SADAB-UD-
DIN
ABMAD
v.
CHAJJU.

1908
November 14.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

PIARI LAL (PLAINTIFF) v. NAND RAM AND OTHERS (DEFENDANTS.) *

Civil Procedure Code, section 13—Res judicata—Suit for sale on a mortgage—Compromise by which mortgagee accepted a simple money decree—Second suit for sale barred.

A suit for sale on a mortgage was compromised on the terms that the mortgagee should accept a simple money decree for the amount of the mortgage debt, and such a decree was accordingly passed. This decree not being satisfied, the mortgagee again sued for sale of the mortgaged property. Held that the suit was barred. *Shibu Bera v. Chandra Mohan Jana* (2) followed. *Bhola Nath v. Muhammad Sadiq* (3) and *Madho Prasad v. Baij Nath* (4) distinguished.

The facts of this case are as follows:—

In the year 1880 the predecessors in title of some of the defendants and the other defendants executed a mortgage in favour of the predecessor of the plaintiff. A suit was brought upon this mortgage on the 21st of September 1882, in which a sale of the mortgaged property was claimed. The suit was compromised on the terms that a simple money decree only should be passed in favour of the plaintiff and such a decree was passed on the 27th of November 1882. The amount due to the plaintiff on foot of the compromise was, however, not satisfied, or at least not fully satisfied. Thereupon the plaintiff instituted a second suit for sale of the mortgaged property. The first

* Second Appeal No. 488 of 1907 from a decree of J. H. Cumming, Assistant Judge of Aligarh, dated the 21st of January 1907 reversing a decree of Muhammad Shah, Subordinate Judge of Aligarh, dated the 16th of July 1906.

(1) (1905) I. L. R., 28 All., 78. (3) (1908) I. L. R., 26 All., 223.
(2) (1906) I. L. R., 33 Calc., 849. (4) Weekly Notes, 1905, p. 152.

1908

PIARI LAL
v.
NAND RAM.

Court (Subordinate Judge of Aligarh) decreed the claim, but upon appeal the lower appellate Court (Additional Judge of Aligarh) dismissed it, on the ground that it was barred by section 13 (explanation III) of the Code of Civil Procedure.

The plaintiff thereupon appealed to the High Court.

Mr. B. E. O'Connor, for the appellant.

Mr. M. L. Agarwala and Babu Durga Charan Banerji, for the respondents.

·STANLEY, C.J., and BANERJI, J.—This appeal arises out of a suit for sale of mortgaged property. It was dismissed under the following circumstances as barred by section 13 of the Code of Civil Procedure. It appears that in the year 1880 the predecessors in title of some of the defendants and the other defendants executed a mortgage in favour of the predecessor of the plaintiff. A suit was brought upon this mortgage on the 21st of September 1882, in which a sale of the mortgaged property was claimed. The suit was compromised on the terms that a simple money decree only should be passed in favour of the plaintiffs and such a decree was passed on the 27th of November 1882. The events which happened subsequent to the date of this compromise it is unnecessary for the purposes of the decision of this appeal to detail, suffice it to say that the amount due to the plaintiff on foot of the compromise was not satisfied, or at least fully satisfied. Thereupon the suit out of which this appeal has arisen was instituted for sale of the mortgaged property. The first Court decreed the claim, but upon appeal the lower appellate Court dismissed it, on the ground that it was barred by section 13 (explanation III) of the Code of Civil Procedure. In that explanation it is laid down that any relief claimed in a plaint which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused. In view of this section the claim of the plaintiff in the first suit for sale of the mortgaged property must be deemed to have been refused, and therefore his right as mortgagee to have a sale of the mortgaged property became barred as a matter *res judicata*. In view of this section it is impossible to hold that a fresh suit for sale can be maintained, and therefore we think that the lower appellate Court rightly dismissed the plaintiff's suit. This view is supported by the decision of the

Calcutta High Court in the case of *Shibu Bera v. Chandra Mohan Jana* (1), the facts of which are admittedly on all fours with the facts of the present case. Our decision is in no way in conflict with the decision of Benches of this Court in the cases of *Bhola Nath v. Muhammad Sadig* (2) and *Madho Prasad v. Baij Nath* (3). In both of these cases it will be found that in the suits originally instituted by the plaintiffs no claim was put forward for sale of the mortgaged property; the plaintiffs contented themselves with applying for simple money decrees. Section 13 therefore had no application. We therefore dismiss the appeal with costs.

1908

 PIARI LAL
 v.
 NAND RAM.

Appeal dismissed.

Before Mr. Justice Banerji and Mr. Justice Richards.

JAGAR NATH SINGH AND OTHERS (DEFENDANTS) v. LALTA PRASAD
 AND ANOTHER (PLAINTIFFS) AND DWARKA PRASAD (DEFENDANT)*

 1908
 August 13.

*Act No. IX of 1872 (Indian Contract Act), section 11—Minor—Act No. 1
 of 1872 (Indian Evidence Act), section 115—Estoppel—Effect of minor
 fraudulently representing himself to be of full age.*

Whether or not the doctrine of estoppel applies to a contract entered into by a minor, where persons who are in fact under age by false and fraudulent misrepresentations as to their age induce others to purchase property from them, they are liable in equity to make restitution to the purchasers for the benefit they have obtained before they can recover possession of the property sold. *So held* by BANERJI, J. *Mohori Bibee v. Dharmodas Ghose* (4), *Brahmo Dutt v. Dharmodas Ghose* (5), *Ganesh Lala v. Bapu* (6) and *Stikeman v. Dawson* (7) referred to.

RICHARDS, J., differed on the question of fact as to whether the plaintiffs had been induced by any misrepresentations of the defendants as to their ages to enter into the contract sought to be set aside.

THE plaintiffs in the suit out of which this and the connected appeal, No. 118, arose (Lalta Prasad and Bhuaneshri Prasad) were the sons of one Madho Prasad, whose paternal uncle was the plaintiff's guardian Dwarka Prasad. After the death of Madho Prasad in 1882, Dwarka Prasad applied for, and obtained in 1888, a certificate of guardianship of the persons and property of the plaintiffs, who were minors at the date of their father's

* First Appeal No. 167 of 1906, from a decree of Srish Chander Bose, Officiating Subordinate Judge of Ghazipur, dated the 17th of April 1906.

(1) (1906) I. L. R., 33 Calc., 549. (4) (1903) I. L. R., 30 Calc., 539.
 (2) (1903) I. L. R., 26 All., 223. (5) (1898) I. L. R., 26 Calc., 381.
 (3) Weekly Notes, 1905, p. 152. (6) (1896) I. L. R., 21 Bom., 198.
 (7) (1847) 16 L. J. Ch., 265.