1910
February 19.

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

BACHCHAN SINGH (PLAINTIFF) *v.* KAMTA PRASAD AND OTHERS (DEFENDANTS).*

Act No. XV of 1877 *(Indian Limitation Act), schedule II, articles* 91, 141—*Limitation—Suit to recover possession of property sold by guardian during minority of plaintiff—Cancellation sale deed ancillary—Decree for possession conditional upon restoring such portion of the consideration as was for the minor's benefit.*

Held that in the case of a suit to set aside an alienation of the plaintiff's property made during his minority by his guardian the limitation applicable is that prescribed by article 141 of the second schedule to the Indian Limitation Act, 1877. *Unni* v. *Kunchi Amma* (1) followed. *Abdul Rahman* v. *Sukh Dayal Singh* (2), *Jhamman Kunwar* v. *Tiloki* (3) and *Ram Dei Kunwar* v. *Abu Jafar* (4) referred to.

When, however, such a sale is in part for the benefit of the minor plaintiff, he is in equity liable to make good to the purchasers the portion of the consideration by which he benefited, and he would be entitled to recover the property only on condition of his paying to the purchasers that portion of the consideration. *Gobind Singh* v. *Baldeo Singh* (5) referred to.

THIS was an appeal under section 10 of the Letters Patent from a judgement of RICHARDS, J. The facts of the case sufficiently appear from the judgement under appeal, which was as follows:—

"This was a suit in which the plaintiff claimed a declaration that he was the owner of certain property and that his mother Musammat Bhawani had no power to make a transfer during his minority and that a sale-deed executed by his mother in favour of the defendant should be cancelled and that he be put in possession of the property. The facts are fairly simple. At the time of execution of the sale-deed in question a decree had been passed by a court against the plaintiff himself in respect of a debt due by his father. He was then a minor and his mother was his guardian in the suit and his natural guardian also. The courts below have held that a part of the sale at least was for the benefit of the minor. The sale was a sale of half the property and by its means the other half was saved. The consideration money was Rs. 400 and the lower court has held that out of Rs. 400, Rs. 285 was raised by the sale for the benefit of the minor. Had the court found that the whole transaction was also for the benefit of the minor under the circumstances of the present case, I do not think any one could find much fault with the decision. However, where a minor's property is concerned, the court is, no doubt, quite right to be very strict. The minor came age in 1901, and the suit was not instituted until 14th August 1907. It seems me that the plaintiff should have instituted the suit at a much earlier date.

* Appeal No. 79 of 1909 under section 10 of the Letters Patent.

(1) (1890) I. L. R., 14 Mad., 26.
(2) (1905) I. L. R., 28 All., 30.
(3) (1903) I. L. R., 25 All., 495.
(4) (1905) I. L. R., 27 All., 494.
(5) (1903) I. L. R., 25 All., 330.

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He waited until his mother was dead. The defendant could not be expected to produce the bonds and the delay caused great difficulty to the defendant. One of the pleas raised is that the suit is barred by Act 91 of the Limitation Act XV of 1877. The authorities on this subject are not very clear. I think that it may be safely laid down that article 91 does apply to cases in which it is necessary that the deed should be set aside, that is to say, to cases in which the plaintiff cannot get his property until the deed is set aside. The court of first instance held that the consideration to some extent failed, and gave the plaintiff a decree for possession of a proportionate part of the property. The lower appellate court gave the plaintiff a decree for possession of all the land and cancelled the sale-deed on condition of the plaintiff's paying Rs. 285 within a time named. If the money was not paid the suit was to be dismissed.

"Having regard to the fact that at the time the sale-deed was executed, a decree was actually out against the plaintiff, and further that the decree is referred to and mentioned in the sale-deed and also to the fact that the main object of the sale was to satisfy the decree, I think that the sale-deed may fairly be treated as if it were a deed expressly made by Musammat Bhawani as guardian of the minor. If it was so made and if it was not fraudulent (and void on this account), I think it must be considered as the deed of the plaintiff himself. The act of a guardian of a minor as such is the act of the minor. It was necessary therefore for the plaintiff to set the deed aside before he could regain possession of his property. His own plaint and the prayers contained therein demonstrate that he and his advisers considered that the deed must be got rid of before the property could be claimed.

"I think that having regard to the circumstances of the present case the plaintiff ought to be strictly confined to his plaint. On the facts of the case, I hold that article 91 of the Limitation Act XV of 1877 does apply and the suit is barred by limitation.

"I therefore allow the appeal, set aside the decrees of both the courts and dismiss the plaintiff's suit with costs in all courts."

The plaintiff appealed on this appeal.

Maulvi *Ghulam Mujtaba*, for the appellant, submitted that the suit being one for possession of immovable property was governed by Article 144 and not Article 91 of the Limitation Act, and relied on *Abdul Rahman* v. *Sukh Dayal Singh* (1).

Munshi *Gulzari Lal*, for the respondents, submitted that, apart from the question of limitation, the finding of the first court of appeal being that the sale by the guardian was for the benefit of the minor, the suit ought to have been dismissed. As to the question of limitation, he contended that the case in I. L. R., 28 All., 30 related to the transfer by a guardian which was beyond his power and not to a valid transfer for the benefit of the minor. He cited *Hasan Ali* v. *Nazo* (2), *Chunder Nath*

(1) (1905) I. L. R., 28 All., 30. (2) (1889) I. L. R., 11 All., 456.

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Bose v. *Ram Nidhi Pal* (1), *Janki Kunwar* v. *Ajit Singh* (2), *Gajeshri Prasad* v. *Dharam Dat* (3) and *Malkarjun* v. *Narhari* (4).

The suit was governed by article 144 or 91 of the Limitation Act and the plaintiff must get rid of the sale before he got possession of the property. He further submitted that it would not be just and equitable to deprive the respondents of the possession of the property sold to them for valid necessity after such a length of time. It would be more equitable to allow them to retain the property on payment of the portion of the consideration which had not been proved to have been paid for necessity. *Gobind Singh* v. *Baldeo Singh* (5) and *Ram Dei Kunwar* v. *Abu Jafar* (6) relate to a different state of things.

STANLEY, C. J., and BANERJI, J. :—The suit out of which this appeal has arisen was brought by the plaintiff appellant to recover certain property sold by his mother Musammat Bhawani during his minority on the 7th of July, 1896. The plaintiff attained majority on the 1st of July, 1901, and instituted the suit on the 14th of August, 1907. His allegation was that his mother had no authority to sell the property and that there was no necessity for the sale. He asked for a declaration that the sale was void and could not affect his interests, and, as stated above, he sought to recover possession of the property comprised in the sale. The court of first instance decreed the claim in part. The lower appellate court held that the sale by the mother was for the benefit of the minor to the extent of Rs. 285, that is to say, that there was necessity for raising that sum for the benefit of the minor and to save his other property, and that to that extent the minor was liable. It made a decree for possession subject to the condition that the plaintiff should make good to the defendants Rs. 285. Otherwise the suit would stand dismissed. From this judgement two appeals were preferred and were disposed of by a learned Judge of this Court. He held that the claim was barred by limitation, not having been brought within three years from the date on which the plaintiff attained majority,

(1) (1902) 6 C. W. N., 863.
(2) (1887) I. L. R., 15 Calc., 58.
(3) Weekly Notes, 1888, 152.
(4) (1900) I. L. R., 25 Bom., 337.
(5) (1903) I. L. R., 25 All., 330.
(6) (1905) I. L. R., 27 All., 494.

and he applied to it the provisions of article 91 of schedule II of the Indian Limitation Act, No. XV of 1877, and dismissed the suit in its entirety. From the judgement of the learned Judge of this Court this appeal and the connected appeal No. 83 of 1909 have been preferred. It is contended that article 91 of schedule II of the Limitation Act of 1877 does not apply to a case like this. In our judgement this contention is well founded. The suit of the plaintiff is not one to set aside a document executed by himself, but to recover immovable property belonging to him, which, according to him, had been alienated by his guardian without valid authority to do so. Such a suit is in reality a suit for the recovery of immovable property, and the prayer for a declaration that the sale does not affect the plaintiff's rights is only ancillary to the substantive claim for possession. As was pointed out by the Madras High Court in *Unni* v. *Kunchi Amma* (1):—"When a person seeks to recover property against an instrument executed by himself or one under whom he claims, he must first obtain the cancellation of the instrument, and the three years' rule enacted by article 91 applies to any suit brought by such person." But "where an instrument of alienation is executed by a person who is not the full owner of the property but has only conditional authority to dispose of it, that article would not apply." The learned Judges proceed to observe:—"Such are the cases of a guardian of a minor, the manager of a Hindu family or the sonless widow in a divided Hindu family. In these cases, as was argued by the appellant's vakil, it is not only not necessary, but it is not possible, to have the instrument of alienation cancelled and delivered up, because, as between the parties to it it may be a perfectly valid instrument. All that is needed is a declaration that the plaintiff's interest is not affected by the instrument, and that declaration is merely ancillary to the relief which may be granted by delivery of possession." A similar view was held by this court in several cases, of which we may refer to the case of *Abdul Rahman* v. *Sukh Dayal Singh* (2). The same principle was laid down in

(1) (1890) I. L. R., 14 Mad., 26. (2) (1905) I. L. R., 28 All., 30.

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Jhamman Kunwar v. *Tiloki* (1) and also in *Ram Dei Kunwar* v. *Abu Jafar* (2). We are accordingly unable to agree with the learned Judge's view that article 91 applies to a case like this and that the suit should have been brought within three years of the date on which the plaintiff attained majority. The article applicable to such a suit is in our judgement article 141. It was contended by the learned vakil for the respondents that as the lower appellate court in its judgement held that the sale made by the plaintiff's guardian was for necessity, a decree for possession of the property ought not to have been made. It is true that in its finding on issue No. 5 the lower appellate Court said that Musammat Bhawani as *de facto* guardian was competent to execute the sale-deed of 7th July, 1896, in favour of the defendants and that it was executed for the plaintiff's benefit, but this finding must be read with the finding on the 4th issue, which is to the effect that a portion only of the consideration for the sale, namely Rs. 285, was for the benefit of the plaintiff. The learned additional Judge accordingly made a decree for possession subject to the condition that the plaintiff should pay to the defendants the aforesaid sum of Rs. 285 within a time fixed. We think that the lower appellate court was right in making a decree in the terms referred to above. The guardian of the plaintiff had no authority to sell his property except for his benefit, and if the plaintiff benefited only in respect of a part of the sale consideration, he is in equity liable to make good to the purchasers the portion of the consideration by which he benefited, and he would be entitled to recover the property only on condition of his paying to the purchasers that portion of the consideration. The learned vakil for the respondents asks us to affirm the decree of the first court which granted to the plaintiff a decree for a portion only of the property. We find no justification for the course adopted by that court. The principle hitherto applied by the courts in respect of such transactions is to make a decree for the property transferred by the guardian, but to attach to the decree the condition that the plaintiff should pay to the transferee so much of the consideration as was for his benefit or for which there was a justifying necessity. We may refer to *Gobind Singh*

(1) (1903) I. L. R., 25 All., 435. (2) (1905) I. L. R., 27 All., 494.

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v. *Baldeo Singh* (1), in which the widow of a separated Hindu had sold property belonging to the estate of her deceased husband, and the sale as to a portion of the consideration was justified by legal necessity, and as to the remainder of the consideration not so justified. It was held that it was competent to the next reversioner to sue for and obtain a decree for the property on payment of such portion of the consideration as represented moneys borrowed by the widow for legal necessity. The principle laid down in that case applies to a sale by a guardian where a part only of the consideration was such as was binding upon the minor. The same view was held in the case of *Ram Dei Kunwar* v. *Abu Jafar* (2). For these reasons we are of opinion that the decree of the lower appellate court was right. We accordingly allow the appeal, set aside the decree of this Court, and restore that of the lower appellate court with costs. We extend the time for payment of Rs. 285 mentioned above for a period of two months from this date.

Appeal allowed.

REVISIONAL CRIMINAL.

1910
February 10.

Before Mr. Justice Tudball.

EMPEROR v. MAHADEO.*

Criminal Procedure Code (1898), *sections* 182, 531—*Jurisdiction—Place at which consequence of act ensues—Criminal breach of trust—Act No. XLV of* 1860 *(Indian Penal Code)*, *section* 408.

One M was employed as an agent by a firm in Mirzapur. Goods were entrusted to him for sale in various districts in Lower Bengal, and from time to time, as he sold goods, he remitted money to his employers at Mirzapur. When called upon to furnish accounts, he offered to furnish Rs. 500 as a deposit, but did not submit any account.

Held that the Courts at Mirzapur had jurisdiction to try M for whatever offence he had committed arising out of the above transactions. *Queen-Empress* v. *O'Brien* (3) followed.

THE accused in this case was employed as an agent by a firm in Mirzapur. Goods were entrusted to him for sale in various districts in Lower Bengal, and from time to time, as he sold

* Criminal Revision No. 30 of 1910, from an order of Muhammad Ali, Sessions Judge of Mirzapur, dated the 4th of December 1909.

(1) (1903) I. L. R., 25 All., 330. (2) (1905) I. L. R., 27 All., 494.
(3) (1896) I. L. R., 19 All., 411.