APPELLATE CIVIL.

1911
March, 11.

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

HARDWARI LAL AND ANOTHER (PLAINTIFFS) *v.* GOMI (DEFENDANT).*

Act No. IX of 1875 (Indian Majority Act), sections 2, 3—Hindu law—Majority —Testamentary capacity of Hindus.

Held that a Hindu domiciled in the United Provinces cannot execute a valid will until he has reached the age of majority as prescribed by the Indian Majority Act, 1875.

THE facts of this case were as follows :—

One Lallu Mal died on the first of July, 1903, leaving him surviving his widow Jasodha and his mother Gomi, the respondent. Jasodha died on the 8th of May, 1908. Both Lallu Mal and Jasodha were, at the dates of their respective deaths, between sixteen and eighteen years of age. Lallu Mal had made a will o the 29th of June 1903, three days before his death, and Jasodha another, on the 5th of May, 1908, also three days previous to her death. Musammat Gomi claimed under these wills to be absolutely entitled to the estate of Lallu Mal, on the allegation that both the deceased were competent under the Hindu Law to have bequeathed property as they liked. This was a suit by the eversioners of Lallu Mal for a declaration that they were unaffected by the wills in question and that Gomi was entitled only to a life estate.

The court of first instance (Subordinate Judge of Saharanpur) dismissed the suit. The plaintiffs appealed.

Mr. *W. Wallach* (with him Babu *Lalit Mohan Banerji*), for the appellant, submitted that the provisions of the Indian Majority Act, 1875, would apply. The acts of minors which had validity given them were enumerated there and testamentary capacity had not been conferred on them.

The Hon'ble Pandit *Sundar Lal* (with him the Hon'ble Pandit *Moti Lal Nehru*, Dr. *Satish Chandra Banerji* and Mr. *J. L. Jaini*), for the respondent, contended that a minor could make a will under Hindu Law. A will was not a contract. The age of majority was nowhere fixed under the Hindu Law; Trevelyan on Minors, page 1. All that the

* First Appeal No. 346 of 1909 from a decree of Pramatha Nath Banerji, Subordinate Judge of Saharanpur, dated the 22nd of July, 1909.

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Hindu Law laid down was that having attained the age of 16 he was quite independent and quite competent to make a will. He might not, it is true, be able to make a gift, but if the Legislature had wished to prohibit his making will, it would have done so specially. Only the analogy of the law of gift was applicable to wills, not the statute law of gifts. A number of requirements, e.g. registration and attestation, were to be complied with in the case of gifts. They were not necessary in the case of wills. The term minor was given a special meaning under the statut eonly for certain purposes.

Babu *Lalit Mohan Banerji*, in reply, referred to the Sacred Books of the East, Vol. XXXIII, page 52. A minor was a minor under the provisions of Act IX of 1875. Where an exception was made, as in cases of marriage, divorce, adoption and dower, it was said so in the Act. In all other transactions the provisions of the Act would have to be complied with. He referred to Mayne on Hindu Law, paragraph 407.

STANLEY, C. J., and BANERJI, J.—This appeal arises out of suit for a declaration that a will alleged to have been executed by one Lallu Mal in favour of his wife Jasodha on the 29th of June, 1903, as also a will made by Musammat Jasodha on the 5th of May, 1908, are void by reason of the fact, among others, that both Lallu Mal and Jasodha were under the age of eighteen years, at the date of the execution of the respective documents. It is admitted that both Lallu Mal and Musammat Jasodha were over the age of sixteen but under the age of eighteen years. The contention on behalf of the defendant respondent is, that both being Hindus and having attained the age of sixteen years, were capable of disposing of their property by will. The court below held that Lallu Mal and Jasodha were competent to execute the wills in question, and that having done so with full knowledge of their contents and being of full testamentary capacity, the wills were valid and the plaintiff's suit failed.

This appeal was then preferred, and the main contention on behalf of the appellants is that the question is concluded by the provisions of the Indian Majority Act No. IX of 1875. The argument addressed to us on behalf of the respondent is that both

Lallu Mal and Jasodha being upwards of sixteen years old, and so having attained full age, according to the Hindu Law they had power to make wills; that the capacity to make a will is not regulated by statute; and that the Hindu Law should be applied to the case.

We are of opinion that the question is concluded by the Indian Majority Act. That Act extends to the whole of British India and was intended to prolong the period of nonage in the case of Hindus as well as of other subjects of the Crown.

In the preamble it is stated that "it is expedient to prolong the period of nonage and to attain more uniformity and certainty respecting the age of majority than now exists." Section 2 is a saving clause and prescribes that nothing in the Act contained shall affect *(a)* the capacity of any person to act in the following matters, namely, marriage, dower, divorce and adoption; *(b)* the religion or religious rights and usages of any class of Her Majesty's subjects in India, or (*c*) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him. Then section 3 prolongs the nonage of a minor, of whose person or property a guardian has been or shall be appointed, up to 21 years; and in the case of every other person domiciled in British India, prescribes that every such other person "shall be deemed to have attained his majority when he shall have completed his age of 18 years and not before."

It appears to us that this enactment extended the period of nonage in the case of Lallu Mal and Jasodha to their 21st year respectively, as a guardian was appointed for each of them, and overrides any rule of law as regards nonage which may have subsisted prior thereto. It will be observed that in section 2, clause *(a)*, the only exception made in regard to the application of the provisions of the Act is in the cases of marriage, dower, divorce and adoption. The capacity to do any other act is not safeguarded. The only other exception is the capacity of any person who, before the Act came into force, had attained majority under the law applicable to such person. In the present case Lallu Mal and Jasodha had not attained majority before Act IX of 1875 came into force. Therefore clause *(c)* does not safeguard

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their capacity to make a will. The Act was intended to attain uniformity and certainty respecting the age of majority, and we think it governs a case such as the present.

For these reasons the view taken by the learned Subordinate Judge is in our judgement erroneous. We accordingly allow the appeal, set aside the decree of the court below, and decree the plaintiff's claim with costs in both courts.

Appeal decreed.

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March, 21.

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

NARAIN DAS AND OTHERS (PLAINTIFFS) *v.* BALGOBIND AND OTHERS (DEFENDANTS).*

Partition—Appeal—Appeal against preliminary decree—Final decree passed since the appeal—No appeal against final decree.

Held that an appeal against the preliminary decree in a suit for partition cannot be heard if after the filing of such appeal the final decree has been passed and no appeal is preferred against that decree. *Kuriya Mal* v. *Bishambhar Das*, (1), referred to.

IN this case a preliminary decree for partition had been passed, and the present appeal was against that decree. After the appeal was filed, the final decree in the suit was passed, and by the time this appeal came on for hearing no appeal had been filed against the final decree and the time for appealing had elapsed. A preliminary objection was therefore raised by the respondents that, in the absence of any appeal against the final decree in the suit, this appeal could not be heard.

Dr. *Tej Bahadur Sapru*, for the appellants.

Dr. *Satish Chandra Banerji*, Munshi *Datti Lal* and Munshi *Radha Mohan*, for the respondents.

STANLEY, C. J., and BANERJI, J.—A preliminary objection has been raised to the hearing of this appeal, to the effect that it cannot be entertained, in view of the decision in *Kuriya Mal* v. *Bishambhar Das* (1). The suit was one for partition. A preliminary decree was passed on the 17th of September, 1909, and it is against this preliminary decree that the appeal has been preferred. A final decree was passed on the 27th of January,

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* First Appeal No. 3 of 1910 from a decree of Srish Chandra Basu, Subordinate Judge of Allahabad, dated the 17th of September, 1909.

(1) (1910) I. L. R., 32 All., 225.