

PRIVY COUNCIL.

P. C.*

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June, 30,

July, 23.

PARTAB SINGH AND ANOTHER (PLAINTIFFS) v. BHABUTI SINGH
(DEFENDANT).

[On appeal from the Court of the Judicial Commissioner of Oudh, at
Lucknow.]

Minor—Representation of minor in suits—Suit to set aside compromise of and decrees in suits to which minors were parties—Civil Procedure Code (1892), sections 443, 456, 452—Minors unrepresented owing to fraud and misrepresentation of de facto guardian whose interest conflicted with theirs—Form of decree—Civil Procedure Code (1908), section 98—Act No. I of 1877 (Specific Relief Act), section 42—Question of law.

In this case the appellants sued for a declaration that a compromise of certain pre-emption suits and decrees based thereon, made on their behalf in 1899 when they were minors, were not binding on them having been obtained by the fraud and misrepresentation of the respondent (who was then their *de facto* guardian and manager of their property) and in proceedings in which they were practically unrepresented; and they prayed that they might be restored to the position held by them prior to the date on which the compromise and decrees were made. It appeared that, although the appellants were described in the proceedings as "under the guardianship" of one H. P., he had never been properly appointed their guardian *ad litem* by the Court as required by section 443 of the Civil Procedure Code, 1882: that no *bond fide* application had ever been made under section 456 to have a guardian *ad litem* appointed by the Court; and that the leave of the Court had not been obtained to enter into the compromise on the appellant's behalf as was necessary under section 462.

Held that the appellants were entitled to the declaration they sought. H. P. had, their Lordships found, been introduced into the suits of 1899 by the respondent as the guardian or next friend of the appellants to advance the interests of the respondent and to defeat the interests of the appellants, which conflicted with those of the respondent: he had throughout acted under the directions and on behalf of the respondent and in his interest and contrary to the interests of the appellants, and the respondent had taken advantage of his position to the detriment of the appellants. There was therefore no one to protect them, and they were unrepresented in the proceedings, which were therefore not binding on them. *Manohar Lal v. Jadunath Singh* (1) followed.

Section 42 of the Specific Relief Act (I of 1877), which had been applied to the case by the majority of the Court of the Judicial Commissioner was held not to be applicable.

Seemle the question whether on certain stated facts the relief which the appellants prayed for should be granted or refused, was a question of law within the meaning of section 98 of the Civil Procedure Code (Act V of 1908); and where, on a difference of opinion on that question between two Judges of the

* Present:—Lord ATKINSON, Lord PARKER, Sir SAMUEL GRIFFITHS, Sir JOHN EDGE and Mr. AMBER ALI.

(1) (1906) I. L. R., 28 All., 585; L. R., 83 I. A., 129.

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Court, the case was referred under that section to a third Judge, that was the only question he had jurisdiction to consider and decide.

APPEAL from a judgement and decree (14th March, 1910) of the Court of the Judicial Commissioner of Oudh, which reversed the judgement and decree (29th July, 1908) of the Subordinate Judge of Sitapur, and dismissed the suit of the appellants.

The suit was brought on the 22nd of February, 1908, for a declaration that an agreement of compromise, dated the 15th of December, 1899, entered into on the plaintiffs' behalf during their minority, and two decrees based thereon were not binding on them; the plaint alleging in effect that the compromise, and consequent withdrawal of two suits for pre-emption (the subjects of the compromise) were fraudulent, inasmuch as one Hari Prasad, who acted in the said suits on behalf of the plaintiffs and was a subordinate and under the orders of their then guardian *de facto* the defendant Bhabuti Singh (now the sole respondent), had never been properly appointed by the Court as their guardian *ad litem*, and the Court's sanction to the compromise had been obtained by misrepresentation. The relief claimed was that the plaintiffs might be restored to the position held by them prior to the 15th of December, 1899, the date on which the two decrees were passed.

Bhabuti Singh was the only defendant who appeared, and, so far as is now material, his defence was that the plaintiffs were independently represented by Hari Prasad who had acted in their best interests by withdrawing their suit and entering into the compromise; and that the withdrawal, having received the sanction of the Court, could not be disturbed.

The circumstances prior to the suit and leading up to the compromise will be found fully stated in the judgement of their Lordships of the Judicial Committee.

The Subordinate Judge decreed the suit with costs making the declaration as sought by the plaintiffs.

From that decree the defendant preferred an appeal, which was heard by the Judicial Commissioner (Mr. E. CHAMIER) and the First Additional Judicial Commissioner (Mr. L. G. EVANS), who differed in opinion, the former holding that the appeal ought to be dismissed, and the latter being of opinion that it should be allowed and the relief claimed refused to the plaintiffs. Mr. CHAMIER said:

"I hold that the plaintiffs were not effectively represented in the suits of 1899. Their *de facto* guardian was their opponent, who used his position to bring about a compromise much to his own advantage and to the detriment of the minors. I think there can be no doubt that the plaintiffs are not bound by such proceedings."

And to a contention that the Court had a discretion to give or refuse relief under section 42 of the Specific Relief Act (I of 1877), and that relief should in their case be refused on various grounds he said:

"I think there can be little doubt that the plaintiffs had not funds in hand wherewith to purchase the property. If the cases had been fought out, the minors would have got a decree for pre-emption. Bhabuti Singh also would, according to the practice of the court, have been given a decree for pre-emption in case the minors did not pay the purchase money within the time limited by their decree. Bhabuti Singh would have been under no obligation to raise money on his personal security for the minors in order to enable them to take advantage of the decree and he would have been unable to mortgage their property for the purpose even if he had been so minded. It is clear therefore that Bhabuti Singh would have done nothing to prevent the dismissal of the minors' suit. Had Bhabuti Singh adopted this course such a suit as the one before us could never have been brought. . . . I think it is a question whether such a suit as this is brought under section 42 of the Specific Relief Act, and whether we can in the exercise of our discretion refuse relief to the plaintiffs; but assuming that the suit is brought under that section I am of opinion that we ought to give the plaintiffs relief. . . . As for the argument that as Bhabuti Singh was under no obligation to claim pre-emption on behalf of the minors he was at liberty to direct Hari Prasad to withdraw their suit and their defence, I need only say that it is quite clear that a guardian is not entitled to use his ward's rights as a means of procuring an advantage for himself. A suit for pre-emption was filed on behalf of the minors. It was not disposed of according to law, but was suppressed for the benefit of the minors' guardian. In my opinion the Court was right in decreeing the plaintiffs' claim."

Mr. EVANS agreed generally with the facts found by the Judicial Commissioner, but said,

"In the present case the most that can be found against the defendant is that he used the rights of the minors to obtain some personal advantage. He did not allow any fraudulent decree to be passed against them, nor did he allow them to be unjustly deprived of any property. It appears to me that it would be an improper exercise of the discretion of this Court to allow the plaintiffs to reopen this litigation, which terminated in 1899, merely because their *de facto* guardian did not see fit to prosecute a claim for pre-emption on their behalf, especially when it is not proved that there were any funds in his possession belonging to the minors for investment in immovable property I hold that this is pre-eminently a case in which the Court should not

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exercise the discretion vested in it by section 42 of the Specific Relief Act and should refuse to grant the relief prayed for. I would allow the appeal, and dismiss the claim."

The Court of the Judicial Commissioner on the same day made the following order under section 98 of the Civil Procedure Code (Act V of 1908).

"We are both agreed that the sanction of a court does not validate a compromise which is invalid on other grounds.

"We are also agreed that Bhabuti Singh was the *de facto* manager of the minors' property, that he was not obliged to institute a suit for pre-emption on their behalf, that he caused the suit for pre-emption to be instituted on their behalf in order to protect himself against other claimants, that Hari Prasad in withdrawing the minors' suit and joining in the compromise acted under Bhabuti Singh's instructions, that if the cases had been fought out lots would have been drawn as regards the share in Khushalpur, the minors would have obtained a decree for pre-emption of the share in Ismailganj and Bhabuti Singh would have been given a decree for pre-emption in case the minors did not pay the purchase money within the time limited by their decree, that Bhabuti Singh had funds wherewith to take advantage of the decree, that the minors had no funds and Bhabuti Singh was under no obligation to raise funds for them.

"On these facts one of us is of opinion that the plaintiffs should be given a declaration that the compromise and decrees are not binding on them and that they are remitted to their original rights; the other is of opinion that the suit should be dismissed. The point on which we differ is certainly not a question of fact. After hearing counsel for the parties we hold that it is a point of law within the meaning of section 98 of the Code of Civil Procedure and we accordingly direct that the appeal be laid before the second Additional Judicial Commissioner under that section."

The matter was therefore re-argued before the Second Additional Judicial Commissioner (Mr. T. C. PIGGOTT), who agreed substantially with the First Additional Judicial Commissioner, being of opinion that the only facts with which the Court trying the case was not acquainted at the time when it accepted the compromise of the 15th of December, 1899, were that the suit for pre-emption in which the minors were plaintiffs (177 of 1899) had never been seriously intended to succeed, and that a decree for pre-emption in favour of the plaintiffs in that suit would, so far as can now be ascertained, have resulted in no benefit to the latter. In my opinion the case for the plaintiffs breaks down because these were not material facts from the point of view of the decision of the suits of 1899, and because their concealment on the part of Bhabuti Singh, if it was fraudulent at all, was not a fraud on the

minor plaintiffs but on certain other possible pre-emptors who might have been thereby discouraged from asserting their right.

The appeal from the Subordinate Judge was therefore allowed and the suit dismissed with costs in both Courts.

On this appeal—

Arthur Grey and *R. Jacob* for the appellants contended that they were not effectively represented in either of the suits for pre-emption in 1899, and that the respondent used his position as their guardian to bring about a compromise much to his own advantage, and to the detriment of the appellants. That was the finding of the Judicial Commissioner, and it was submitted that it was correct, and that he was right in holding that the appellants were not bound by such proceedings. Though they were described as under the guardianship of Hari Prasad, he was never appointed their guardian *ad litem* by any order of the Court as required by section 443 of the Civil Procedure Code, 1882; and admittedly no *bona fide* application was ever made for that purpose under section 456. The compromise was signed by Hari Prasad as guardian of the appellants, but no sanction of the Court to it was ever asked for or obtained as required by section 462 of the Code. Reference was made to *Manohar Lal v. Jadunath Singh* (1), in which under similar circumstances it was declared that a compromise was not binding, and the minors were remitted to their original rights. In the appellate Court the effect of the findings and judgements of the Judicial Commissioner and the First Additional Judicial Commissioner was that under section 98 of the Civil Procedure Code, 1908 (corresponding with section 575 of the Code of 1882) the appeal stood dismissed, and the decree of the Subordinate Judge confirmed. The exercise of the discretion of the Court to grant or refuse relief to the plaintiffs under section 42 of the Specific Relief Act (I of 1877) was not a point of law within the meaning of section 98 of the Code, and a difference of opinion between the Judges on that point did not justify the reference of the case to a third Judge, even if the Court, after having delivered judgement had power to refer the case at all to another Judge, which it was submitted it had not: *Lal Singh v. Ghansham Singh* (2) was referred to. The Second Judicial

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(1) (1906) I. L. R., 28 ALL., 585 (589); (2) (1887) I. L. R., 9 ALL., 625 (642).

L. R., 39 I. A., 129 (132).

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Commissioner exceeded his powers in coming to any finding apart from the specific point of law (assuming it was such) referred to him, and his judgement was, so far, irrelevant. Upon the facts found by the Bench of two Judges who first heard the appeal, the appellate Court had no discretion to refuse the relief claimed by the appellants. Their omission to ask in terms that the decree in their pre-emption suit should be set aside did not disentitle them to relief in the form of the declaration they sought. Reference was made to *Isri Dut Koer v. Hansbutti Koerain* (1). Even if such a discretion existed, it had been exercised by the Subordinate Judge in favour of the appellants and no sufficient reasons had been given for interfering with his exercise of discretion as the decree appealed from had done.

[*De Gruyther, K. C.*, said he did not contend that section 42 of the Specific Relief Act had any application at all to the case.]

De Gruyther, K. C. and *G. R. Lowndes*, for the respondent contended that the dismissal of the pre-emption suit in which the appellants were plaintiffs was not procured by any fraud upon them by the respondent; that had been found by the judgement appealed from. Nor had the dismissal of that suit been shown to have been in any way prejudicial to the interests the appellants then had. If that suit had been contested to the end, the appellants would have been unable to take advantage of any decree that might have been passed in their favour. There was also in the evidence recorded in the present suit nothing to show that the said suit of 1899 was not instituted *bona fide* in the interests of the appellants. The present suit, it was submitted, having been filed for the purpose of obtaining a declaratory decree only, was bad in form, inasmuch as it did not pray that the decree in the suit of 1899 in which the appellants were plaintiffs should be set aside. But, assuming that it was rightly framed in asking only for a declaratory decree, the Court had a discretion as to granting or refusing such declaration, and that discretion had been properly exercised by the appellate Court, because the appellants were not under the circumstances of the case entitled to the relief they claimed. Reference was made to the Oudh Laws Act (XVIII of 1876), sections 6 and 9, as to the nature and extent of rights of

(1) (1883) I. L. R., 10 Calo., 324 (332); L. R., 10 I. A., 150 (156).

pre-emption as having preference over other claims, though the period of time within which they must be brought was limited, namely, one year from the date of sale. The appeal should be dismissed.

Arthur Grey replied.

1913, July 23rd :—The judgement of their Lordships was delivered by Sir JOHN EDGE :—

The suit in which this appeal from a decree of the court of the Judicial Commissioner of Oudh has arisen was brought by Kunwar Partab Singh and Kunwar Ahbaran Singh in the Court of the Subordinate Judge of Sitapur against Bhabuti Singh and others on the 22nd of February, 1908. The plaintiffs, who are the appellants here, sought by their suit to have it declared that a decree which was made on the 15th of December, 1899, in a suit for pre-emption which had been brought by Bhabuti Singh, who is respondent here, on the 26th of June, 1899, against certain vendees and others, and in which the appellants, who were then minors, had been added as defendants, was not binding as against them. The plaintiffs appellants also sought in this suit to have a decree set aside which had been made on the 15th of December, 1899, in a suit for pre-emption which had been brought on the 27th of July, 1899, by them under the guardianship of one Hari Prasad against vendees and others and in which Bhabuti Singh had been added as a defendant, and they claimed to be restored to the position which they had held prior to the 15th of December, 1899, and such other relief as they were entitled to.

The material facts which their Lordships find are briefly as follows. The plaintiffs were the sons of Raja Balbhaddar Singh, who died on the 27th of December, 1897. The property of the joint family consisted of, amongst other things, shares in Mahal Ismailganj and Mahal Khushalpur, in respect of which Raja Balbhaddar Singh was at his death recorded in the Revenue Papers as the proprietor. After the death of Raja Balbhaddar Singh the defendant respondent, Bhabuti Singh, assuming to act as the guardian of the plaintiffs and as the manager of their property, obtained in April, 1898, mutation of names in the Revenue Papers in their favour. Syed Muhammad Ismail, Syed Idur Hasan and Syed Mohammad Sadiq on the 3rd of August, 1898, sold certain shares in mahal Ismailganj and mahal Khushalpur

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to Munshi Niaz Ahmad, Babu Ram and Bhagwan Das. It was in respect of that sale that the suits for pre-emption of the 26th of June, 1899, and the 27th of July, 1899, were brought. The vendors and the vendees were original defendants to these suits. Bhabuti Singh had a right of pre-emption equal but not superior to the right of pre-emption of Partab Singh and Ahbaran Singh in respect of the shares which were sold in Mahal Khushalpur, and he had a right of pre-emption inferior to theirs in respect of the shares which were sold in Mahal Ismailganj. It is obvious that the interests of the minors Partab Singh and Ahbaran Singh conflicted with the interests of Bhabuti Singh. On the 26th of June, 1899, Bhabuti Singh, on his own behalf, brought a suit to pre-empt the shares which had been sold in the two mahals, and made the vendors and vendees defendants to the suit. On the 5th of August, 1899, Bhabuti Singh caused Partab Singh and Ahbaran Singh, who were then minors, to be added as defendants to that suit. According to the amended plaint, Partab Singh and Ahbaran Singh, minors, under the guardianship of Hari Prasad, were added as defendants under an order, dated the 5th of August, 1899. The Court appears to have made an order on the 5th of August, 1899, that Partab Singh and Ahbaran Singh should be added as defendants, but it does not appear that the Court had ordered that they should be added as defendants under the guardianship of Hari Prasad. The amendment of the plaint adding Partab Singh and Ahbaran Singh as defendants was not attested by the signature of the Judge. No order appointing Hari Prasad as a guardian for the suit for Partab Singh or Ahbaran Singh was applied for or was made. By section 443 of the Code of Civil Procedure, 1882, it was enacted that—

“Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the suit.”

By section 441 of the same Code it was enacted that—

“Every application to the Court on behalf of a minor (other than an application under section 449) shall be made by his next friend, or by his guardian for the suit.”

The result is that the minors, Partab Singh and Ahbaran Singh, were not in law represented in the suit which was brought by Bhabuti Singh.

On the 27th of July, 1899, Bhabuti Singh, who was then the *de facto* guardian of the minors Partab Singh and Ahbaran Singh, and the manager of their property, caused a suit for pre-emption in respect of the sale of the 3rd of August, 1898, to be brought by Partab Singh and Ahbaran Singh under the guardianship of Hari Prasad against the same vendors and vendees who were defendants to the suit of the 26th of June, 1899. The shares which it was sought to pre-empt by the suit of the 27th of July, 1899, were the same shares which it had been sought to pre-empt by the suit of the 26th of June, 1899. On the 7th of August, 1899, Bhabuti Singh was added as a defendant to the suit of the 27th of July, 1899. On the 27th of July, 1899, Hari Prasad had in the suit in which Partab Singh and Ahbaran Singh were the plaintiffs filed an application to be appointed their guardian *ad litem*. The application purported to be made under section 456 of the Code of Civil Procedure, 1882. The Subordinate Judge to whom the application was made, by his order of the 27th of July, 1899, held that the application was unnecessary, and directed that the costs should be borne by the plaintiffs in that suit in any event.

Bhabuti Singh, the vendors, the vendees, and Hari Prasad, professing to act on behalf of Partab Singh and Ahbaran Singh, entered into an agreement of compromise, and on the 15th of December, 1899, filed in the suit in which Bhabuti Singh was the plaintiff a petition in which it was stated that it was agreed that Bhabuti Singh should pay Rs. 15,000 without costs to the vendees, and that a decree for possession of the property sold should be passed in favour of Bhabuti Singh by right of pre-emption. On that petition the then Subordinate Judge passed a decree in that suit in favour of Bhabuti Singh. As Hari Prasad had not been appointed guardian for the suit for the minors Partab Singh and Ahbaran Singh, they were in law unrepresented, and the decree did not bind them. Further, Hari Prasad had not obtained the leave of the Court to enter into that agreement of compromise on behalf of the minors Partab Singh and Ahbaran Singh.

In pursuance of the agreement of compromise to which their Lordships have referred, Hari Prasad, professing to act as guardian of the minors Partab Singh and Ahbaran Singh, on the 15th of December, 1899, presented to the Court a petition in the suit in

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which Partab Singh and Ahbaran Singh were the plaintiffs, in which it was stated that it had been settled between the parties that a decree should be passed in favour of Bhabuti Singh in his suit; that the compromise had been filed in Court; and that Partab Singh and Ahbaran Singh were willing to withdraw their claim; and it was prayed that the withdrawal of their claim should be sanctioned, and that their suit should be dismissed. That petition was signed by Hari Prasad, Bhabuti Singh, the vendors, and the vendees. Hari Prasad appeared in Court in support of that petition, and stated that:—"Since Bhabuti Singh has acquired this *hakkiyat* on the basis of pre-emption, therefore the minors have now no objection, and they do not advance a claim to the said *hakkiyat* as against Bhabuti Singh." On that petition the then Subordinate Judge dismissed the suit of Partab Singh and Ahbaran Singh. It does not appear that the Subordinate Judge was informed that the minors Partab Singh and Ahbaran Singh were in law unrepresented in the suit of the 26th of June, 1899, in which Bhabuti Singh had obtained a decree as against them and others for the pre-emption of the shares which Partab Singh and Ahbaran Singh were in their suit claiming to pre-empt; nor does it appear that the Subordinate Judge was informed that the petition for the dismissal of the suit of Partab Singh and Ahbaran Singh was made in pursuance of an agreement of compromise which Hari Prasad acting as next friend of the minors Partab Singh and Ahbaran Singh, had entered into without the leave of the Court. This Board has held in *Manohar Lal v. Jadunath Singh*, (1) that in cases to which section 462 of the Code of Civil Procedure, 1882, applies there ought to be evidence that the attention of the Court was directly called to the fact that a minor was a party to the compromise, and it ought to be shown, by an order on petition, or in some way not open to doubt, that the leave of the Court was obtained, and that it is not sufficient proof that the exigencies of section 462 were complied with to show that the minor was described in the title of the suit as a minor, as in that case, suing "under the guardianship of his mother," and that the terms of the compromise were before the Court. The agreement of compromise in pursuance of which Hari Prasad obtained the

(1) (1906) I. L. R., 28 ALL., 565; L. R., 33 I. A., 128.

dismissal of the suit of Partab Singh and Ahbaran Singh was void as against them and on that ground, if there were no other, they are entitled to have the decree dismissing the suit of the 27th of July, 1899, set aside.

Hari Prasad had been a karinda of Raja Balbhaddar Singh, and he acted in a subordinate capacity under Bhabuti Singh in the management of the property of Partab Singh and Ahbaran Singh after Bhabuti Singh assumed the guardianship of the minors. Their Lordships agree with the learned Judicial Commissioner that in the proceedings to which they have referred "Hari Prasad was a mere dummy, that there was no one to protect the interests of the plaintiffs (Partab Singh and Ahbaran Singh), and that in fact Bhabuti Singh took advantage of his position." Their Lordships find that Hari Prasad was introduced into the suits of 1899 by Bhabuti Singh as the guardian or next friend of the minors Partab Singh and Ahbaran Singh to advance the interests of Bhabuti Singh and to defeat the interests of Partab Singh and Ahbaran Singh, for whom previously and subsequently Bhabuti Singh was acting as guardian and as the manager of their property. Hari Prasad throughout acted under the directions and on behalf of Bhabuti Singh and in his interests, and contrary to the interests of Partab Singh and Ahbaran Singh and to their detriment. Upon these findings of fact it follows as an obvious conclusion that the compromise and the proceedings which were taken in pursuance of it were not binding upon Partab Singh and Ahbaran Singh, and it is clear, apart from the other considerations which their Lordships have already discussed, that Partab Singh and Ahbaran Singh are also on these findings of fact entitled to relief.

The Subordinate Judge of Sitapur in this suit gave Partab Singh and Ahbaran Singh a decree on the 29th of July, 1908. From that decree Bhabuti Singh appealed to the Court of the Judicial Commissioner of Oudh. The appeal was heard by a Bench consisting of the Judicial Commissioner and the First Additional Judicial Commissioner. The learned Judicial Commissioner, on the facts found by him, held that Partab Singh and Ahbaran Singh were entitled to the decree which they had obtained from the Subordinate Judge, and that the appeal should be dismissed with costs. The First Additional Judicial Commissioner agreed with

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the findings of the Judicial Commissioner on all the material facts. In his judgement the First Additional Judicial Commissioner stated :—

“I agree with my learned colleague in holding that it is satisfactorily established that the appellant [Bhabuti Singh] was *de facto* manager of the minors' property at that time [1899], and that Hari Prasad in withdrawing the minors' suit acted under his instructions. If the case had been fought out the minors [Partab Singh and Ahbaran Singh] would probably have obtained a decree for the larger portion of the property and lots might have been drawn with respect to a smaller portion thereof. In arranging for this compromise the appellant acted in his own interests, and the reason why he got a pre-emptive suit instituted on behalf of the minors was to protect himself in case other persons who had a better right of pre-emption than himself instituted suits claiming pre-emption of the property. After the period of limitation for such suits had expired he withdrew the minors' claim and obtained a decree in his own favour.”

Notwithstanding that finding the First Additional Judicial Commissioner, for reasons which appear to their Lordships to be irrelevant, considered that, exercising a discretion under section 42 of the Specific Relief Act, 1877, he ought to refuse to grant the relief for which Partab Singh and Ahbaran Singh had prayed, and held that the appeal should be allowed and the suit dismissed with costs. Section 42 of the Specific Relief Act, 1877, did not apply. The Judicial Commissioner and the First Additional Judicial Commissioner having differed in opinion on the point of law as to whether section 42 of the Specific Relief Act, 1877, applied to the case, directed that the appeal should be laid before the Second Additional Judicial Commissioner under section 98 of the Code of Civil Procedure, 1908. The Second Additional Judicial Commissioner did not apparently confine himself to a consideration of the point of law, with which alone he had under section 98 of the Code of Civil Procedure, 1908, jurisdiction to deal; he apparently agreed with the opinion of the First Additional Judicial Commissioner that section 42 of the Specific Relief Act, 1877, applied, and held that the appeal should be allowed and the suit should be dismissed with costs in both Courts. In accordance with the opinions of the First Additional Judicial Commissioner and the Second Additional Judicial Commissioner a decree was passed on the 14th of March, 1910, by the Court of the Judicial Commissioner of Oudh allowing the appeal and dismissing the suit with costs. From that decree this appeal has been brought.

Their Lordships are of opinion that this appeal should be allowed and the decree of the Court of the Judicial Commissioner should be set aside, and that the appellants, Partab Singh and Abharan Singh, should have a decree setting aside the decree of the 15th of December, 1899, in their suit, and declaring that the agreement of compromise and the decree of the 15th of December, 1899, in the suit of Bhabuti Singh are not binding upon them or either of them, and that they are entitled to such rights as they had before their suit was dismissed on the 15th of December, 1899. Their Lordships will advise His Majesty accordingly. Bhabuti Singh the respondent must pay the costs of this appeal and of his appeal to the Court of the Judicial Commissioner of Oudh.

Appeal allowed.

Solicitors for the appellants :—*Ranken Ford, Ford & Chester.*

Solicitors for the respondent :—*T. L. Wilson & Co.*

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Before Mr. Justice Ryves and Mr. Justice Lyle.

BABU RAM (DEFENDANT) v. SAID-UN-NISSA AND OTHERS (PLAINTIFFS)*.

Act No. VIII of 1890 (Guardians and Wards Act), section 29—Guardian and minor—Certificated guardian—Sale—Powers of certificated guardian different from those of a guardian under the general rule of law.

The powers of a certificated guardian are regulated and defined by the Guardians and Wards Act, and the rule of law, that, there being no mutuality in a contract to which a minor was a party, it could not be enforced by him, does not apply to a contract for the sale of immovable property entered into by the certificated guardian of a minor with the sanction of the Court; such a contract is valid and a suit for damages for breach of the contract will lie on behalf of the minor. *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri* (1) distinguished.

THE facts of this case are set forth in the judgement of the Court; but, briefly, this was a suit for damages on account of the breach by the defendant of a contract to purchase certain immovable property, entered into with the certificated guardian of certain minors with the sanction of the Court. The property was subsequently sold by auction at less than the covenanted price;

* Second Appeal No. 42 of 1913 from a decree of D. L. Johnston, District Judge of Meerut, dated the 2nd of October, 1912, modifying a decree of Muhammad Husain, First Additional Subordinate Judge of Meerut, dated the 24th of July, 1912.

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