1913

January, 8.

Before Mr. Justice Sir Henry Griffin and Mr. Justice Chamier.

SHAMI NATH SAHI AND ANOTHER (DEFENDANTS) *v.* LALJI CHAUBE AND ANOTHER (PLAINTIFFS.) *

Act No. IX of 1875 (Indian Majority Act), section 3—Guardian and minor —Effect of appointment of Hindu widow as guardian of her minor sons— Sale of minor's property.

A Hindu died leaving a widow and two minor sons. The widow was appointed in 1890 guardian of the two sons, and in 1891 obtained sanction from the District Judge for the sale of half of the property of the minors. In 1906, the widow and the elder son, who had then attained majority, sold part of the property of the sons amounting to somewhat less than half. Within three years of his coming of age the younger son sued for a declaration that the sale of 1906, and mortgage executed in 1902 were not binding on his interest in the property purporting to be dealt with thereby.

Held (1) that the appointment of the mother as guardian had the effect of prolonging the minority of both sons until they reached the age of twenty-one years; and (2) that the sanction of the Judge given in 1891 could not validate a a sale which was not made until 1906. *Gharib-ullah* v. *Khalak Singh* (1) distinguished.

THE facts of this case were as follows:—

One Udit Narain Chaube died several years ago leaving a widow, Musammat Rukmina, and two sons, Lalji Chaube and Gopal Chaube, respondents to this appeal. Both sons were minors when their father died. Mutation of names seems to have been effected in favour of the widow as well as the two sons. But it is common ground that the two sons only succeeded to the property with which we are now concerned, namely, a five anna four pie share in a village called Koelaswa. In September, 1890, the widow was appointed by the court to be the guardian of her two sons, and in the following year she obtained from the District Judge permission to sell half the share in the village. No action seems to have been taken on that permission. On the 10th of February, 1906, the widow and the elder son, Gopal, who had attained majority, sold a two anna, 3 pie, 13½ chitaks share to the appellants for a stated consideration of Rs. 5,774. The younger son, Lalji, alleging that he came of age less than three years before the institution of the suit, sued for a declaration that the sale deed of the 10th of February, 1906, and a mortgage, dated the 1st December, 1902, were not binding on him, and prayed that they may be cancelled and that he might be put

* First Appeal No. 371 of 1911 from a decree of Jagat Narain, Subordinate Judge of Gorakhpur, dated the 5th of August, 1911.

(1) (1903) I. L. R., 25 All., 407.

1913

SHAMI NATH SAHI v. LALJI CHAUBE.

in possession of the share which was sold. The court below decreed the claim so far as it relates to the plaintiff's own share, that is, as to half of the property covered by the deed of sale. The purchasers appealed to the High Court.

Mr. *O. R. Sawhny*, for the appellants.

Munshi *Kalindi Prasad* and Munshi *Durga Charan Singh*, for the respondents.

GRIFFIN and CHAMIER, J.J.:—Udit Narain Chaube died several years ago leaving a widow, Musammat Rukmina, and two sons, Lalji Chaube and Gopal Chaube, respondents to this appeal. Both sons were minors when their father died. Mutation of names seems to have been effected in favour of the widow as well as the two sons. But it is common ground that the two sons only succeeded to the property with which we are now concerned, namely, five annas four pies share in a village called Koelaswa. In September, 1890, the widow was appointed by the court to be the guardian of her two sons, and in the following year she obtained from the District Judge permission to sell half the share in the village. No action seems to have been taken on that permission. On the 10th February, 1906, the widow and the elder son, Gopal, who had attained majority, sold a two anna, 3 pie, 13½ chitaks share to the appellants for a stated consideration of Rs. 5,774. The younger son, Lalji, who alleges that he came of age less than three years before this suit was brought, has sued for a declaration that the sale deed of the 10th of February, 1906, and a mortgage, dated the 1st December, 1902, are not binding on him and he prays that they may be cancelled and that he may be put in possession of the share which was sold. The court below has decreed the claim so far as it relates to the plaintiff's own share, that is, as to half of the property covered by the deed of sale. The purchasers have appealed. The first point taken in appeal is that the suit is barred by limitation for two reasons, namely, that the plaintiff attained majority when he completed his eighteenth year, and, secondly, that, even if the plaintiff attained his majority when he completed his twenty-first year, the present suit was not instituted within three years of the date on which he attained his majority. In support of the first argument we are referred to the

1913

SHAMI NATH SAHI v. LALJI CHAUBE.

decision of the Privy Council in *Gharib-ullah* v. *Khalak Singh*, (1). In that case, one Chet Singh died leaving three sons, two of whom were minors, and his widow was appointed by the Court to be the guardian of the persons and property of the two minors. Their Lordships held that the interest of a member of a joint family was not individual property at all and that therefore the widow of Chet Singh, though appointed guardian of the minors by the court, had nothing to do with the family property and had no right to join with the eldest son in making a transfer of it. Their Lordships expressly refrained from deciding the question whether the appointment of the widow as guardian of the two minors would have the effect of prolonging their minority. In the present case when Musammat Rukmina was appointed guardian of her sons, both of them were minors. The appointment was therefore not open to the objection considered by their Lordships of the Privy Council, and we must hold that under section 3 of the Indian Majority Act the sons did not attain majority until they completed their twenty-first year. The result is that the plaintiff Lalji must be held to have attained his majority when he completed his twenty-first year. On the evidence the court below has held that the present suit was instituted within three years of the date on which the plaintiff completed his twenty-first year. We have not been asked to review that evidence. The Subordinate Judge seems to have given good reason for the conclusion at which he has arrived, and we, therefore, agree with him in holding that the suit is not barred by limitation.

The second point taken by the appellants is that the sale to them was made with the sanction of the District Judge. The so-called sanction was obtained in September, 1891. The sale deed in question was executed in February, 1906, about fourteen and a half years afterwards. The sanction is referred to in the sale deed as if it authorized the transfer of the property. But it is quite clear that the District Judge in 1891 did not intend to sanction the transfer of the minor's property fifteen years later when the circumstances of the family must have altered considerably. In our opinion the transfer cannot be supported by the sanction given in

(1) (1903) I. L. R., 25 All., 407.

1891. We would observe also that this point was not definitely taken in the memorandum of appeal before us.

There remains the question whether the transfer is supported by legal necessity. We were referred to some cases in which the question was considered whether transfers made by a father were binding on his sons. Those cases have no bearing on the present case. If the transfer is to be held valid it must be on the ground that it was made for legal necessity and it was not enough for the appellants to show that part of the consideration was devoted to the discharge of pre-existing debts. Of the stated consideration of Rs. 5,774, a sum of Rs. 3,319-8-0 was left in the hands of appellants for the discharge of a mortgage held by one Doman Bhagat. The plaintiff concedes that that mortgage is binding on him. But it is not suggested that it was necessary to sell the property merely to discharge that mortgage. As a matter of fact the appellants have not yet discharged that mortgage. The remainder of the consideration is made up of several items, each of which was considered separately by the court below. We have not been taken through the evidence regarding these items. But it appears from the judgement of the Subordinate Judge that all that was attempted to be proved was that the majority of the various items were previously existing debts. There is no evidence that these debts were incurred for necessity or for the benefit of the family, and there is no evidence that the appellants made any inquiry regarding them or that they were induced to believe and did believe that the debts were incurred for legal necessity. One of the appellants was examined as a witness, and he does not even suggest that he made any inquiry. The result is that the appellants have failed to prove that there was any necessity for the sale of the property. There being no cross appeal by the plaintiff in this case, we are relieved from the necessity of considering whether the sale should have been set aside in its entirety. The decree, so far as it goes, appears to be correct. The appeal fails, and is dismissed with costs.

Appeal dismissed.