

Before Mr. Justice Dalal.

1928
May, 16.

RADHA KISHAN (DEFENDANT) v. BHOORE LAL AND
ANOTHER (PLAINTIFFS).*

Act No. IX of 1872 (Indian Contract Act), section 11—Act No. I of 1872 (Indian Evidence Act), section 115—Contract entered into with an infant representing himself to be of full age—Estoppel—Equitable relief.

Where a suit is brought upon a contract entered into with an infant on the strength of a representation made by the infant that he is of full age, the defendant will not be estopped from pleading his minority; but, *semble*, upon equitable grounds he might be made liable for any loss which the plaintiff might have suffered in carrying out the contract entered into with him.

THE facts of this case sufficiently appear from the judgement of the Court.

Munshi Panna Lal, for the applicant.

Munshi Sarkar Bahadar Johari, for the opposite parties.

DALAL, J. :—To the plaintiffs' suit for recovery of money due on a contract the reply was that the defendant Radha Kishan was a minor on the date of the contract. According to a guardianship certificate given by a District Court to his mother the date of birth of Radha Kishan is the 14th of August, 1907. The present contract was effected on the 16th of January, 1926, i.e., before Radha Kishan reached the age of 21. He was, therefore, a minor on the date of the contract. The learned Judge of the lower court, however, held him liable under the contract on this ground:—"When a person between 18 and 21 years of age enters into a contract, with the knowledge that his minority has been extended by reason of an order under section 7 of the Guardians and Wards Act, with a person who is not

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aware of that fact, there is misrepresentation and legal fraud on his part and he is estopped from taking advantage of his minority to show that the contract by him is inoperative". Obviously, though he makes no such reference, the Judge is referring to the provisions of section 115 of the Evidence Act. He, however, quotes no authority for his proposition. In Woodroffe and Ameer Ali's Evidence Act (1915) the question is discussed at page 765, and they sum up the result of decisions as follows :—

"A person under disability cannot do by an act *in pais* what he cannot do by deed. He cannot by his own act enlarge his legal capacity to contract or to convey. He cannot be made liable upon a contract by means of an estoppel under this section, if it be elsewhere declared that he shall not be liable upon a contract. To say that by acts *in pais* that could be done in effect which could not be done by deed would be practically to dispense with all the limitations the law has imposed on the capacity to contract. So if a person sues an infant upon a contract, such contract having been entered into on the faith of a representation by the infant that he was of full age, the infant will not be estopped from pleading his minority in answer to a claim to fix him with personal liability to a money decree, notwithstanding his fraudulent representation. But though this section may not apply, the court may, in other cases acting on well-recognized principles of equity, relieve against an infant's fraud".

So in a case like the present the plaintiffs cannot prevent the defendant from pleading minority on the ground of estoppel. At the same time the defendant would be liable for any loss the plaintiffs may have suffered in carrying out the contract and arrangement entered into between the parties. In the present case the plaintiffs fixed the price of the 101 bags according to the

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contract at Rs. 2,653, including interest and miscellaneous costs, and stated that they had received Rs. 2,346. It does not appear that under the contract they suffered any damage or were out of pocket to any extent. They have not disclosed for what price they themselves purchased the 101 bags. In a case like the present I think that on the grounds of equity the plaintiffs could have recovered from the defendant any sum they could have proved to have been lost by them in making the purchase at the cost price to them and in selling. From the figures quoted above I come to the conclusion that they have suffered no such damage. No ground of equity, therefore, arises, and the defendant cannot be estopped from pleading minority.

Another ground for the application was that the suit was not of a nature cognizable by a Court of Small Causes. I do not agree. This is not a suit for an account. In every suit for money some account has to be prepared. In the present case there was only one transaction and the claim is for a specific sum of money as the result of the purchase and sale of goods under one agreement. This is not a case where money may have been advanced to a party from time to time, or purchases made from him from time to time according to some arrangement entered into between the parties. The suit was rightly entertained by the lower court.

In the result I set aside the decree of the lower court and dismiss the plaintiffs' suit; but without any order as to costs.