

Before Mr. Justice Daniels and Mr. Justice King.

BINDA (PLAINTIFF) v. MANGALA AND OTHERS
(DEFENDANTS).*

1926
May, 18.

Parties to suit—One of two plaintiffs having a joint interest in the subject-matter of the suit impleaded as a minor when in fact he was of full age—Suit dismissed—Subsequent suit by ostensible minor to set aside decree—*Estoppel*.

A suit was filed, practically, by two brothers who had a common interest in the subject-matter; formally, by the elder brother for himself and as guardian of the younger brother, who was stated to be a minor. As a matter of fact the younger brother came of age about a month before the suit was filed. The younger brother took an active interest in the proceedings and helped the elder in looking after the suit. The suit was dismissed, and subsequently the younger brother sued to set aside the decree upon the ground that he had been improperly represented in the suit as a minor.

Held that the plaintiff had no case.

Ganga Ram v. Mihin Lal (1), followed. *Sheorania v. Bharat Singh* (2) and *Ruhul Amin v. Shankar Lal* (3), distinguished.

Munshi *Narain Prasad Ashtana*, for the appellant.

Munshi *Girdhari Lal Agarwala*, for the respondents.

DANIELS and KING, JJ. :—This is a suit by one Binda to set aside a decree passed against himself and his brother Girwar, on the ground that he was not properly represented in that suit. The suit was filed by the defendant's elder brother Girwar on his own behalf and as next friend of the present plaintiff Binda, who was alleged to be a minor. It now turns out that Binda attained majority one month before the suit was filed. It appears that Binda and his

* Second Appeal No. 1961 of 1923, from a decree of E. Bennet, District Judge of Agra, dated the 30th of July, 1923, confirming a decree of Sheobaran Singh, Munsif of Fatehabad, dated the 12th of March, 1923.

(1) (1906) I.L.R., 28 All., 416. (2) (1897) I.L.R., 20 All., 90.

(3) (1923) I.L.R., 45 All., 701.

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brother have a common interest, and it is further found by the court below that Binda came to court with Girwar and helped to look after the suit. Under these circumstances, the courts below, following the ruling in *Ganga Ram v. Mihin Lal* (1), have held that the plaintiff is not entitled to get the decree set aside. The case relied on was a case in which a defendant was impleaded as a minor under the guardianship of his mother. He and his mother jointly defended the suit, and at no period did he raise the objection that he was not a minor when it was instituted. This Court held that it was not competent for the defendant to sue subsequently to have the decree declared not binding on the ground that he was in fact of full age when it was instituted. The appellant in this Court distinguishes this case on the ground that it was the case of a defendant and not of a plaintiff and relies on the rulings in *Sheorania v. Bharat Singh* (2) and *Ruhul Amin v. Shankar Lal* (3). The former was a case in which a plaint was instituted on behalf of an alleged minor by one Lachhmi Narain, although the alleged minor was of full age when the plaint was filed. The court found that the whole proceedings were carried on by Lachhmi Narain, a man who had no interest whatever in the property in suit, and had no cause of action against the defendant. It held, therefore, that there was really no suit on behalf of the plaintiff at all and therefore the decree was not binding on him. The case of *Ruhul Amin v. Shankar Lal* (3) was similar. There also it was held that there was no valid plaint before the court and, therefore, the whole proceedings were without jurisdiction. In neither of those cases was the circumstance present that the alleged minor himself took an active part in the prosecution of the

(1) (1906) I.L.R., 28 All., 416.

(2) (1897) I.L.R., 20 All., 90.

(3) (1928) I.L.R., 45 All., 701.

suit, and in both cases there was only one plaintiff. In the present case, there certainly was a valid plaint before the court on behalf at any rate of the plaintiff Girwar. In our opinion, this is a clear case of estoppel against the appellant. If the plea of majority had been taken in the trial court, the plaint might have been amended and the difficulty removed. By taking an active part in the prosecution of the case without raising any objection to the legality of the plaint, the appellant clearly placed the respondents at a disadvantage, and it is not open to him, now that a decree has been passed, to come into court and allege that the decree is a nullity and not binding on him. In our opinion the decree of the court below is correct, and we accordingly dismiss this appeal with costs.

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Appeal dismissed.

Before Mr. Justice Daniels and Mr. Justice King.

MOTI CHAND AND OTHERS (DEFENDANTS) v. KUNWAR
 KALIKA NAND SINGH (PLAINTIFF).*

 1926
 May, 18.

Hindu law—Stridhan—Succession—Order of devolution of the stridhan property of a childless Hindu female.

The stridhan property of a childless Hindu female devolves on her death on her husband, and failing the husband, on his sapindas, and on failure of the husband's sapindas, it devolves on the blood relations of the deceased. *Kanakammal v. Ananthamathi Ammal* (1) and *Ganpat Rama Joshi v. The Secretary of State for India in Council* (2), followed.

THE facts of this case are fully stated in the judgement of the Court.

Munshi *Damodar Das* and Pandit *Rama Kant Malaviya*, for the appellants.

* Second Appeal No. 1366 of 1923, from a decree of K. G. Harper, District Judge of Benares, dated the 28th of July, 1923, reversing a decree of Kauleshar Nath Rai, Subordinate Judge of Benares, dated the 19th of April, 1923.

(1) (1912) I.L.R., 37 Mad., 293.

(2) (1920) I.L.R., 45 Bom., 1106.