

*Before Justice Sir Shah Muhammad Sulaiman and
Mr. Justice Young.*

CHANDI PRASAD MISIR (DEFENDANT) *v.* BALAJI MISIR (PLAINTIFF) AND MAHARAJ PAT' MISRA AND OTHERS (DEFENDANTS).*

1930
November,
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Civil Procedure Code, order XXXII, rule 3—Minor member of joint Hindu family impleaded along with the manager—Appointment of guardian ad litem necessary—Hindu law—Joint Hindu family—Manager's representation of whole family.

The principle underlying the cases in which it has been held that the manager of a joint Hindu family represents the whole family does not apply to a case where a minor member is impleaded as such but no attempt is made to get a guardian *ad litem* appointed for him. If the plaintiff does not choose to sue the manager alone but also impleads the minor member in his individual capacity, it is his duty to get a proper guardian appointed for him, and if this is not done the decree cannot bind the minor.

Mr. *Harnandan Prasad*, for the appellant.

Mr. *Shiva Prasad Sinha*, for the respondents.

SULAIMAN and YOUNG, JJ. :—This is a defendant's appeal arising out of a suit for a declaration that a pre-emption decree obtained by the respondents is not binding on the plaintiff because he was a minor at the time when the decree was passed. One of the pleas raised in defence was that in the previous suit the plaintiff's uncle Maharaj Pat, who was the *karta* of the joint family, had been impleaded and was in a position to take all the possible pleas which could have been raised by the plaintiff because their interests were identical. The courts below have held that the decree is not binding on the minor although Maharaj Pat had been impleaded in the previous suit.

It is contended before us that when the manager of a joint Hindu family was sued and it was not necessary

*Second Appeal No. 769 of 1929, from a decree of Muhammad Zia-ul Hasun, Second Additional Judge of Gorakhpur, dated 15th of February, 1929, confirming a decree of Ali Raza, second Additional Mansif of Deoria, dated the 20th of June 1928.

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to describe him as such, the decree was binding upon the whole family even though a minor member was not represented by a duly appointed guardian, and that the plaintiff could not get the declaration without showing that he had been prejudiced by the omission to appoint a guardian for him. We think the principle underlying the cases in which it has been held that the manager of a joint Hindu family represents the whole family does not apply to a case where a minor member is impleaded as such but no attempt is made to get a guardian appointed for him. If the plaintiff does not choose to sue the manager alone but also impleads the minor member in his individual capacity, it is his duty to get a proper guardian appointed for him. If this procedure has not been followed the decree cannot bind him. We therefore think that the court below was right. The appeal is dismissed with costs.

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ber, 26.

SAID-UN-NISSA BIBI (PLAINTIFF) v. RUQAIYA BIBI
AND OTHERS (DEFENDANTS).*

Guardians and Wards Act (VIII of 1890), sections 27, 29, 33—Muhammadan law—Reference to arbitration—Power of guardian to refer to arbitration dispute involving property of minor—Evidence Act (I of 1872), section 35—Certificate of guardianship—Admissibility in evidence of entry in certificate as to age of the minor.

The mother of a Muhammadan minor was appointed guardian under the Guardians and Wards Act. A dispute having arisen about the division of the property left by the minor's father, the mother joined in a reference of the dispute to arbitration; she did so as guardian of the minor and also on her own behalf. The award given by the arbitrators was made a rule of court and a decree was passed in accordance therewith, the minor being represented in the proceeding by the mother. The minor, after attaining majority, sued to avoid the decree on the ground of fraud and undue influence

*First Appeal No. 366 of 1926, from a decree of Raj Behari Lal, Subordinate Judge of Ghazipur, dated the 27th of March, 1926.