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own point of view. A mere general statement in his judgment that oral and documentary evidence prove beyond all doubt that the plaintiff has not been in possession of the property in suit within limitation and that the defendant has been in possession of the same adversely to the plaintiff, is, in my opinion, not a decision of the case. Such a judgment can be written in every case and is not what is contemplated by the rule of law laid down in order XLI, rule 31.

I, therefore, remanded the case for fresh findings on the two main issues involved in the case, namely, the plaintiff's possession within limitation, and the adverse possession of the defendant. The learned Subordinate Judge should fix a date, hear the parties again and send his findings after due consideration of the evidence on the record within two months from this date. Parties will be allowed ten days' time from the date when findings are notified to them for filing objections.

Case remanded.

APPELLATE CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge, and Mr. Justice Wazir Hasan.

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April, 19.

SUMER SINGH (PLAINTIFF-APPELLANT) *v.* AMAR SINGH AND OTHERS (DEFENDANTS-RESPONDENTS).*

Pre-emption—Minor, suit on behalf of—Suit by next friend to acquire property for himself and not for benefit of minor, maintainability of.

Where in a suit for pre-emption filed by a next friend on behalf of a minor it was found that the suit was instituted by the next friend in his own interest to acquire the property for himself and was not for the benefit of the minor, held, that the suit was not maintainable and was liable to be dismissed on that ground. [(1835) Simons, 234; Revised reports,

* First Civil Appeal No. 18 of 1925, against the decree, dated the 21st of October, 1924, of Khurshed Husain, Subordinate Judge of Sitapur, dismissing the plaintiff's suit.

vol. 40, p. 127; (1839) 1 Beav., 583; Revised reports, vol. 49, pp. 190 and 460; (1840) 2 Beav., 460; Revised reports, vol. 50, p. 243; (1833) 2 M. and K. 243; Revised reports, vol. 39, p. 190 and 3 M.I.A., 329, relied upon.]

Messrs. *A. P. Sen* and *H. K. Ghosh*, for the appellant.

Messrs. *Bisheshwar Nath Srivastava* and *Bishambhar Nath Srivastava*, for the respondents.

STUART, C. J., and HASAN, J.:—This is the plaintiff's appeal from the decree of the Subordinate Judge of Sitapur, dated the 21st of October, 1924, and it arises out of a claim for pre-emption in respect of a sale of certain villages evidenced by the deed of the 17th of July, 1922. This deed was executed by Thakur Amar Singh, father of the plaintiff, both in his own behalf and in behalf of the plaintiff who was a minor on the date of the deed and is still a minor. The consideration for the sale as stated in the deed is the sum of Rs. 1,98,600 and there is no question before us that any part of the consideration is not genuine. The vendees are Lala Madho Ram, Lala Raghubar Dayal, Lalta Salek Chand and Lala Misri Lal, defendants Nos. 2 to 5 to the present suit. Thakur Amar Singh, father of the plaintiff, is defendant No. 1 to this suit.

The present suit was instituted by one Thakur Raghunath Singh purporting to act as the next friend of Thakur Sumer Singh, the minor plaintiff.

There were various defences to this suit but we propose to dispose of this appeal on one ground only. This ground is the subject-matter of issue No. 1 which is as follows: Is the suit for the benefit of the minor and is it maintainable? The trial court has decided this issue in the negative and has dismissed the suit. On the merits of the case, we are of opinion

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that the decision of the trial court on the issue mentioned above is correct and should be maintained.

The exact line of defence which gave rise to the issue mentioned in the preceding paragraph is that the object of the suit was to enable the next friend Raghu Nath Singh and his father Durga Singh to acquire the property in suit for themselves and consequently the suit was not instituted for the benefit of the plaintiff.

In the first place the plaintiff's father Amar Singh has resisted the suit on the ground just now mentioned. In his application, dated the 10th of August, 1923, Amar Singh stated that the plaintiff was only ten years old and was living jointly with him and his grandmother; that the family property was burdened with a debt of about Rs. 4,00,000; that the object of the sale in question was to satisfy a portion of those debts; that the minor had never evinced any desire to recover the sale property by means of a claim for pre-emption; that neither the minor nor the family were possessed of any means to pay the pre-emption money in case of success in this suit; and that the sole object of the next friend, whose interests were adverse to those of the minor, was to acquire the property for himself. By means of this application Amar Singh finally prayed that if the suit were at all allowed to proceed, Musammat Maharani Kuer, grandmother of the plaintiff should be appointed as the next friend. The prayer for the appointment of Musammat Maharani Kuer as the next friend of the plaintiff was opposed by Raghu Nath Singh by means of his application of the 28th of September, 1923.

Chandrika Bux Singh was the grandfather of the plaintiff. He died in September, 1913. There

is ample evidence on the record to establish the fact that there had been continuous and protracted litigation between Durga Singh, the father of Raghu Nath Singh, the next friend, and Chandika Bux Singh from the year 1899 to 1907 (exhibits A36 and A39). When Durga Singh's attempts to acquire the property of the plaintiff's family by means of that litigation proved infructuous he then changed his tactics and began advancing loans to Amar Singh and taking mortgages of the family property. The property was held by the defendants Nos. 1 to 5 under several mortgages previous to the sale in question and at the instance of Durga Singh a suit for redemption of those mortgages was instituted by Amar Singh both in his own name and in the name of his minor son the plaintiff. The suit ended in a decree for redemption, dated the 16th of March, 1922, on payment of nearly Rs. 3,00,000. It appears that after the redemption decree Amar Singh succeeded in extricating himself from the hold of Durga Singh and effected the sale in question in favour of the defendants Nos. 2 to 5. The sale had the effect of wiping off the redemption decree to the extent of Rs. 1,98,600 and saving one village and a large area of *sir lands* which were liable to be sold in pursuance of the decree, if the payment required by the decree had not been made. It is more than probable that it would not have been made. The rest of the decretal amount was satisfied by means of a mortgage which Amar Singh gave in favour of the decree-holders. The sale was, therefore, highly beneficial to the entire family; but it had the further effect of entirely neutralizing the persistent efforts of Durga Singh to acquire the property belonging to the plaintiff's family. Not content to leave the things at rest there the next move taken by Durga Singh was the institution of the present suit by appearing in the

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garb of his son Raghu Nath Singh as the next friend of the minor plaintiff.

It is quite clear to us as it was to the learned Judge of the trial court that the plaintiff has got no means to pay the pre-emption price in the event of his success in the present suit. Indeed, Chandrika Singh, plaintiff's witness No. 1, who must be taken to have been produced by Raghu Nath Singh, stated that Durga Singh's sons had agreed to take the property in suit under a usufructuary mortgage from the plaintiff. These being the facts of the case we are clearly of opinion that the action of Raghu Nath Singh in instituting the present suit is in his own interest and is not for the benefit of the minor.

The next question for determination is: Can and should this suit be dismissed on that finding? Our answer is in the affirmative. In *Walker* v. *Else* (1), SHADWELL, V. C., ordered the bill filed on behalf of an infant to be taken off the file and in doing so made the following observation:—

> "Where a suit is instituted on behalf of an infant, it should be manifest to the court that the next friend is likely to conduct the suit for the benefit of the infant. It is reasonably plain, from the facts stated in the affidavits, that the bill in the first cause was filed, not for the benefit of the infant, but to gratify a spite entertained by the next friend against the testator's widow, because she had discharged him from her service."

In *Fox* v. *Suwerkrop* (2), on the report of the Master that a suit instituted on behalf of infants was

(1) (1835) 7 Simons, 234; Revised reports, vol. 40, p. 127.

(2) (1839) 1 Beav., 583; Revised reports, vol. 49, p. 460.

improperly instituted Lord LANGDALE, M. R., dismissed the bill and said :—

> " The court has given great latitude in allowing bills to be filed in the name of infants by a person assuming the character of next friend, it is, therefore, the more necessary to see that this liberty should not be abused. In this case it has been ascertained that the suit has been improperly instituted and there is no evidence of circumstances affording any excuse for its institution; I have, therefore, no hesitation in saying, that the bill must be dismissed, with costs to be paid by the next friend."

On a motion in the case of *Guy* v. *Guy* (1), Lord LANGDALE, following the previous decisions, dismissed the suit filed on behalf of a minor by a next friend on the ground that the suit was improper.

In an earlier case of *Naldar* v. *Hawkins* (2), the observations of Lord BROUGHAM, L. C., are very instructive and they are as follows :—

> " The true and the just principle which should govern all such cases is this. No discouragement ought to be thrown in the way of persons *bonâ fide* suing as next friends; but no undue facility should be given to mere volunteers, who interfere rather for their own purposes than for the infant's advantage. While they appear to act *bonâ fide*, they will be protected; the presumption will rather be in their favour; the proof will rather be thrown upon those who impeach their motives; the leaning will be more for than against

(1) (1840) 2 Beav., 460; Revised reports, vol. 50, p. 243.

(2) (1883) 2 M. and K. 243; Revised reports, vol. 39, p. 190.

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them. But no strained presumptions will be made to protect them; no forced constructions will be put on their conduct; no benefit from bare possibilities will be conjured up in their behalf. They must be content to have their motives appreciated and their acts judged like other parties. If they have involved themselves in suspicion, their proceedings must be subjected to inquiry; if they have incurred just blame, be it by improper interference, or be it by unnecessary interference, they must abide the consequences; the suit at their instance must be stayed; or if the suit be useful to the infant, but the parties instituting it be unfit to conduct it, they must give place to others in whom the court can better repose confidence."

In *Kerakoose* v. *Serle* (1), their Lordships of the Privy Council said :—

"But whatever may be the propriety of making provision by the appointment of a public officer for the institution of suits on behalf of infants, it is of the utmost importance that no person should be appointed for that purpose, of whom even a suspicion can exist, that he may be biased by any personal interest either in the institution of the suit or in the mode of conducting it."

On these grounds we are of opinion that the decree of the court below is correct and should be confirmed. We dismiss this appeal with costs to be paid by the next friend.

Appeal dismissed.

(1) 3 M.I.A., 329.