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from the defendants to the plaintiffs, tried and decided the question judicially, what was the yearly rent at which the tenure was held by the defendants under the plaintiffs. They having done that, as in the other case, this case falls exactly within the authority of that case. Consequently, the conclusion at which the learned Subordinate Judge arrived upon these materials was correct, and the materials upon which he arrived at it were rightly and properly before him. In the result this appeal must be dismissed with costs.

NORRIS, J.—I concur in holding that this appeal should be dismissed. I think I ought to say, because I entertain a somewhat strong opinion on the subject, an opinion not shared in any degree by the Chief Justice, that even if the judgment of the High Court—a judgment of Mr. Justice Ghose and myself, which the Chief Justice says, having been arrived at upon the authority of the case decided by Mr. Justice Pigot and Mr. Justice Gordon, operates as *res judicata*—does not operate as such, still it is some evidence as to the rate of rent of the previous year. But I distinctly wish it to be understood that this is an expression of my own opinion, and that it is not shared in by the Chief Justice.

c. s.

*Appeal dismissed.*

## ORIGINAL CIVIL.

*Before Mr. Justice Norris.*

FATIMA BIBI v. DEBNAUTH SHAH.\*

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 March 15.

*Minor, right of, to contract—Contract by a minor—Specific performance of contract, Right of minor to enforce—Contract Act (IX of 1872), s. 11.*

A minor in this country cannot maintain a suit for specific performance of a contract entered into on his behalf by his guardian.

*Flight v. Bolland* (1) followed.

*Semble*, having regard to the provisions of section 11 of the Contract Act (IX of 1872), a minor in this country cannot contract at all.

*Mahamed Arif v. Saraswati Debya* (2) and *Hanmant Lakshman v. Jayarao Narsinha* (3) referred to.

\* Original Civil Suit No. 366 of 1892.

(1) 4 Russ., 298.

(2) I. L. R., 18 Cal., 259.

(3) I. L. R., 13 Bom., 50.

THIS suit was instituted by one Fatima Bibi, otherwise called Azizunnissa, stated to be an infant of the age of 8 years or thereabouts, through her father and natural guardian, Hafiz Abdool Kadir.

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The plaint, which was verified by Hafiz Abdool Kadir, stated that an agreement in writing was entered into on the 16th September 1888 between the defendant and the plaintiff's father, acting on the plaintiff's behalf, whereby the defendant agreed to let certain premises therein described as vacant land to the plaintiff for a period of one year at a monthly rent of Rs. 5-8, exclusive of taxes; that Hafiz Abdool Kadir entered into possession of the premises on behalf of the plaintiff, and acquired from the out-going tenant a tiled hut situate on the land; that some months subsequent on Hafiz Abdool Kadir complaining to the defendant of the unsatisfactory nature of tiled huts for letting purposes, the latter offered to let the land on a heritable and alienable lease on the same terms as to rent and taxes as those already agreed to, provided that Hafiz Abdool Kadir agreed on behalf of the plaintiff to erect permanent masonry buildings on the land; that thereafter negotiations took place between them, which ultimately resulted on the 12th Magh 1295 (24th January 1889) in the defendant giving the plaintiff a *hukumnamah*, or order to build, and also agreeing to execute in favour of the plaintiff such a heritable and alienable lease as would be sufficient in law to carry out the arrangement. A copy of the translation of the *hukumnamah* will be found in the judgment of the Court.

The plaint went on to state that thereafter Hafiz Abdool Kadir on behalf of the plaintiff erected a pucca two-storied building on the land, and that the defendant during the construction frequently suggested alterations and improvements; that during the construction and subsequent thereto, Hafiz Abdool Kadir frequently asked the defendant to execute the lease, but the latter put him off on various pretexts, though he received the rent at the agreed-on rate up to January 1892; that in that month, however, the defendant demanded an increased rent, which was refused, and that this resulted in a notice to quit the house and land being served by the defendant; that in reply to this notice the plaintiff caused a letter to be written, in which it was stated that some Rs. 10,000 had been

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spent by her on the construction of the house; and referring to the agreement, it called on the defendant forthwith to execute the lease as arranged; that thereafter on the 23rd February 1892 the defendant instituted a suit in the Calcutta Small Cause Court, in the nature of a suit for ejection, which was still pending.

The plaintiff claimed that the defendant might be restrained from proceeding with the Small Cause Court suit; that he might be ordered to execute a proper lease in favour of the plaintiff, and do all other acts necessary to give effect to the arrangement, and that in default of the Court decreeing specific performance the defendant might be ordered to pay compensation to the plaintiff for the amount expended by her on the house and improvements; and that an enquiry might be directed to ascertain what she had so expended.

The defendant in his written statement admitted that he executed the agreement of the 16th September 1888 in favour of Fatima Bibi and Azizunnissa whom Hafiz Abdool Kadir had represented to be respectively his daughter and wife, and both adults, and he annexed a copy of a translation of that agreement which was in Bengali, and which was expressed to have been made and executed by two persons named Fatima Bibi and Azizunnissa through Hafiz Abdool Kadir. The written statement went on to deny any such arrangement as that set up in the plaint, and stated that the alleged *hukumnama* was a forgery, and though the defendant admitted that Hafiz Abdool Kadir had caused a two-storied building to be erected, he stated the cost was only about Rs. 2,000, and alleged that some walls, which were in existence when the plaintiff took possession, had been utilized in the building. The defendant also, while denying the material portion of the plaintiff's case, pleaded a number of matters which it is not material to notice for the purpose of this report.

Mr. R. Mitra and Mr. Chuckerbutty for the plaintiff.

Mr. T. A. Apear and Mr. Sale for the defendant.

After Mr. Chuckerbutty had opened the facts of the case, Mr. Apear objected that the suit would not lie, both on the ground that an infant cannot enforce specific performance of a contract, and that the contract sued on was so vague in its nature that

the Court could not decree specific performance of it. As regards the former point, he contended that the right must be mutual; and that as an infant cannot be sued, he cannot therefore sue, and cited *Flight v. Bolland* (1) in support of his contention. He further urged that the plaint showed that the agreement sought to be enforced was with Azizunnissa as well as with the plaintiff, and that the plaintiff could not therefore sue alone.

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Mr. *Mitra* for the plaintiff contended that in this country a contract with an infant is only voidable and not void. *Mahamed Arif v. Saraswati Debya* (2) and *Hanmant Lakshman v. Jayarao Narsinha* (3); and that an infant can sue for specific performance. He referred to sections 12 and 21 of the Specific Relief Act (I of 1877), and urged that as there was nothing in that Act which required that the right to specific performance should be mutual, the plaintiff could enforce the contract, and was entitled to maintain the suit.

Mr. *Apear* in reply submitted that it was immaterial whether the contract was void or voidable, as there still existed the same want of mutuality.

The judgment of the Court (NORRIS, J.) was as follows:—

This is a suit brought by a minor, Fatima Bibi, through her father and natural guardian, Hafiz Abdool Kadir, as her next friend, for the specific performance of a certain agreement. I take the facts from the opening of learned Counsel, Mr. Chuckerbutty, that on the 16th September 1888, corresponding with the 1st Assin 1295, the defendant granted to the minor plaintiff a lease of a piece of land for the term of one year. On this piece of land there was a tiled hut; that on the 24th January 1889, corresponding with the 12th Magh 1295, the defendant entered into a contract with the minor plaintiff in these words—

“ To

“ Sri Fatima Bibi and Azizunnissa.

Know by (this) letter that I have given orders to construct a *pucca* building on my land, situate at No. 6, Rajmohun Bose's Lane. Having

(1) 4 Russ., 298.

(2) I. L. R., 18 Calc., 259.

(3) I. L. R., 13 Bom., 50.

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erected the same, you and your sons, grandsons, &c., shall continue to reside therein. I shall execute an agreement hereafter. I have no time now. Finis. Year 1295. Date 12th Magh."

" Sri Debnath Shaha."

It is alleged that a *pucca* building, costing a considerable sum of money, has been erected out of the minor's money on the piece of land. The plaint asks for specific performance of this agreement and to restrain a suit in the Small Cause Court, in which suit the defendant seeks to eject the plaintiff from this piece of land. The plaint also asks for relief in the nature of payment to her for the outlay she has incurred in building the house, if she is not entitled to specific performance of the agreement. The plaint admits that the plaintiff is a minor. Upon these facts Mr. Apear objects that the suit cannot proceed. His contentions are—

1st.—That the contract of which specific performance is sought to be decreed is a contract entered into by the defendant, not with the plaintiff alone, but with another person of the name of Aziz-unnissa.

2nd.—That the contract is of so vague a character that no Court could decree specific performance of it.

3rd.—That a minor cannot enforce specific performance of a contract.

Mr. Mitra for the plaintiff has referred me to two cases—one that of *Mahamed Arif v. Saraswati Debya* (1), a decision of Tottenham and Trevelyan, JJ., where it was held that a contract entered into by a minor is only voidable at the option of the minor, and another case, *Hannant Lakshman v. Jayarao Narsinha* (2), where it was decided without argument that a money bond taken by a minor was good in law and may be sued upon.

I am bound to say that in my view of the Contract Act a minor in this country cannot contract at all. I cannot understand what other meaning can be put upon section 11 of the Contract Act, except that a person who is not of age cannot contract. But whether I am right or wrong does not seem to signify as far as

(1) I. L. R., 18 Cal., 259.

(2) I. L. R., 13 Bom., 50.

this case is concerned, because this is a case of specific performance of a contract, and the case of *Flight v. Bolland* (1) is applicable. On the authority of that case I am bound to say that this suit will not lie, and I must dismiss the suit with costs on scale 2 to be paid by the next friend.

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*Suit dismissed.*

Attorneys for the plaintiff: Messrs. *Remfry and Rose.*

Attorneys for the defendant: Messrs. *Bannerjee and Chatterjee.*

H. T. H.

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## CRIMINAL REVISION.

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*Before Mr. Justice Prinsep and Mr. Justice Ghose.*

DHANPUT SINGH (2ND PARTY—PETITIONER) v. CHATTERPUT  
SINGH (1ST PARTY—OPPOSITE PARTY).\*

1893  
January 19.

*Criminal Procedure Code (Act X of 1882), s. 145—Breach of the peace—  
Police report—Duties of Magistrate acting under section 145—  
Record of grounds—Notice to parties.*

Before instituting proceedings under section 145 of the Code of Criminal Procedure, a Magistrate is bound to satisfy himself, on grounds which are reasonable, that a breach of the peace is imminent in regard to properties of the description specified in that section, and that a dispute likely to cause a breach of the peace exists concerning them; and the grounds stated by him must be such as to satisfy a Court of Revision before which such case may be brought by any of the parties concerned.

Where a Magistrate, in consequence of the institution of various cases relating to breaches of the peace between the partizans of two rival zemindars, had directed the police to enquire and report whether there were sufficient grounds for proceeding under section 145, Criminal Procedure Code, and, having received a report which both suggested the necessity for such and set forth substantial reasons in support of the suggestion, made such report the foundation for the proceedings which he instituted, it was contended, among other things, that the Magistrate had not complied

\* Criminal Revision No. 501 of 1892, against the order passed by C. J. S. Faulder, Esq., District Magistrate of Purneah, dated 29th of October 1892, reversing the orders of Baboo Sarada Prasad Sarkar, Deputy Magistrate of Arrareah, dated 22nd of September and 13th of October 1892.

(1) 4 Russ., 298.