

APPEAL FROM ORIGINAL CIVIL.

Before Mr. Justice Chevis, Acting Chief Justice, and Mr. Justice LeRoissignol.

WASINDA RAM (PLAINTIFF)—*Appellant.*

versus

SITA RAM (DEFENDANT)—*Respondent.*

Civil Appeal No. 2862 of 1916.

*Minor—fraudulent representation by minor that he was of age—
estoppel—Indian Evidence Act, I of 1872, section 115*

Plaintiff sued to recover the principal and interest due on a bond executed by defendant on 4th February 1912. Defendant pleaded *inter alia* that he was not liable as he was a minor on that date. Defendant was born on 10th December 1891, and he was therefore about 20 years and 2 months old when the bond was executed. A guardian had been appointed for him, but the guardian resigned, and on 18th May 1910 the District Judge passed an order that though the minor was 18 or 19 years of age and minority would continue till the age of 21, as the appointment of a fresh guardian was discretionary and as the minor did not wish a fresh guardian to be appointed, and was old enough by appearance to act for himself, no fresh guardian need be appointed. After that defendant managed his own affairs, and acted as a man who has attained majority would do. The plaintiff alleged that the dealings were entered into on defendant's assurance that he had become an adult. This was disputed by defendant but the High Court found on the evidence (contrary to the finding of the District Judge) that the defendant did represent himself to be of full age and that the plaintiff was misled by the false representation.

Held, that section 115 of the Evidence Act is applicable to the case and that the defendant's plea of minority cannot be heard.

Ganesh Lala v. Bapu (1), *Nelson v. Stocker* (2), *dicta* of Turner, L. J., cited in I. L. R. 25 Cal. at page 393 and *Levene v. Brougham* (3), followed.

Dharmo Das Ghose v. Brahma Dutt (4), and *Mohori Bibi v. Dharmo Das Ghose* (5), distinguished.

Dhanmull v. Ram Chander Ghose (6), *Brahmo Dutt v. Dharmo Das Ghose* (7), *Saral Chand Mitter v. Mohun Bibi* (8), and *Balak Ram v. Dadu* (9), not followed.

(1) (1895) I. L. R. 21 Bom. 198.

(2) (1859) 4 De Gex and J. 458.

(3) Times L. R. Vol. 24 p. 801.

(4) (1898) I. L. R. 25 Cal. 616.

(5) (1903) I. L. R. 30 Cal. 539, P. C.

(6) (1890) I. L. R. 24 Cal. 285, F. B.

(7) (1898) I. L. R. 26 Cal. 381, F. B.

(8) (1898) I. L. R. 25 Cal. 371, F. B.

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The facts of the case are given in the judgment.

First appeal from the decree of J. A. Ross, Esq., District Judge, Dera Ghazi Khan, dated the 30th June 1916, dismissing plaintiff's suit.

GOKAL CHAND, NARANG, for Appellant.

M. N. MUKERJI, for Respondent.

CHEVIS, C. J. * * * * *

The plaintiff Was nda Ram sued for Rs. 1,351 principal and interest due on a bond for Rs. 600 executed by the defendant Sita Ram on 4th February 1912. The defendant admitted execution but pleaded that he had not received full consideration and that the rate of interest charged was penal. He also pleaded that he was not liable as he was a minor at the time of execution.

The issues were as follows :—

1. Was defendant a minor on 4th February 1912 ?
2. Did defendant represent to plaintiff that he was of age, and if so what is the effect ?
3. Was the bond not for full consideration ?
4. Is the rate of interest penal ?

The Lower Court decided issues 3 and 4 in plaintiff's favour, but dismissed the suit holding that defendant and plaintiff both knew that defendant was a minor and that defendant was therefore not liable. The plaintiff appeals to this Court.

As to issues 3 and 4 I should have no hesitation in agreeing with the Lower Court. The defendant might have defended the Lower Court's decision in part by arguing that the decision on these issues should have been in his favour, but nothing was said in arguments on his behalf with regard to these issues.

The Lower Court's finding as to defendant's age is that he was born on 10th December 1891. The copy of entry in the birth register gives the name of the child as well as the father's name, so I consider there can be no doubt that this entry refers to the defendant. His age then would be about 6 weeks short of 20 years when his dealings with the plaintiff commenced

(*i.e.*, in *Assu* 1968), and about 2 months over 20 when the bond in suit was executed. A guardian had been appointed for him, but the guardian resigned, and on the 18th May 1910 (*i.e.*, about 5 months before the dealings with plaintiff commenced) the District Judge passed an order that, though the minor was 18 or 19 years of age and minority would continue till the age of 21, as the appointment of a fresh guardian was discretionary and as the minor did not wish a fresh guardian to be appointed, and was old enough by appearance to act for himself, no fresh guardian need be appointed. After that Sita Ram managed his own affairs, as he admits. (See page 5 of the paper book.) He brought a suit without a next friend in April 1911 (see his own evidence), *i.e.*, before dealings with plaintiff began and in every way seems to have acted as a man who had attained his majority would do. The plaint alleges that the dealings were entered into on defendant's assurance that he had become an adult and had got back his property from the District Judge on 18th May 1910. The witnesses go one step further and allege that the plaintiff said he was 21 or 21½. The District Judge has no faith in this evidence, saying, the witnesses come from plaintiff's village, and one is a former tenant of the defendant who was ejected from his tenancy. Seeing that the dealings took place in plaintiff's village it is only to be expected that the witnesses should belong to that village. As to one witness, *viz.*, Amdu, P. W. 3, being a former tenant of the defendant, this is correct, but he says that he voluntarily gave up the land and was not ejected. The evidence of these witnesses may not be relied on implicitly with regard to the actual words used by the defendant, but I see no sufficient reason for disbelieving the gist of their evidence, which is that the defendant represented himself to be of full age. He obviously had been posing as a major, and I do not suppose for a moment that the plaintiff would have advanced him money at 1 *per cent.* interest if he had not believed him to be a major. Plaintiff's brother Teju Ram, P. W. 6, says "Sewa Ram was guardian of defendant. He used to come with him. When he was removed defendant acted for himself." He also says "He said he was over 21, otherwise plaintiff would

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not have advanced to him." I should say all this was perfectly correct, except that defendant may perhaps have posed as being over 21 without having necessarily said anything precise as to his age. If he posed as 21 that would be quite sufficient. I believe he did pose as being of full age, *i.e.*, as being 21 years old, and I would hold that the money was advanced in consequence of the defendant misrepresenting that he was of full age. The learned District Judge lays stress on the fact that the defendant's age is put down as 20 in the stamp-vendor's endorsement on the stamped paper, but I do not think this matter of any consequence at all. In the first place it is not shown that the plaintiff was present when the stamp was purchased in Dera Ghazi Khan or that the plaintiff ever read the endorsement, which is in Urdu and it is alleged that the plaintiff cannot read Urdu, and in the second place, even if the plaintiff read the endorsement there is no particular reason why he should bother about it, seeing that a stamp-vendor would probably enter the age merely by guessing it from the purchaser's appearance and without making enquiries from the purchaser.

Holding then, as I would hold, that the defendant obtained the money by misrepresentations as to having attained his majority, I have next to consider whether the defendant is estopped from pleading minority, by reason of section 115 of the Evidence Act.

The first case I will notice is *Dhanmull v Ram Charder Ghose* (1). There the plaintiff sued for a money decree and for a mortgage decree. He had been induced by fraud on the part of the minor defendant to part with his money. It was held by the Full Bench that the plaintiff could not get any decree in the face of defendant's plea of infancy. But as is noted at the foot of *Saral Chand Mitter v. Mohun Bibi* (2), the publication of this case was prohibited by two of the deciding Judges, and so this case was not published till 6 years after its decision.

In *Saral Chand Mitter v. Mohun Bibi* (2) the plaintiff had advanced money on a mortgage deed.

having been deceived as to the defendant's age. So the facts were similar to those of the above mentioned case. The trial Judge, Jenkins, J., so far followed the *Dhanmull v Ram Chander Ghose* (1) ruling that he refused to give a personal money decree against the defendant, but he gave the plaintiff an ordinary mortgage decree, holding that there was nothing in the earlier ruling to prevent his doing so, as in the earlier case it had for some reason or other been admitted on behalf of the plaintiff that a mortgage decree could not be given. On appeal by the defendant the Full Bench noted that all that was decided in the *Dhanmull v. Ram Chander Ghose* (1) case was that no personal money decree could be passed against the minor. That judgment was doubted, but as no money decree had been given by the trial Judge it was unnecessary to refer the case to a Full Bench. There were no cross-objections by the plaintiff, claiming a money decree, so the decree of the trial Judge was simply affirmed.

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In *Dhurmo Dass Ghose v. Brahmoo Dutt* (2), the plaintiff was the *quondam* minor, suing for cancellation of a mortgage effected by him during his minority. It was held that the misrepresentations as to his age had not misled the plaintiff and the claim was decreed. The defendant appealed, and the case came before a Full Bench, which upheld the decision, holding that there could be no estoppel in the case of a minor; see *Brahmo Dutt v. Dharmo Das Ghose* (3). [It may here be noted that a contrary view had been held in *Ganesh Lala v. Bapu* (4)]. The case went on to the Privy Council, which held, see *Mohori Bibi v. Dharmo Das Ghose* (5), that it was unnecessary to decide the question whether the doctrine of estoppel was inapplicable in all cases of infants, but simply held that the doctrine could not apply to a case where the party dealing with the minor had not, as a matter of fact, been misled by his misrepresentations. Their Lordships lay down that a contract entered into with a minor is void and not merely voidable, but do not decide the question whether the doctrine of estoppel is

(1) (1890) I. L. R. 24 Cal. 265, F.B. (3) (1898) I. L. R. 26 Cal. 381, F.B.

(2) (1898) I. L. R. 25 Cal. 616.

(4) (1895) I. L. R. 21 Bom. 193.

(5) (1903) I. L. R. 30 Cal. 589, F.C.

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applicable to a case where the minor has actually misled the person with whom he is dealing. In *Nelson v. Stocker* (1) the decision was in favour of the *quondam* minor, on the ground that the other party was not misled, but, as is pointed out in *Saral Chand Mitter v. Mohun Bibi* (2), there are passages in the judgment of Lord Justice Turner—Lord Justice Knight Bruce not differing—which make it clear that if a false representation had been made and acted on, the person to whom it was made not knowing it to be false, the liability of the *quondam* minor to return the money would have been undoubted. Lord Justice Turner says :—

Infants are no more entitled than adults are to gain benefits to themselves by fraud. * * * The privilege of infancy is a legal privilege. On the one hand it cannot be used by infants for the purposes of fraud. On the other hand, it cannot, I think, be allowed to be infringed upon by persons who, knowing of the infancy, must be taken also to know of the legal consequences which attach to it."

In *Balak Ram v. Dadu* (3), the *quondam* minor, though he had deceived the defendant was allowed to recover the land sold during his infancy on repayment of the sale money. For my own part I doubt if he should have been given any relief at all, I would favour rather the Bombay view *Ganesh Lahu v. Bapu* (4). But we are not here dealing with the case of a minor seeking to recover property, so we need not, in my opinion, stop to consider whether or on what terms he should be allowed to do so ; the ruling is based on the applicability of section 41 of the Specific Relief Act, with which we have nothing to do in the present case.

It seems to me clear that where there have been no misrepresentations, or where the misrepresentations have not, as a matter of fact, misled the opposite party there can be no estoppel and infancy can be successfully pleaded. On the other hand, where the opposite party has been misled by false representations I am of opinion that section 115 is applicable, and that the plea of minority cannot be heard. I fail to see why the word " person " as used in section 115 of the Evidence Act should be narrowed down to exclude an infant. To do so in my opinion means to open the door to fraud.

(1) (1859) 4 De Gex. and J. 468.

(2) (1898) I. L.R. 25 Cal. 371 (398), F. B.

(3) 76 P. R. 1910.

(4) (1895) I.L.R. 21 Bom. 193.

There is, I consider, a good deal of weight to be attached to the opinions quoted in *Nelson v. Stocker* (1), and in *Saral Chand Mittar v. Mohun Bibi* (2).

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I would accept the appeal and decree this claim with costs in both Courts.

P. S.—I have omitted to note *Levene v. Brougham* (3), a case in which a money decree was given against a minor who had obtained an advance of money by misrepresentations as to his age. I note, however, that stay of execution was granted with a view to appeal, and that I have not been able to ascertain the result of the appeal, if any appeal was lodged.

LEROSSIGNOL, J.—I agree with what my learned colleague has written. In view of what the District Judge wrote in his order of 18th May 1910, we must take it that the defendant knew that although, practically, that order rendered him *sui juris*, it declared him in so many words to be still subject to the disability of infancy, so that his conduct in suggesting the reverse to third persons was false and intentional. It is true that a contract made with an infant is no contract but is void *ab initio*, but that is not a matter of which Courts must take cognizance *suo motu*, and if section 115 of the Evidence Act prohibits the tender of the plea (and I see no reason to suppose that it does not) then the plea may not be tendered.

It is unfortunate that we have no pronouncement by the Privy Council on the applicability of that section to minors, but the matter appears to be *res integra* and I read the word 'person' in its natural sense, including a minor.

In any case, if the *quondam* minor is not liable on the contract, he is liable in equity to make restitution and to pay damage for the loss entailed upon plaintiff by his fraud.

For these reasons I concur in accepting the appeal and decreeing the claim with costs throughout.

Appeal accepted.

(1) (1859) De Gez. and J. 458.

(2) (1898) I. L. R. 25 Cal. 371, F. B.

(3) Times L. R. Vol. 24, p. 801.