

APPELLATE CIVIL.

Before Mr. Justice Abdul Raof and Mr. Justice Martineau.

1921

April 23.

JITA SINGH—(PLAINTIFF)—Appellant,
versus

MAN SINGH AND OTHERS—(DEFENDANTS)—Respondents.

Civil Appeal No. 1014 of 1917.

Civil Procedure Code, Act V of 1908, Order XXII, rule 7 (Section 462 of old Code)—Compromise by guardian of a minor without leave of the Court, followed by a decree—whether such decree is a nullity or only voidable—Limitation for a suit to set aside such a decree—Indian Limitation Act, IX of 1908, articles 44, 91, 95, 120.

Held, that if a compromise is entered into by a guardian on behalf of a minor without the leave of the Court and a decree is passed in accordance with the terms of the compromise, such a decree is not a nullity, but is voidable at the instance of the minor.

Virupakshappa v. Shidappa (1), Ganesha v. Mul Chand (2) and Muhammad Ibrahim v. Allah Bakhsh (3), followed.

Hanuman Prasad v. Muhammad Ishaq (4), and Partab Singh v. Bhabuti Singh (5), distinguished.

Held also, that a suit by the minor to set aside such a decree is governed by article 120 of the Limitation Act.

Second appeal from the decree of S. Wilberforce, Esquire, District Judge, Ferozepore, dated the 5th January 1917, confirming that of Sayad Muhammad Shah, Munsif, 1st Class, Ferozepore, dated the 13th November 1916, dismissing the claim.

NANAK CHAND, for appellant.

KHARAK SINGH, for Respondents.

The judgment of the Court was delivered by—

MARTINEAU, J.—The plaintiff Jita Singh was a son of Dan Singh, but was adopted by his uncle Waryam Singh, and on the death of the latter in 1904 his land was mutated in the plaintiff's favour. In 1905 Man Singh, a brother of Waryam Singh and Dan Singh, sued Jita Singh for possession of one-third of Waryam Singh's

(1) (1901) I. L. R. 26 Bom. 109.

(2) 95 P. R. 1912 (F. B.)

(3) 145 P. R. 1919.

(4) (1905) I. L. R. 28 All. 137

(5) (1915) I. L. R. 35 All 487 (P. C.).

land and of one-third of a house. Jita Singh was then a minor, but was represented by his natural father Dan Singh, who was appointed his guardian for the suit. On the 4th January 1906 Dan Singh appeared in Court and filed a compromise, agreeing to a decree, being passed in favour of Man Singh for the property claimed. A decree was passed accordingly but the sanction of the Court was not obtained as was required by section 462 of the Civil Procedure Code which was then in force. Man Singh got possession of the land in execution of the decree. Jita Singh who has attained majority, now sues to recover possession of the land on the ground that he is not bound by the compromise of 1906, which Dan Singh was not competent to enter into.

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The Courts below have concurred in dismissing the suit, finding that plaintiff was more than 21 years of age when he instituted the suit, which is therefore barred by limitation. They are of opinion that the case is governed by article 95 of the 1st Schedule to the Limitation Act, and the Lower Appellate Court adds that if that Article does not apply Article 44 or Article 91 applies. The plaintiff has preferred a second appeal to this Court.

The contention for the appellant is that as the compromise entered into on the 4th January 1906 was not sanctioned by the Court the decree passed thereon is a nullity and the appellant can ignore it, and that the suit, having been brought within 12 years from the date on which Man Singh got possession of the property is within time under Article 142 or Article 144 of the 1st Schedule to the Limitation Act. The contention on the other side is that the decree passed in 1906 was not void but only voidable. *Hanuman Prasad v. Muhammad Ishaq* (1) and *Partab Singh v. Bhabuti Singh* (2), which are relied on by the learned counsel for the appellant, are not in point, as those were cases in which no guardian *ad litem* had been appointed for the minor defendant. In the present case a guardian was appointed and he attended the Court, and the only defect in the proceedings was the failure to obtain the Court's sanction to the compromise.

(1) (1905) I. L. R. 28 All. 137. (2) (1913) I. L. R. 35 All. 477 (P. C.).

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The question whether the compromise on behalf of the minor, having been entered into without the leave of the Court, is void or only voidable appears to be set at rest by section 462 of the Civil Procedure Code of 1882, which lays down that such a compromise is voidable against all parties other than the minor. The same provision occurs in Order 32, Rule 7, of the Code now in force. In *Firupakshappa v Shidappa* (1) also it was held that the compromise of a suit on behalf of the minor without the leave of the Court is voidable. It has also been held by a Full Bench of this Court in *Ganesh v. Mul Chand* (2) that an application by a guardian or next friend of a minor for an order of reference to arbitration will, unless the leave of the Court has been obtained, have the same effect and be open to the same objections as would any other agreement or compromise entered into by such guardian or next friend without leave, and that where the leave of the Court had not been obtained the reference to arbitration would not necessarily be void, but that it would be open to the minor to affirm and ratify it. That ruling was followed in *Muhammad Ibrahim v. Alla Bahsh* (3) in which it was held that an agreement on behalf of a minor, without the express sanction of the Court, to refer to arbitration came within the purview of Order 32, rule 7, Civil Procedure Code, and was voidable.

We held therefore that the decree of 1903 is not a nullity, as contended by the appellant, but was only voidable, and the present suit must be held barred by limitation unless the appellant is in time to have the decree of 1906 set aside. Articles 93, 44 and 91 of the 1st Schedule to the Limitation Act do not in our opinion apply to the case, but the Article applicable would be 20. As more than six years have elapsed since the decree of 1906 was passed the present suit is barred.

The appeal consequently fails and we dismiss it with costs.

Appeal dismissed.

(1) (1901) 1, L. R. 26 Bom. 109. (2) 95 P. R. 1912 (F. B.)

(3) 145 P. R. 1919.