

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Campbell.

INDAR SAIN—(PLAINTIFF)—*Appellant*,

versus

PRABHU LAL AND OTHERS—(DEFENDANTS)—
Respondents.

Civil Appeal No. 2238 of 1917.

Minor—decree against—whether a nullity or only voidable at the instance of the minor, where he was represented in the case—Bona fide auction purchaser—all that he need inquire into in regard to title.

N. M. brought a suit for recovery of money due on book account against I. S. (the present plaintiff), as representing his deceased brother J.—I. S. was then a minor and was represented by his father's sister's son who compromised the claim on condition that the money was to be recovered by instalments from the estate of J. in the possession of I. S., the minor. The decree was drawn up against the minor, but the reservation that it was to be executed only against the property of J. in the minor's hands was erroneously omitted. The house in dispute was attached and sold, in spite of the objection by the minor's guardian that it had never belonged to J. The house was sold for Rs. 246, out of which the decree of N. M. as well as those of two other creditors of J. was satisfied. The purchaser at the auction sale was R.K., who in 1910 transferred the house to P.L. the only respondent defending the appeal.

Held, that when a minor is a party to the case and the decree is issued against him, unless he has been entirely unrepresented, that decree, so long as it stands, is not invalid, but only voidable at the instance of the minor.

Held also, that a *bona fide* auction purchaser need look only to the decree and order of sale of the executing Court and is not bound to enquire further into title, and so long as the decree remains valid the proceedings taken under that decree, so far as they affect third parties in the same position as *bona fide* auction purchasers, cannot be impugned.

hiwalah Bhagwan v. Shambhu Prasad (1), and *Zain-ul-Abdin v. Muhammad Asghar Ali (2)*, followed.

Manohar Lal for the appellant—The compromise was to the effect that the money was to be recovered from the property of Jethu in the hands of Indar Sain, who was then a minor, but the decree did not embody this essential condition of the compromise and was consequently a nullity *ab initio*—*Manohar Lal v. Jadunath Singh (3)*.

(1) (1905) I. L. R. 29 Bom. 485 (F. B.). (2) (1837) I. L. R. 19 All. 153 (P. C.).

(3) (1908) I. L. R. 24 All. 585 (P. C.).

The District Judge has held that the decree against Indar Sain was void, but that Indar Sain cannot be given possession of the house as the respondent got the house from a *bonâ fide* auction purchaser. This position is unsound. If the decree is void, then the house must be restored to Indar Sain, and the auction purchaser or his vendee can avail himself of any other relief that may be open to him. *Shivlal Bhagvan v. Shambhu Prasad* (1), and *Zain-ul Abdin v. Muhammad Asghar Ali* (2) are not applicable to the facts of the present case.

Hargopal, for the respondent—The respondent, Parbhu Lal, purchased the house from Ram Kishen, who was a *bonâ fide* auction purchaser. The minor was properly represented in the Court which passed the decree. Such decree is not a nullity *ad initio*, but subsists until it is set aside by a Court at the instance of the minor *Shivlal Bhagvan v. Shambhu Prasad* (1), *Zain-ul-Abdin v. Muhammad Asghar Ali* (2), *Rewa Mahlon v. Ram Kishen Singh* (3), and *Jita Singh v. Man Singh* (4) support the contention put forward.

Manohar Lal replied.

Second appeal from the decree of Khan Bahadur Maulvi Inam Ali, District Judge, Hissar, dated the 19th June 1917, varying that of Sardar Uttam Singh, Munsif, 2nd Class, Hissar, dated the 30th June 1916.

The judgment of the Court was delivered by—

LE ROSSIGNOL, J.—This second appeal arises out of a suit brought by a *quondam* minor for possession of a house sold in execution of a decree in 1906 under the following circumstances :—

Nadir Mal brought a suit for recovery of monies due on book account against the present plaintiff as representing his deceased brother, Jethu. The plaintiff then a minor was represented by his father's sister's son who compromised the claim on the condition that the money was to be recovered by instalments from the estate of Jethu, whatever it might be, in the possession of the minor. The decree was drawn up against the minor but the reservation that it was to be executed

(1) (1905) I. L. R. 29 Bom. 435 (F.B.). (3) (1886) I. L. R. 14 Cal. 18 (P.C.).

(2) (1887) I. L. R. 10 AIL 166 (P. C.). (4) (1921), 22 Indian Cases 794.

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only against the property of Jethu in the minor's hands was erroneously omitted. The house now in dispute was attached and ultimately sold in spite of an objection from the minor's guardian that the house had never belonged to Jethu. The house was sold for Rs. 245, out of which the decree of Nadir Mal, the decree of one Ramji Das and the decree of one Ranjit Singh, the last two of whom had already obtained decrees against Indar Sain as representative of his deceased brother were satisfied. The purchaser at the auction was one Ram Kishen, who, some years later in 1910, transferred the house by sale to Prabhu Lal, the only respondent who defends this appeal.

The first Court holding that the minor's interests had not been properly safeguarded decreed his claim and the relief granted was to restore the case, *i.e.*, Nadir Mal's suit, to its original number and to direct that proceedings should continue as from the date when the compromise was accepted by the guardian with the consent of the Court. It did not find that the house in dispute was the property of the plaintiff and had never belonged to Jethu, but it ordered that the house should be restored by Prabhu Lal to the plaintiff until such time as the house was proved to have been the property of Jethu Mal. The lower appellate Court accepted Prabhu Lal's appeal and modified the relief granted to plaintiff by the first Court by maintaining the house in Prabhu Lal's possession and giving the plaintiff a decree for the aggregate of the amounts paid to Nadir Mal, Ramji Das and Ranjit Singh, out of the sale-proceeds of the house.

In this Court on second appeal by the plaintiff, it is admitted that the possession of a *bond fide* auction purchaser is different from that of parties to the original suit, but it is contended that inasmuch as the compromise was to affect merely the property of Jethu in the hands of his minor brother and the decree did not restrict execution to that property the decree is a mere nullity and was void *ab initio*. We see no reason to dissent from the proposition that when a minor is entirely unrepresented before the Court which issues the decree against him that decree is a nullity so far as the minor is concerned. But when a minor is a party

to the case and the decree is issued against him we see no reason to hold that that decree so long as it stands is invalid, it is only voidable at the instance of the minor, and we must note that in this case although the wording of the decree was defective the property proceeded against was regarded by both the decree-holder and the executing Court as the property of Jethu and not as the property of the minor, so that the defective wording of the decree is not responsible for the proceedings of which the plaintiff now complains.

But the main point for us now to decide is whether in spite of the fact that it has not been established that the property in dispute was the property of Jethu, the auction purchaser, has to suffer dispossession, and on this point we have no hesitation in following the well-known principles laid down *inter alia* in *Shivalal Bhagwan v. Shambhu Prasad* (1) and *Zain-ul-Abdin v. Muhammad Asghar Ali* (2), that a *bonâ fide* auction purchaser need look only to the decree and order of sale of the executing Court, and is not bound to inquire further into title. So long as the decree remains valid, the proceedings taken under that decree so far as they affect third parties in the same position as *bonâ fide* auction purchasers cannot be impugned.

For these reasons we think this appeal must fail. As to the equities, although strictly we are not concerned with them, we note that Jethu was an adult, that at the time of his death the plaintiff was still a minor, that their father left no immoveable property, that the plaintiff has failed to establish that the house was his own exclusive property, and that even if the house was not the exclusive property of Jethu but he obtained it by succession, in that case the plaintiff would not be entitled to the whole of the sale-proceeds of the house, but only to one moiety of the same. We dismiss the appeal with costs.

A. R.

Appeal dismissed.

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