

whereby standing trees are sold with a stipulation that the purchaser may cut them at any time within ten years.

There was a finding by the first Court that there was no proof that the defendants cut any trees. This finding was not contested in the grounds of appeal to the lower Appellate Court, nor is it referred to in the grounds of appeal to this Court, nor have any arguments been addressed to us on the point. I would, therefore, give the plaintiff a decree for the perpetual injunction which he seeks and would dismiss the rest of his suit. As the plaintiff has only partially succeeded and, in view of his delay in suing, I would leave the parties to bear their own costs throughout.

C. H. O.

Appeal accepted in part.

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Moti Sagar.

DAD (DEFENDANT) Appellant

versus

LAL (PLAINTIFF) AND } Respondents.
MALKA (DEFENDANT) }

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May 20.

Civil Appeal No. 2174 of 1923.

Declaratory suit—brought in the name of a minor son to contest his father's alienation—Collusive suit—whether a decree should be granted.

Two brothers effected sales of land. The minor son of one of the vendors brought the usual declaratory suits contesting the alienations. The trial Court dismissed the suits holding that they were collusive and were brought at the instance of the vendors, who had been financing the litigation, and that the sales were effected for necessity. On appeal the District Judge, without disturbing the finding that the suits were collusive, held in both the cases that no necessity for the alienations was proved except in respect of an item of Rs. 150, and accordingly he accepted the appeals and remanded the cases for a decision as to the amount due for improvements.

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Held, that a declaratory decree may be given in a suit to contest an unnecessary alienation if the suit is brought honestly on behalf of a minor reversioner to protect his interests, but that it would not be proper to pass such a decree in a case in which the minor is merely a figure-head and the real plaintiff is the alienor himself, who has caused the suit to be instituted for the purpose of undoing his own act.

Second appeal from the order of Khan Bahadur Munshi Rahim Bakhsh, District Judge, Jhang, at Sargodha, dated the 7th July 1923, reversing that of Diwan Sita Ram, Senior Subordinate Judge, Jhang, dated the 8th January 1923.

FAKIR CHAND and JIWAN LAL KAPUR, for Appellant.

ABDUL QADIR, for Respondents.

The judgment of the Court was delivered by—
MARTINEAU J.—Appeals Nos. 2174 and 2175 of 1923 arise out of suits to contest sales of land effected in favour of Dad by Malka and his brother Sikandar on the 6th October 1909 and the 18th November 1909, respectively. The suits were instituted in August 1921 by Malka's minor son Lal through a relation named Sultan. The Subordinate Judge dismissed them finding that they were collusive and had been brought at the instance of Malka and Sikandar, who were incurring the expenses of the litigation, and that the sales were effected for necessity.

The District Judge on appeal held in each case that no necessity for the alienation was proved except in respect of an item of Rs. 150 due to a mortgagee and he accepted the appeals and remanded the cases for a decision as to the amount to which the vendee was entitled for improvements. The present appeals have been filed by the vendee from those orders, and there are cross-objections on behalf of the plaintiff.

The learned District Judge in deciding the appeals before him did not advert to the collusive nature

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of the suits. Malka, Sikandar, and Lal all live together, and it has been brought out in evidence, as pointed out by the Subordinate Judge, that the money required for the litigation with Dad was raised by Malka himself by a mortgage effected only a few days before the institution of the suits. The Subordinate Judge's finding that Malka and Sikandar are the persons who are at the back of the litigation and that they have been financing it has not been disturbed by the learned District Judge and we have no doubt about its correctness. Without going into the question of necessity we think that on that finding alone the judgments of the trial Court dismissing the suits should have been affirmed. A declaratory decree may be given in a suit to contest an unnecessary alienation if the suit is brought honestly on behalf of a minor reversioner to protect his interests. But in our opinion it would not be proper to pass such a decree in cases like the present, in each of which the minor is merely a figure-head and the real plaintiff is the alienor himself, who has caused the suit to be instituted for the purpose of undoing his own act. There is an additional reason for not passing a decree in the suit contesting the sale by Sikandar, *viz.*, that the suit was instituted at a time when, if brought by Malka in his own name, it would have been barred by limitation under the Punjab Limitation Act, I of 1920.

We accordingly accept the appeals, set aside the orders of the lower Appellate Court, and restore the decrees of the trial Court dismissing the suits. The plaintiff-respondent will bear the appellant's costs in all the Courts in each case. The cross-objections are dismissed.

A. N. C.

Appeal accepted.