

J.C.  
1932

ABDUL  
RAHMAN  
2.  
D. K. CASSIM  
& SONS.

Their Lordships have thought it right to deal with this matter at some length, as there seems to have been a considerable divergence of opinion in some of the Indian Courts as to what is a final order under s. 109 (a), and they think that the decision in *Ramchandra Manjimal's* case must have been either overlooked or misunderstood.

For these reasons their Lordships think that the appeal is incompetent, and they will humbly advise His Majesty that it should be dismissed with costs.

Solicitor for appellants: *Cutler, Allingham and Ford.*

Solicitor for respondent No. 1: *J. E. Lambert.*

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### APPELLATE CIVIL.

*Before Mr. Justice Das.*

YU HOCK TUN

vs.

YU HOCK AND OTHERS.\*

1933

Jan. 3.

*Minor plaintiff—Suit to declare mortgage void—Consequential relief—Court Fees Act (VII of 1870), s. 7, IV (c).*

A minor plaintiff is entitled to sue for a bare declaration that a mortgage deed executed by him is void as against him. It is not necessary for him to ask for any consequential relief in such a suit and the provisions of clause 4 (c) of s. 7 of the Court Fees Act are not applicable.

*Ba Maw* for the appellant.

*Paul* for the respondent.

DAS, J.—This appeal must be allowed.

The plaintiff filed a suit alleging that he was a minor at the time of the execution of the mortgage deed and that therefore the mortgage deed was void as against him. If the plaintiff was a

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\* Civil Miscellaneous Appeal No. 96 of 1932 from the order of the District Court of Hanthawaddy in Civil Appeal No. 90 of 1931.

minor at the time of the execution of the mortgage, the mortgage deed must be void as far as he is concerned and it is not necessary for him to ask for any consequential relief regarding the mortgage deed in the suit. He is basing his suit on the ground of his minority and not asking for any relief on any other ground. If he was not a minor at the time of the execution of the document, his suit must be dismissed. The only test in a case of this nature is where it was incumbent on the plaintiff to get a document set aside before he could question it, it must be treated as involving a prayer for consequential relief and the provisions of clause 4 (c) of s. 7 of the Court Fees Act would be applicable. But in the case of a minor it is not necessary to ask for the setting aside of the document. All that is necessary for a minor is to ask that the document be declared to be void as against him ; so I hold that the Court fee paid by the plaintiff is sufficient and the orders of the lower Courts are set aside and the suit is remanded to the trial Court for trial on the merits.

The plaintiff will get his costs in all Courts.

1933  
YU HOCK  
 TUN  
 7.  
YU HOCK,  
 DAS, J.