APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

1888. *February* 14.

MANISHANKAR PRA'NJIVAN, (ORIGINAL PLAINTIFF), APPELLANT, *v.* BA'I MULI AND ANOTHER, (DEFENDANTS), RESPONDENTS.*

Minor—Act XX of 1864, *Sec.* 18—*Sanction of alienation of minor's property—Civil Procedure Code* (*Act X of* 1877), *Sec.* 462—*Compromise on behalf of a minor—Mortgage—Assignment of mortgage by guardian of minor—Suit on mortgage by assignee—Proof of assignment when necessary—Consideration for assignment—Adequacy of consideration.*

Section 18 of the Minors' Act XX of 1864 applies only to persons to whom a certificate has been granted under that Act. An assignment of a mortgage, therefore, by a widow, acting as natural guardian of her minor son, but who has not obtained a certificate under the Act (XX of 1864), is not invalid because effected without the sanction of the Court.

Where a widow acting as natural guardian of her minor son assigned a mortgage which had been executed to her deceased husband for a consideration, a part of which was a sum due under a decree to the assignee,

Held, that such an assignment was not invalid under section 462 of the Civil Procedure Code (Act X of 1877). Assuming that section to be applicable to the compromise of a decree, the circumstance that the compromise was voidable would only affect the consideration for the assignment by reducing its amount.

The plaintiff sued, as assignee of a mortgage, to recover the debt due from the mortgagors personally and from the property mortgaged. The assignor was a Hindu widow, acting as natural guardian of her minor son. The consideration for the assignment was a sum of Rs. 68-9-0 due to the plaintiff under a decree obtained by him and Rs. 30-7-0 cash paid.

The lower Courts held that as to the Rs. 68-9-0 the transaction really amounted to a satisfaction or adjustment of the decree under which it was due, and that as such adjustment had not been certified to the Court it was invalid; they further held that the consideration for the assignment of the mortgage having so far failed, the assignment was without adequate consideration, and, therefore, they dismissed the suit. On appeal to the High Court,

Held, that although in ordinary cases it is the rule that where an assignee sues on his assignment and proves it, an adverse party cannot take the objection that there was no consideration, yet that under the peculiar circumstances of this case that rule did not apply. The mortgage-deed was assigned by a widow acting as the natural guardian of a minor, and a great part of the consideration for the assignment had admittedly failed, the confirmation of the decree which formed part of the consideration not having been certified to the Court. There was on the record no admission of the assignment by the assignor. It might be that the

* Second Appeal, No. 755 of 1885.

minor in a suit by his next friend or guardian appointed under Act XX of 1864 might dispute the assignment. The defendants in order to protect themselves had a right to call on the plaintiff to prove the assignment, and a Court ought in the interests of justice to see that they were so protected. The assignment was on behalf of a minor, and the person acting as his guardian had not admitted it, and it might be that even her admission would not be binding on him since he was not a party to the suit. It was necessary that the point should be so tried and determined as to bind the minor, and to do that it was essential that he should be made a party to the suit.

The Court, therefore, reversed the decree of the lower Courts and remanded the case.

SECOND appeal from the decision of S. Hammick, Acting District Judge of Surat, in Appeal No. 54 of 1884.

The plaintiff as assignee of a mortgage sued the defendants, (the mortgagors), to recover Rs. 250 due upon the mortgage. The mortgage was originally executed on the 23rd December, 1871, by the defendants, (Bái Muli and another), to one Magan Jiva. After the death of Magan Jiva (the mortgagee) his widow acting as the natural guardian of her minor son assigned the mortgage to the plaintiff, the consideration for the assignment being a sum of Rs. 68-9-0 due to the plaintiff under a decree obtained by him and Rs. 30-7-0 paid in cash by the plaintiff to her. The assignment was made on the 7th September, 1880.

The defendants (the mortgagors) contended *(inter alia)* that they knew nothing of the assignment of the mortgage, that it was not a *bonâ-fide* transaction, and that the debt due under the mortgage bond had been paid off ten years previously.

The Subordinate Judge was of opinion that, as far as Rs. 68-9-0 was concerned, the assignment was really a satisfaction or adjustment of the decree out of Court, and that as it had never been certified to the Court, it was null and void. He, therefore, held that the assignment of the mortgage was without consideration, and on that account void under section 23 of the Indian Contract Act (IX of 1872). The suit was, therefore, dismissed.

On appeal this decision was confirmed by the Acting District Judge, for the following reasons:—

"The pleader for the plaintiff (appellant) has attempted to controvert this view" *(i.e.* the Subordinate Judge's), "and sun-

1888.

MANISHANKAR PRÁNJIVAN v. BAI MULI.

ports his argument by the authority of the Allahabad High Court case—*Rámghulám* v. *Jánki Rái*[1]. That case was very similar to the present one, and undoubtedly the view taken by the High Court is in favour of the appellant. The Bombay High Court, however, in the case of *Pátankar* v. *Devji*[2], took the opposite view, and held that a suit for the recovery of money paid to a judgment-creditor out of the Court and not certified appears to be barred by section 244 of Act X of 1877, and by the last paragraph of section 258 as amended by Act XII of 1879. The same law governs the present case, and the Bombay High Court has adhered to its previous enunciation of the law in the more recent case of *Pándurang Rámchandra Chowghule* v. *Náráyen*[3]. For this Presidency, therefore, the law seems for the present to be settled, and I am bound to hold that as more than two-thirds of the ostensible consideration for the purchase of plaintiff's mortgage-deed was valueless, the sale of the mortgage-deed was without adequate consideration, and the transaction is, therefore, void. The plaintiff, therefore, is barred from suing on his mortgage-deed, and his claim must be rejected.

"A second objection to the plaintiff's suit has been found in the fact that the mortgage-deed, which deals with immoveable property belonging to a minor, was sold to him by Bái Kunvar, the minor's natural guardian, without the sanction of the Civil Court. This objection also appears to be supported by the authority of the High Court's decision in *Bái Kesar* v. *Bái Ganga*[4]. The provisions of section 462 of Act X of 1877 interpose a further bar of an analogous nature to the plaintiff's suit.

"On the above grounds I find that the plaintiff's (appellant's) suit is barred, and I, therefore, confirm the decree of the lower Court and reject this appeal with costs."

Against this decision the plaintiff appealed to the High Court.

Motilál M. Munshi for the appellant:—Here, as in England, a mortgagee may transfer his rights to a third person by way of

(1) I. L. R., 7 All., 124.
(2) I. L. R., 6 Bom., 146.
(3) I. L. R., 8 Bom., 300.
(4) 8 Bom. H. C. Rep., 31, A. C. J.

assignment—*Chinnayya Rawutan* v. *Chidambaram Chetti*[1]; *Gokuldás Jagmohandás* v. *Lakhmidás Khimji*[2]; *Abdool Hakim* v. *Doorga Prashad Bonerji*[3].

Mánekshán Jehángirshán for the respondent:—The assignment in question is opposed to public policy. It is, therefore, invalid under section 23 of the Indian Contract (IX of 1872). The greater part of the consideration consists of a judgment-debt which has been compromised. This compromise was not certified to the Court. The consideration is, therefore, illegal.

BIRDWOOD, J.:—In this case the plaintiff sued, as the assignee of a deed of mortgage, to recover the debt from the defendants, the mortgagors, and the mortgaged property. The assignor was a widow, acting as the natural guardian of her minor son.

The District Judge has held the assignment invalid, for three reasons:—(1) because the assignment had not been sanctioned by the District Court under section 18 of the Minors' Act XX of 1864[4]; (2) because the leave of the Court was not obtained under section 462[5] of Act X of 1877 to the compromise by which the decree was satisfied; and (3) because the sale of the mortgage-deed was without adequate consideration. The first reason is bad, because the widow was a *de facto* manager under the Hindu law who had not applied for any certificate under the Minors' Act, and section 18 of the Act applies only to persons to whom a certificate has been granted under the Act. See *Bái Amrit*

(1) I. L. R., 2 Mad., 212. (2) I. L. R., 3 Bom., 402.
(3) I. L. R., 5 Calc., 4.

(4) "Section 18.—Every person to whom a certificate shall have been granted under the provisions of this Act may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a minor, and may collect and pay all just claims, debts, and liabilities due to or by the estate of the minor. But no such person shall have power to sell, alienate, mortgage, or otherwise encumber any immoveable property, or to grant a lease thereof for any period exceeding five years without the sanction of the Civil Court previously obtained."

(5) "Section 462.—No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

"Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor."

1888.

MANISHANKAR PRÁNJIVAN v. BÁI MGLI.

v. *Bái Mánik*[1] and *Rám Chundar Chuckerbutty* v. *Brojonáth Mozumdár*[2]. The second reason is also bad, because, even assuming that section 462 of the Code of Civil Procedure applies to the compromise of a decree, the circumstance that the compromise was voidable would affect only the consideration for the assignment of the mortgage by reducing its amount.

As to the third reason, it is argued that such an objection ought not to have been taken, inasmuch as the transaction was proved. In ordinary cases, no doubt, it is the rule that where an assignee sues on his assignment and proves it, an adverse party cannot take the objection that there was no consideration. See *Kachu Bayaji* v. *Kachobá Vithobá*[3] and *Tukárám* v. *Bahiráv Yádavrav Keskar*[4]. In this case, however, the circumstances are peculiar. There is on the record no admission of the assignment by the assignor. The mortgage-deed, moreover, is assigned by a widow, acting as the natural guardian of a minor, and a great part of the consideration has admittedly failed, the compromise of the decree which formed a part of the consideration not having been certified to the Court. It might be that the minor in a suit by his next friend or by a guardian appointed under Act XX of 1864 might dispute the assignment. The defendants, in order to protect themselves, have the right to call on the plaintiff to prove the assignment; and a Court ought, in the interests of justice, to see that they are so protected. When the assignor is an adult, that can of course be done by his own admission recorded in the suit. Here, however, the assignment is on behalf of a minor, and the person, acting as his guardian, has not admitted it, and it might be that even her admission would not be binding on him, since he is not a party to the suit. It is necessary, therefore, that the point shall be so tried and determined as to bind the minor, and to do this it is essential that he be made a party to the suit.

We, therefore, reverse the decrees of the lower Courts and remand the case for the minor represented by a guardian for the suit to be joined as a defendant and for the point as to the legal-

(1) 12 Bom. H. C. Rep., 79, A. C. J.
(2) I. L. R., 4 Calc., 929.
(3) 10 Bom. H. C. Rep., 491.
(4) Printed Judgments for 1888, p. 7.

ity of the assignment to be determined as between him and the plaintiff, and thereafter for the determination of the suit on the merits as between the plaintiff and the present defendant. Costs to be provided for in the new decree.

1888.

MANISHANKAR PRÁNJIVAN v. BÁI MULI.

Decree reversed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

KA'GAL GANPAYA, (ORIGINAL PLAINTIFF), APPELLANT, *v.* MANJA'PP'A AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

1888. *August* 14.

Hindu law—Joint family—Money decree—Decree against father alone—Purchaser at execution sale under such decree—How far such sale binding on the interest of the sons not parties to the suit or execution proceedings.

In the case of a joint Hindu family whose family property is sold by the father alone by private conveyance, or where it is sold in execution of a decree obtained against him alone, the mode of determining whether the entire property or only his interest in it passes by the sale, is to inquire what the parties contracted about in the case of a conveyance, or what the purchaser had reason to think he was buying if there was no conveyance but only a sale in execution of a money decree.

In the case of an execution sale the mere fact that the decree was a mere money decree against the father as distinguished from one passed in a suit for the realization of a mortgage security directing the property to be sold, is not a complete test.

The plaintiff claimed certain property from the defendant, alleging that he had purchased it from a third person, who had purchased it at an auction sale held in execution of a money decree obtained against the first defendant alone. The first defendant was the father of the remaining defendants, and they constituted a joint Hindu family. The sons contended that only the father's interest was bound by the sale; and the lower Courts decided in their favour.

In appeal, the High Court reversed the decree, and sent back the case for a fresh decision, on the ground that the lower Courts had decided the question in the case exclusively on the ground that the property had been purchased in execution of a money decree without referring to the execution proceedings.

THIS was a second appeal from a decision of G. McCorkell, District Judge of Kánara.

The plaintiff sued the defendant for certain property, alleging that he had purchased it from a person who himself had bought it

* Second Appeal, No. 440 of 1886.