

## APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Ránade.*

1895.  
November 12.

GANESH LA'LA (ORIGINAL DEFENDANT No. 4), APPELLANT, *v.* BA'PU AND OTHERS (ORIGINAL PLAINTIFFS, &C.), RESPONDENTS.\*

*Minor—Estoppel—Fraud—Fraudulent representation by minor that he was of age—Contract by minor.*

A minor representing himself to be of full age sold certain property to A. and executed a registered deed of sale. The deed contained a recital that he was twenty-two years of age.

*Held*, in a suit by him to set aside the sale on the ground of his minority, that he was estopped.

SECOND appeal from the decision of Ráo Bahádur N. G. Phadke, Joint First Class Subordinate Judge, A. P., of Sholápur.

On 10th June, 1885, two brothers, Bandu and Bapu, and their mother, Bhagubái, as guardian of a third brother, Devman, who was a minor, executed a registered deed of sale of certain family property to one Kushába, the third defendant. There was no question as to Bandu having at that time attained majority. As to Báu, however, the sale-deed recited that he was twenty-two years of age. Bhagubái had on 30th November, 1877, obtained a certificate of guardianship and administration to the estate of all three sons who were then stated to be fifteen, nine and five.

Kushába (defendant No. 3) duly obtained possession of the property he had purchased, and he subsequently sold it to Ganesh Lal. Gardeshi (defendant No. 4), who purchased it in good faith and for valuable consideration.

In 1891 a suit was brought by Báu for himself, and as guardian of his brother Devman, to have the sale-deed cancelled and to recover possession of the property. Bhagubái and Bandu were joined as defendants to the suit. The main grounds upon which plaintiffs based their claim were that (1) they were minors at the time of the sale and (2) that the sanction of the District Court had not been obtained to the sale. Bhagubái (defendant No. 1) denied knowledge of the sale. Bandu (defendant No. 2) and Kushába (defendant No. 3) did not appear.

\* Second Appeal, No. 840 of 1893.

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Defendant No. 4 (Ganesh) contended that Bandu and Bápu had ceased to be minors at the date of the sale, and that they were living together with Devman (plaintiff No. 2) and their mother; and that the sanction of the District Court was not necessary.

The Subordinate Judge of Bársi found that the sale-deed was proved; that when the sale-deed was passed in 1885, Bápu was a minor, seventeen or eighteen years of age, but that as he had fraudulently induced defendant No. 3 to believe him to be twenty-two years old and to act on that belief, he was estopped from avoiding the sale.

As to the second plaintiff Devman, who was admittedly a minor, the Subordinate Judge held that Bhagubái's certificate of guardianship being still in force, Bápu could not sue as guardian of the minor. The Subordinate Judge, therefore, dismissed the suit, but without prejudice to the rights of the minor Devman, plaintiff No. 2.

In appeal by the plaintiffs the Joint First Class Subordinate Judge, A. P., of Sholápur awarded plaintiff No. 1's claim. He observed:—

“According to the Indian Majority Act, plaintiff No. 1 was a minor at the time and was under a legal disability rendering him incompetent to enter into a transaction like the sale in dispute, notwithstanding the fact that he had good intelligence and had attained understanding powers. The certificate of administration issued to the defendant No. 1 being still in force, at least as regards plaintiff No. 2, who is still a minor, the plaintiff No. 1 cannot properly and legally represent him. See *Atmáram Hari v. Anandibái kom Ganesh* (1).

“In this state of things, permission of the District Court was a condition precedent to the validity of the sale to defendant No. 3 according to the Minors Act of 1864.”

Against this decision defendant No. 4 preferred a second appeal to the High Court.

*Mahádev Bháskar Chaubal* for the appellant (defendant No. 4):—There is no doubt that plaintiff No. 2 cannot sue by any other person except his certificated guardian.

But as regards plaintiff No. 1, he joined in the sale to Kushába (defendant No. 3) though a minor, representing himself to be twenty-two years old. As a matter of fact it has been found by

(1) P. J., 1885, p. 199.

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the District Judge that he was eighteen years of age at the time ; but the District Judge holds him to be a minor, because the certificate of his guardianship under Act XX of 1864 had not been cancelled. He relies for this decision on the Indian Majority Act (IX of 1875), section 3, whereby the age of majority is fixed at twenty-one years. But it is doubtful whether the fact of a guardian having been once appointed is sufficient to bring the case within the first clause of section 3 of that Act. See *Yeknáth v. Warubáí*<sup>(1)</sup>.

Under the Hindu law, Bandu, the eldest son, became the manager of the family on his attaining majority, and ousted the mother, who was a guardian under the certificate, and became thenceforth the guardian of the person and property of plaintiff No. 1. See Act XX of 1864, section 30 ; *Savage v. Foster*<sup>(2)</sup>. The doctrine of estoppel applies to a minor—*Wright v. Snowe*<sup>(3)</sup> ; Kerr on Fraud, 122. Fraud binds infants—*Evroy v. Nicholas*<sup>(4)</sup>.

*Máneksháh Jehángirsháh* for the respondent (plaintiff No. 1):—The doctrine of estoppel does not apply to a minor ; if it did, a minor would be able to enter into a valid contract of sale. Simpson on Infants, p. 42, shows that a minor is not bound by recitals in deeds which he has joined in executing. Section 18 of Act XX of 1864 gives the rule of law on the subject.

JARDINE, J. :—The plaintiff No. 1 (Bápu) being at the time seventeen or eighteen years of age, and a ward under Act XX of 1864, and, therefore, a minor by operation of the Indian Majority Act, IX of 1875, section 3, joined actively in the contract of sale, dated the 10th June, 1885, which contained a statement that his age was twenty-two years. We infer, as did the Subordinate Judge, that this statement induced the defendant No. 3 (Kushába) to purchase the property. Bápu seeks to have the sale set aside in his favour on the ground of his minority. The Subordinate Judge applied the doctrine of estoppel by fraud, and rejected the claim of Bápu against defendant No. 3 and his vendee (defendant No. 4), as neither of them were put on inquiry as to the age of Bápu. The lower Court of Appeal ignored this doctrine, and

(1) J. L. R., 13 Bom., 285.

(2) 2 De Gex and S., 321.

(3) 2 W. &amp; T., 678 at p. 692.

(4) 2 Eq. Ca. Abridg., 188.

held that the defendant No. 4 must have been put on inquiry at the time he bought from defendant No. 3.

It has been contended by Mr. Máneksháh that the rule of estoppel cannot be applied to a plaintiff asking to rescind a transaction knowingly entered into by him when an infant, even though he may have made statements untrue in fact. The exception of an infant is not made in section 115 of the Evidence Act, nor suggested in the authoritative decision on the meaning of that section by the Privy Council in *Sarat Chunder v. Gopál Chunder*<sup>(1)</sup>, nor in *Mills v. Fox*<sup>(2)</sup>, where the difference between cases depending on estoppel and contract is explained. Proof of fraud on the part of the infant is not essential. *Wright v. Snowe*<sup>(3)</sup> shows these propositions, and that the infant could not afterwards, as plaintiff, get the aid of a Court to treat his deed as a nullity when the other party had acted upon it. The cases we have cited govern the present and justify the original decree. The Court reverses the decree of the lower Court of Appeal and restores that of the Subordinate Judge. Costs of both appeals on the plaintiff Bápu.

*Decree reversed.*

(1) I. L. R., 20 Cal., 296.

(2) 37 Ch. D., 153.

(3) 2 De Gex and S., 321.

## ORIGINAL CIVIL.

### FULL BENCH.

*Before Sir C. Farran, Kt., Chief Justice, Mr. Justice Strachey and Mr. Justice B. Tyabji.*

MULJI LA'LA' AND OTHERS, PLAINTIFFS, v. LINGU MAKAJI AND ANOTHER, DEFENDANTS.\*

1896.

February 14

*Limitation—Limitation Act (XV of 1877), Sec. 19—Acknowledgment—Stamp Act (I of 1879), Sch. I, Art. 1, and Sec. 34—Evidence.*

An acknowledgment of a debt coming under article 1, Schedule I, of the Stamp Act I of 1879 cannot, if unstamped, be given in evidence for any purpose including the purpose of saving limitation.

REFERENCE by C. M. Cursetji, Third Judge of the Bombay Small Causes Court, under the provisions of section 617 of the Civil

\* Small Cause Court Reference, No. 23880 of 1895.