APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1899. *February* 14.

VIRUPAKSHAPPA (ORIGINAL DEFENDANT No. 1), APPELLANT, *v.* SHIDAPPA AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Minor—Suit on behalf of minor—Decree—Compromise of decree by next friend—Application to set aside compromise—Modes of impeaching the decree—Practice—Procedure—Civil Procedure Code (Act XIV of 1882), *Sec.* 462.

Where a decree to which a minor is a party has been compromised with leave of the Court granted under section 462 of the Civil Procedure Code (Act XIV of 1882), the compromise cannot be subsequently re-opened by the Court *proprio motu* on the ground that it gave the minor less property than he was entitled to under the decree. The modes in which such an order can be impeached are, at the most, two, namely, by review or by suit.

APPEAL from the decision of Ráo Bahádur Mahadeo Shridhar, First Class Subordinate Judge of Sholápur.

The plaintiffs, by their mother and next friend, sued for partition in 1895, and on 21st December, 1897, obtained a decree for their shares. In execution certain property in possession of the defendants was attached. On the 13th June, 1898, the plaintiff Shidappa, who described himself as then of age, and his brother Basappa (the co-plaintiff) by his guardians (his mother and brother) applied to the Court to release the attached property and restore it to the defendants, stating that they (the plaintiffs) had adjusted the decree on the 6th June, 1898, and taken possession of the property given to them under the adjustment, and had no further claim against the defendants. The Court granted the application and ordered the *darkhást* to be struck off the file after restoring the attached property to the defendants.

On the next day (14th June, 1898) one Nijlingappa, a stranger to the suit, alleging himself to be interested in the plaintiffs, applied that the *darkhást* should be restored to the file and that further inquiry into the matter should be made. He stated that it was not true that Shidappa had attained his majority, and alleged that the guardian had been deceived, and that the adjustment had been made in fraud of the minors.

The defendant Virupakshappa opposed the application, contending that Nijlingappa had no authority to move in the matter; that the

*Appeal No. 88 of 1898.

statements made in his application were untrue; that the adjustment of the decree had been honestly made and communicated to the Court which recognized it; that the adjustment was beneficial to the plaintiffs; and that the Court had no power to go into the matter after the *darkhást* had been struck off the file and the whole execution proceeding concluded.

The Judge held that the adjustment of the decree ought not to be recognized and that the execution should proceed. The following is an extract from his judgment :—

"I think I can entertain Nijlingappa's application. The application by plaintiff No. 1 and Nilgangava was granted and the *darkhást* was ordered to be struck off, but the fact that the decree was compromised on behalf of minor plaintiffs by their next friend and mother does not appear to have been brought to the notice of the Court. The application appears to have been considered as made under section 257 of the Civil Procedure Code. It is, therefore, open to me to inquire whether the decree was adjusted and the plaintiff's mother received the money and property under the adjustment with or without the leave of the Court, or whether the minor's interests have not been prejudicially affected. I am also of opinion that I can make this inquiry *proprio motu*, or on the application of any person interested in the welfare of the minors.

"There is no evidence in this case to show that the plaintiff No. 1, Shidappa, has attained majority. Under the Civil Procedure Code it is his right to elect to prosecute the suit as a major, and till he has exercised this right he is to be treated as a minor. Plaintiff No. 1 is not only not proved to have arrived at man's estate, but has made no application electing to be treated as a major. I am also of opinion that the adjustment of the decree cannot take effect as regards plaintiff No. 1.

"There remains the first issue (namely, whether the adjustment of the decree is beneficial to the minor plaintiffs) and that is easily disposed of. The *darkhást* gives the plaintiff's property of less value than that they were entitled to under the decree. A comparison of the decree with the parkhat makes this clear."

Defendant No. 1, Virupakshappa, appealed.

Dattatraya A. Idgunji for the appellant (defendant No. 1) :— The Judge was wrong in treating the application of the 13th June, 1898, as one under section 257 of the Civil Procedure Code. The fact that one of the applicants was a minor was apparent on the face of the application. The adjustment was not only certified to the Court; the leave of the Court was asked for and granted. This was sufficient compliance with section 462 of the Civil Procedure Code—*Usman* v. *Gyanu*[1]. Shidappa described himself as having attained

(1) P. J., 1891, p. 111.

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full age; the proceedings taken by him on his own behalf were not invalid—*Doorga Mohun Dass* v. *Tahir Ally*(1). The adjustment was conclusive as against him. There was no evidence to show that he had not attained majority. The entertaining of the application of the 14th June, 1898, and the subsequent inquiry were *ultra vires*. There is no provision of law enabling a Court *proprio motu*, or on the application of a person describing himself as interested in the welfare of the minors, to open up an adjustment duly sanctioned by the Court—*Karmali* v. *Rahimbhoy*(2); *Mirali* v. *Rehmoobhoy*(3); *Eshan Chundra* v. *Nundamoni Dassee*(4); *Bibee Solomon* v. *Abdool Azeez*(5). The only mode of doing so is by review under section 623 or by suit under section 11 of the Civil Procedure Code.

The mere fact that the adjustment allotted property of less value than that granted by the decree, does not show fraud. The family property consisted of large outstandings and included bad debts. The plaintiffs were paid in cash, and an allowance was made in our favour, because we undertook the risk of recovering the outstandings and bad debts. This was, we submit, a fair arrangement.

There was no appearance for the respondents (plaintiffs).

PARSONS, J.:—The Subordinate Judge, no doubt, acted hastily in granting the application of the 13th June and striking off the *darkhást* without enquiry. He says that the fact that the decree was compromised on behalf of the minor plaintiffs by their next friend and mother, does not appear to have been brought to the notice of the Court, but that fact was apparent on the face of the application itself, and the Subordinate Judge should not have sanctioned the compromise without being satisfied that it was *bonâ fide* and for the benefit of the minors. Nevertheless the fact remains that the leave of the Court was given to it and it must be considered to have been granted under section 462 of the Civil Procedure Code. It was not, therefore, we think, a matter that the Subordinate Judge could re-open *proprio motu* as he has done and set aside his order on the mere ground that the compromise gave the minors less property than what they were entitled to under the decree. The modes in which such an order can be impeached have been fully discussed in the case

(1) (1894) 22 Cal., 270.
(2) (1888) 13 Bom., 137.
(3) (1891) 15 Bom., 594.
(4) (1884) 10 Cal., 357.
(5) (1881) 6 Cal., 687.

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of *Karmali Rahimbhoy* v. *Rahimbhoy*[1] and in the cases therein cited, and resolve themselves into two at the most, *viz.*, by review or by suit. In the present case no suit has been filed, and the minors have not approached the Court at all to ask for relief, so that we cannot treat the proceedings of the lower Court as taken upon an application for review of the order.

We must reverse the order of the 15th October, 1898, as made without jurisdiction, leaving the minors, or some one legally competent to act on their behalf, free to take such steps as they may be advised to take, if they wish to have the order of the 13th June set aside.

Order reversed.

(1) (1888) 13 Bom., 137.

APPELLATE CIVIL.

Before Mr. Justice Parsons, Acting Chief Justice, and Mr. Justice Ranade.

RATANLAL (ORIGINAL DEFENDANT NO. 3), APPELLANT, *v.* BAI GULAB, (ORIGINAL PLAINTIFF), RESPONDENT.*

1899. *February* 28.

Civil Procedure Code (Act XIV of 1882), *Sec.* 231—*Application for execution by one of several joint decree-holders—Order refusing to allow execution by one of several joint decree-holders—Appeal—Practice.*

No appeal lies against an order under section 231 of the Code of Civil Procedure (Act XIV of 1882), refusing to allow one of several joint decree-holders to execute a joint decree.

APPEAL from the decision of Rao Bahádur K. B. Marathe, First Class Subordinate Judge of Surat.

One Ratanlal Rangildas and Utamram Itcharam traded together in partnership in Bombay.

Utamram was charged with criminal breach of trust in respect of certain jewellery entrusted to him for sale by one Bai Gulab of Surat.

In execution of a search warrant issued by the First Class Magistrate of Surat, the Police seized the jewellery from the accused's partner, Ratanlal, and produced it before the Magistrate.

* Appeal, No. 104 of 1898