

## APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice and Mr. Justice Heaton.*

GURUSHIDDSWAMI AND ANOTHER, SONS AND HEIRS OF BASAWANEYA BIN GURUSHIDDYA NARENDRA, DECEASED, MINORS BY THEIR GUARDIAN MOTHER IRAWA KARI BASWANEYA (ORIGINAL DEFENDANTS), APPELLANTS *v.* PARAWA KOM DUNDAYA NARENDRA (ORIGINAL PLAINTIFF), RESPONDENT.<sup>3</sup>

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August 21

*Specific Relief Act (I of 1877), sec. 41—Minor—Representation made as major—Estoppel—Sale deed, suit to set aside—Restoration of consideration money.*

The plaintiff sued to obtain a declaration that the sale deed passed by her to her deceased husband's brother was not valid as having been executed during her minority and to recover possession of the property. The defendant contended that the plaintiff was estopped because she represented herself as being a major when she must have known that she was a minor. On these pleadings questions having arisen (1) whether the plaintiff was estopped on account of the representation made by her and (2) whether under section 41 of the Specific Relief Act, 1877, the Court should have directed the plaintiff to restore the consideration money :

*Held*, that the plaintiff was not estopped there being evidence that the defendant was not deceived by what she told him, inasmuch as he had made inquiries about plaintiff's age from the plaintiff's father and from other sources and beyond that was himself the brother of her deceased husband and therefore a fair presumption arose that he must have known what the plaintiff's age was ;

(2) that there was no equity in favour of the defendant to direct the plaintiff to restore the consideration money.

FIRST appeal against the decision of T. V. Kalsulkar, First Class Subordinate Judge, Dharwar, in suit No. 325 of 1913.

Suit for a declaration and possession.

Plaintiff was the widow of the divided brother of defendant No. 1.

<sup>3</sup> First Appeal No. 256 of 1916.

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On the 9th March 1902, the defendant obtained from the plaintiff a sale deed for a consideration of Rs. 2,400

In 1913, the plaintiff sued for a declaration that the sale deed was not valid as when it was executed plaintiff was a minor, and to recover possession of the property.

The defendant contended *inter alia* that the plaintiff and her father represented that she was major; that the plaintiff was estopped from setting up her minority; and that if the sale deed was set aside, he was entitled to get back the purchase money.

The Subordinate Judge found that the plaintiff was a minor at the date of the sale deed and that she was not estopped from contending that she was a minor. He, therefore, set aside the sale deed as void and decreed the plaintiff's claim for possession.

The defendant appealed to the High Court.

*G. S. Rao* and *P. B. Shingne*, for the appellant:—It was wrong to hold that plaintiff was a minor at the date of the sale. The evidence on the point consists of oral evidence and vaccination certificates and birth-certificates exhibited on plaintiff's behalf. The oral evidence has been disbelieved by the lower Court. As to vaccination certificates they are not admissible in evidence and as to birth certificates, they relate to all the children born after the plaintiff.

The lower Court has found that the consideration for the deed was paid. Plaintiff's father had taken a prominent part in getting the deed executed. The plaintiff was identified before the Sub-Registrar by one of her own relatives who was a clerk in the Mamlatdar's office. The Sub-Registrar also believed that she was a major. The attesting witnesses were respectable men.

All this evidence creates estoppel against the plaintiff: see *Dadasaheb Dadrathrao v. Bai Nahani*<sup>(1)</sup>.

At any rate, the consideration received by the plaintiff should be ordered to be restored: section 41, Specific Relief Act, 1877.

*Jayakar* with *K. H. Kelkar*, for the respondent, not called upon.

MACLEOD, C. J.:—The plaintiff sued to obtain a declaration that the sale-deed passed by her on the 9th March 1903 to her deceased husband's brother was not valid, and to recover possession of the property described in the plaint with mesne profits for the year 1911-12 with future mesne profits and costs. The greater part of the evidence turned upon the question whether the plaintiff was a minor when she signed the sale-deed. It cannot be disputed that she signed the sale-deed and admitted execution before the Sub-Registrar, and that it appears from the document that Rs. 2,400 was paid for the land. We have considered very carefully the evidence which was dealt with by the learned Subordinate Judge, and also the arguments adduced by Mr. Rao to show that the finding of the learned Judge was wrong, but there are many circumstances in the case which all point to the fact that the plaintiff was a minor in 1903.

Then the question arises whether she is now estopped because, according to the defendant's case she represented herself as being a major when she must have known that she was a minor. It has been held by a Bench of this Court that a person can be estopped in such circumstances, but it was admitted in that case that the circumstances in which an estoppel would be allowed would be extremely rare. But in this case

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there is evidence that the defendant was not deceived by what the plaintiff had told him. He had made inquiries about plaintiff's age from other sources and from the plaintiff's father. Beyond that, the plaintiff was the widow of his deceased brother and it is not an unfair presumption to make against the defendant that he must have known perfectly well what the plaintiff's age was.

Lastly, the question arises whether under section 41 of the Specific Relief Act we should direct the plaintiff to restore the consideration money. The Court no doubt has a discretion to do so, but there must be very strong circumstances in the case to enable the Court to find that there is an equity in favour of the defendant. In the case of *Thurstan v. Nottingham Permanent Benefit Building Society*<sup>(1)</sup>, referred to in *Mohori Bibee v. Dharmodas Ghose*<sup>(2)</sup> by their Lordships of the Privy Council and in which the judgment of Romer L. J. is quoted, a mortgage in favour of the society was set aside, and the question was whether the society was not entitled to repayment of the advances; Romer L. J. said: "The short answer is that a Court of Equity cannot say that it is equitable to compel a person to pay any moneys in respect of a transaction which, as against that person, the Legislature has declared to be void." Cases may arise in which the Court might come to the conclusion that there was an equity in favour of the person to be paid the money. But in this case we do not think that there is any such equity. The result must be that the appeal is dismissed and the decree of the lower Court confirmed with costs.

HEATON, J. :—I concur.

*Decree confirmed.*

J. G. R.

<sup>(1)</sup> [1902] 1 Ch. 1; [1903] A. C. 6.

<sup>(2)</sup> (1903) 30 Cal. 539 at p. 549.