means the property as a whole, and not divided, separate portions of it. I think it is perfectly clear that these two individuals were associated together for the purpose of acquiring the property and deriving profits from it, and that they are assessable as an association of individuals.

It has been contended that as one of the assessees at the time when the property was acquired, and during the year of assessment, was a minor, he could not be associated with the major assessee to acquire the property. I do not think we are concerned with what was the legal effect of the contract of purchase entered into. In my opinion, the minor was none the less associated with the major assessee in acquiring the property,—although he was a minor at the time; and I think that all we have to decide is whether, as a matter of fact, these two persons were associated together as individuals for acquiring the property.

I agree that the questions must be answered, as they have been answered by the learned Chief Justice.

Answers accordingly.

J. G. R.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice.

KARIMUNNISA BEGUM, WIDOW OF KAJI MIRSYED ALISAHEB (ORIGINAL DEFENDANT No. 2), APPLICANT *v.* KAJI MIR JAMALUDDIN VALADE MIR MASUM ALIKHAN AND OTHERS (ORIGINAL DEFENDANTS Nos. 1 AND 3 AND PLAINTIFF), OPPONENTS.*

Civil Procedure Code (Act V of 1908), section 152— Mistake in consent order—Application to correct mistake—Power of Court to entertain application.

The Court has, under section 152 of the Civil Procedure Code, 1908, power to entertain an application in order to correct a clerical or arithmetical mistake in a consent order.

*Civil Revision Application No. 61 of 1936.

1937

KARIMUNNISA BEGUM v. KAJI MIR JAMALUDDIN

CIVIL REVISION APPLICATION against an order passed by I. A. Shaikh, Extra Joint Second Class Subordinate Judge, Surat.

Application to correct mistake in consent order.

The applicant was defendant No. 2 in suit No. 429 of 1931 filed by opponent No. 3. The suit ended in a compromise and a consent decree in terms of the compromise was drawn up.

Under the decree the applicant obtained, among other properties, survey No. 75 of Vegaum and its area was wrongly described as being 18 Vasa and 10 Vishwas, instead of 1 Bigha, 9 Vasa and 15 Vishwas. When the mistake was discovered, the applicant applied to the Court to have the same corrected. Notices were duly issued to the parties.

The Subordinate Judge was of opinion that section 152 would apply to the present case, but he preferred to rely upon a decision in 15 I. C. 497 and rejected the application.

The applicant applied to the High Court.

H. M. Choksi, for the applicant.

No appearance, for the opponents.

BEAUMONT C. J. In this case a consent order was made, and it is alleged that that order contains a clerical or arithmetical mistake, and an application was made to the learned Judge under section 152 of the Civil Procedure Code asking him to correct the mistake. The learned Judge refused to entertain the application on the ground that section 152 does not apply to a consent order. I have been referred to no authority, and I know of none, in this country or in England, which deals with this particular point, and I must decide it on principle. A consent order is a form of contract; a mistake in a contract common to both parties, —and a clerical or mathematical error can hardly fail to be that—can be rectified by an order of the Court; the method of obtaining such an order is a matter of procedure; normally

1937

KARIMUNNISA BEGUM v. KAJI MIR JAMALUDDIN

Beaumont C. J.

a suit is necessary, but when the contract is embodied in an order, I see no reason why the parties should not avail themselves of the simple method of correcting such mistakes in an order provided by section 152. In my opinion, therefore, the Judge had power to entertain the application. I must set aside the order of the lower Court and send the case back to the learned Judge with a direction to deal with it on the merits and decide whether the case does or does not fall within the terms of section 152. If it does, I think he can make the alteration required without putting the parties to the delay and expense of filing a suit. The costs of this revisional application will be costs in the application to be dealt with by the Judge.

Order set aside: case sent back.

Y. V. D.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice.

1937
April 9

AURAJ JOHARMAL MARWADI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS *v.* DALPAT SUPADU, MINOR, BY HIS GUARDIAN, NAZIR, DISTRICT COURT, JALGAON, AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 3), RESPONDENTS.*

Minor—Guardian—Suit against minor—Negligence of guardian ad litem*—Decree passed against minor—Whether minor can challenge decree in a substantive suit.*

A minor cannot challenge in an independent suit the validity of a decree passed against him on the ground of negligence of his guardian *ad litem*.

In the absence of fraud or collusion, if a minor wishes to challenge a decree against him on the mere ground of negligence by his guardian, he must do so in the suit, by such means as the rules of procedure provide.

Raghubar Dyal Sahu v. *Bhikya Lal Misser*,(1) *Beni Prasad* v. *Lajja Ram*,(2) and *Imam Din* v. *Puran Chand*,(3) approved.

Lalla Sheo Churn Lal v. *Ramnandan Dobey*,(4) and *Siraj Fatma* v. *Mahmud Ali*,(5) disapproved.

*Second Appeal No. 827 of 1933.

(1) (1885) 12 Cal. 69.
(2) (1916) 38 All. 452.
(3) (1919) 1 Lah. 27.
(4) (1894) 22 Cal. 8.
(5) (1932) 54 All. 646, F. B.