

1871
 AKHUT
 RAMANA
 AND
 RAMKARINJI.
 v.
 AHMED
 YOCSAFFJI.

after the service of this decree upon him, and that, in default, execution do issue against him.

An order for such execution must be applied for by the appellants in the usual way.

The surety Hadji Abdul Ryman must pay the costs of this appeal,

Appeal allowed.

Before Mr. Justice Bayley and Mr. Justice Mitter.

1871
 March 13.

PARAN CHANDRA PAL (ONE OF THE (DEFENDANTS)). KARUNAMAYI
 DASI (PLAINTIFF) AND ANOTHER (DEFENDANT).*(1).

Sale during Minority—Suit to set aside Sale on Majority—Refund of Sale Proceeds—Period of Majority.

The plaintiff, on coming of age, sued to set aside a sale of his ancestral property which had been made by his guardian during minority. No legal necessity was proved, but it appeared that he had the benefit of the sale proceeds. A decree was passed in his favour, but subject to the condition that he should first refund the proceeds of sale.

The plaintiff's case was that, during his minority, his guardian, acting in collusion with the defendant Paran Chandra Pal, sold certain plots of his paternal jummai land to the latter. He therefore sought to have the sale declared invalid and to recover possession of the lands.

The defence of the purchaser was, mainly, that the plaintiff was more than fifteen years of age, and therefore not a minor at the date of sale, and that the deed of sale was *bonâ fide* and for good consideration. The Moonsiff held that, after the completion of the fifteenth year, a native of Bengal, who is not a zemindar paying revenue to Government, attains his majority.

(1) The original plaintiff was one came in and had her name substituted Mini Lal Kundu. He continued as for her husband, who was alleged to plaintiff in the Courts below, until the be dead. present special appeal, when his wife.

*Special Appeal, No. 2166 of 1870, from a decree of the Subordinate Judge of Hooghly, dated the 29th June 1870, reversing a decree of the Moonsiff of that district, dated the 19th February 1869.

He was of opinion that the age of majority, after the completion of eighteen years, as laid down by section 2, Regulation XXVI of 1793, was not of universal application, but only confined to the cases of persons who held estates paying revenue to Government.

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Upon the evidence, the Moosiff found that, at the time of the execution of the kabala on the 28th Asar 1268 Bengali year, (11th July 1861), the plaintiff was fifteen years and one month old. Therefore he held that the deed was executed by the plaintiff after reaching majority.

He also found that the kabala of the defendant had been duly executed by the plaintiff and his guardian jointly, and that it was a valid deed of sale; the purchase by the defendant being made in good faith for a valuable consideration, which was received and appropriated by the plaintiff. For these reasons the plaintiff's suit was dismissed. On appeal, the Subordinate Judge, taking exactly the same view as the first Court on all the points decided by it, dismissed the appeal, and confirmed the first Court's decree.

The plaintiff preferred a special appeal to the High Court, but their Lordships (BAYLEY and MARKBY, J.J.), on the authority of *Madhusudan Munji v. Debi Gobinda Newgi* (1), reversed the decree of the Court below, and remanded the case to be re-tried on the merits, with a direction that eighteen years should be taken as the proper age of majority.

After remand the Subordinate Judge decided that the sale had taken place during the plaintiff's minority. He also decided that, as there was no evidence of any legal necessity, such as would justify the sale by a guardian of a minor's property, in this case, the plaintiff should recover possession of the property, but he said nothing as to the refund of the purchase money.

On this occasion the Subordinate Judge did not go into the question of collusion between the plaintiff's guardian and the defendants, and the *bonâ fide* character of the latter's purchase; but in his former decision, he had fully upheld the judgment of the first Court on those points.

The defendant Paran Chandra Pal appealed to the High Court.

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Baboo *Nilmadhab Sen* for the appellant contended that the plaintiff should in this suit be ordered to refund the purchase-money before being allowed to execute his decree for possession of the property sold.

He urged that, under the circumstances of this case, when it was found as a fact, by the Moonsiff, and upheld by the Subordinate Judge in his first decision, that, not only was there no collusion proved, but, on the contrary, that the plaintiff (though now held to be legally a minor) was of sufficient age to understand fully the nature of the transaction, and that he had actually received the consideration-money, and appropriated it, no Court of Equity ought to give a decree restoring the property sold, without an order in the decree at the same time for a refund of the purchase-money.

Baboo *Taraknath Sen* for the respondent contended that, if the defendant had any right to a refund, his remedy was by a regular suit; and that, upon the contention of the appellant, there was nothing in the circumstances of this case which would induce the Court to make an order of refund before the plaintiff was allowed to get possession.

The appellants were not called on to reply.

The judgment of the Court was delivered by

MITTER, J.—We are of opinion that, before the plaintiff can be permitted to recover the disputed property in this case, he is bound to refund to the purchaser, defendant, the full amount of the purchase-money received by him from the latter, the interest upon that amount being set off against the profits realized by the purchaser from the date of his purchase down to that of the refund,—*i. e.*, of the deposit of the principal amount of the purchase-money by the plaintiff. Both the Courts have concurrently found that the sale was deliberately made by the plaintiff at a time when he was sufficiently advanced in years to understand the nature of the transaction, and that he had received the full amount of the purchase-money from the defendant. Although so far as the validity of the sale is concerned, the plaintiff was

not quite a major, at the time when he executed the conveyance, there is no just reason why he should not refund now to the purchaser the amount of the consideration-money paid by the latter. This, then, the plaintiff must do before he can get back the property. The plea of minority cannot be used to injure third parties, but it can be used only to protect the minor. We think that, under the circumstances, the plaintiff ought to pay to the defendant (the purchaser) the costs of this litigation, and our decree is that the plaintiff should get possession of the disputed property subject to the condition of his paying the amount of the purchase-money to the defendant, or of depositing it in Court, within two months from the date of this decree; the purchaser, defendant, not being held responsible for any profit which he might derive from the property up to that date.

Appeal allowed.

Before Mr. Justice L. S. Jackson and Mr. Justice Ainslie.

CHOWDHRY BHOLANATH THAKOOR AND OTHERS (PLAINTIFFS) v. MUSST. BHAGABATTI DEVI AND OF THE (DEFENDANTS).*

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Jan. 17.

MUSST. BHAGABATTI DEVI (ONE OF THE DEFENDANTS) v. CHOWDHRY BHOLANATH THAKOOR AND ANOTHER (PLAINTIFFS).*

MUSST. BHAGABATTI DEVI (PLAINTIFF) v. CHOWDHRY BHOLANATH THAKOOR AND OTHERS (DEFENDANTS).*

Widow—Income—Accumulations—Alimentation—Maintenance—Reversionsers.

A Hindu widow cannot alienate moveable or immoveable properties acquired by her out of the funds derived from the income of her husband's estate. Such properties descend to the heirs of the husband and not of the widow.

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1 Cal. 104.

Where, however, a widow held under a deed which conveyed the property to her to enjoy for her life-time, and to incur all needful expenses, *held* she was entitled to invest sums out of the income for the benefit of her daughter and grand-daughter in the purchase of immoveable property for their maintenance.

ONE Lachminath Thakoor, a Hindu inhabitant of Tirhoot left three sons,—Gopagir, Hira, and Udan. Udan Thakoor, during his life-time, adopted Gridhari Thakoor, one of the sons

* Regular Appeals, [No. 156, 169, and 170 of 1870, from the decrees of the Subordinate Judge of Tirhoot, dated the 21st April 1870.