

1872
 RAJ NARAIN
 DEB CHOW-
 DHRV
 v.
 KASSEE
 CHUNDER
 CHOWDREY.

Chundernath to the plaintiff was sufficient to question the legality of the sale by his guardian. Nothing short of twelve years will bar the plaintiff, who is a purchaser from one who is *sui juris*, and does not stand in the relation of a ward. The doctrine of ratification does not apply to a case where there is an end of the fiduciary relation. The equitable doctrine of acquiescence does not apply to suits in the Mofussil for which a period of limitation is provided—*Rámá Rau v. Rájá Rau* (1). When the right is founded upon law, the bar must be under the law, and cannot be subject to any equitable bar.

Baboo *Mohini Mohun Roy* for the respondents contended that there was acquiescence. The act of the guardian was not void, but voidable only. The silence of Chundernath for such a considerable length of time after attaining majority was ratification—*Boidonath Dey v. Ramkishore Dey* (2). There must be

(1) 2 Mad. Rep., 114.

(2) Before Mr. Justice Phear and Mr. Justice Mitter.

BOIDONATH DEY (DEFENDANT) v.
 RAMKISHORE DEY (PLAINTIFF).*

The 11th February 1870.
 Minor, contract by—Delay in repudia-
 ting—Ratification.

Baboo *Nilmadhub Sein* for the appel-
 lant.

The respondent did not appear.

The following judgments were deli-
 vered:

PHEAR, J.—In this case the plaintiff admits that he sold the property, which he now seeks to recover, to the defendant, and received the purchase money. But he says that, at the time when he sold it, he was a minor, consequently the contract was a void contract, and he is now entitled to recover back from the defendant the property which he so sold.

The lower Appellate Court holds that he is entitled to recover back the property thus sold, and has given a decree against the defendant to that effect; and inasmuch as this decree is not accompanied by any order that the plaintiff should refund the purchase-money which he has undoubtedly put into his pocket, the result will be that the decree, if allowed to stand, will give a legal sanction to that which is nothing more or less than robbery. It is obvious that this must be wrong. Let us look at the facts. According to the judgment of the lower Appellate Court, although the plaintiff was a minor at the time of the sale, he was then within a very few months of his majority, and since that time so long a period has elapsed, that the present suit only escapes being barred by a single month. In other words, the plaintiff for eleven years after he became a major stood by, and allowed the defendant to quietly enjoy possession of the land, which is the subject of suit, under the contract which he now seeks to set aside.

* Special Appeal, No. 2846 of 1869, from a decree of the Additional Subordinate Judge of Mymensing, dated the 8th September 1869, reversing a decree of the Munsif of that district, dated the 24th December 1868.

some prompt act to repudiate the alienation, otherwise ratification must be presumed—*Doorga Churn Shaha v. Ramnarain Doss* (1).

1872

RAJ NARAIN
DEB CHUNDER
DHRY
B.
KASSEE
CHUNDER
CHOWDERRY.

Now a contract which is made by a minor is voidable only; it is not necessarily void, and if it has been made for a consideration, which was of the nature of a necessary to the minor, it is not even voidable. I think that when, as is the case here, a minor chooses to remain quiet for eleven years, after he has attained his majority, and for eleven years and eleven months after the contract, without doing anything in any shape to repudiate it, a Court of Equity is bound as against him to presume that the consideration for the contract was of such a character as to bind him, or that he had after coming of age ratified the contract, unless this long period of silence can be explained, or the original contract impeached upon grounds going to its merits, other than that of the minority of the vendor.

was transferred to the defendant set aside. The law has not laid down any specific period of time for an action to set aside such a sale, and I am, therefore, inclined to think that the plaintiff's suit, so far as it relates to the reversal of that sale, would be barred by the provisions of the clause above referred to; and if he is not in a position to have that sale set aside, his claim for the recovery of the immoveable property in question must necessarily fall to the ground.

No sort of suggestion appears to have been made in this case that there was any good reason for the plaintiff's long silence, or that the contract of sale was not *bonâ fide* on the part of the defendant.

But I would add that I entirely concur in the opinion of my learned colleague that the plaintiff is not entitled to succeed in this action in consequence of his silence for eleven years, which has not been explained in any manner whatever, and which may be therefore taken as a sufficient ratification of the sale.

The decree of the lower Appellate Court must be reversed with costs.

(1) *Before Mr. Justice Phear and Mr. Justice Mitter.*

I am, therefore, of opinion that the lower Appellate Court was wrong in setting aside the sale. Even had there been good ground for doubting the binding character of the contract of sale, it ought not to have been set aside on any other terms than that of the plaintiff's refunding the purchase-money. As I have said, I am of opinion that the decision of the lower Appellate Court is wrong, and ought to be reversed, and it must accordingly be reversed with costs both in this Court and the Court below.

DOORGA CHURN SHAHA (ONE OF THE DEFENDANTS) V. RAMNARAIN DOSS (PLAINTIFF).*

The 14th February 1870.

Minor, contract by—Delay in repudiating—Ratification.

Baboo Grish Chunder Ghose for the appellant.

Baboo Rajender Nath Bose for the respondent.

THE judgment of the Court was delivered by,

PHEAR, J.—We think that the decision of the lower Appellate Court cannot be supported.

The plaintiff claims through two roots

MITTER, J.—I concur. I am not quite sure that the plaintiff's suit is not barred by the provisions of cl. 16, s. 1, Act XIV of 1859. It is true that the plaintiff has sued for the recovery of an immoveable property, but his right to that property is dependent on his right to have the sale by which it

* Special Appeal, No. 2604 of 1869, against the decree of the Judge of Sylhet, dated the 24th August 1869 affirming a decree of the Munsif of that district, dated the 30th April 1869.