

APPELLATE CIVIL.

Before Mr. Justice Bayley and Mr. Justice Mitter.

1872
August. 24.

RAJ NARAIN DEB CHOWDHRY (PLAINTIFF) v. KASSEECHUNDER
CHOWDHRY AND OTHERS DEFENDANTS.*

*Guardian and Infant—Sale by Guardian—Delay in repudiating a Guardian's
act—Ratification of Contract made by Guardian.*

Mere delay on the part of a ward, after attainment of majority, in repudiating an alienation made by his guardian, cannot be treated as a ratification of the guardian's act, but only as evidence of ratification.

ONE Bhobanipersaud, a Hindu, died, leaving a widow Chunderbutty Dossee, and a minor grandson by his daughter, named Chundernath, and leaving amongst other property an eight-anna share of 21 *hals* of land. On the death of Chunderbutty, Chundernath succeeded to the property left by Bhobanipersaud. During the minority of Chundernath, his father, Saheb Roy, as the guardian of his minor son, executed an izarah pottah of the eight-anna share of the land in favor of Kassee Chunder Chowdhry and others, who obtained possession of the land on the 4th November 1857. Chundernath, a few days after attaining his majority, executed on the 26th February 1862 a deed of sale of a four-anna share of the property to Rajnarain Deb, therein reciting that the izarah pottah was in reality an out-and-out sale of the property; that there was no necessity to justify the sale; and that the sale by his guardian was "illegal and invalid."

On the 4th October 1869, Rajnarain brought the present suit for recovery of possession of the land let in izarah to Kassee Chunder Chowdhry and others, stating in the plaint that the cause of action arose on the 4th November 1857. The defence set up was (*inter alia*) that the izarah pottah had been executed

* Special Appeal, No. 120 of 1872, from decree of the Judge of Sylhet, dated the 16th August 1871, reversing a decree of the Moonsiff of that district, dated the 23rd February 1871.

to raise money for payment of debts incurred by Bhubani-persaud, that it was executed under a legal necessity, and that, after attaining majority, Chundernath, having purchased two *kears* of the land mentioned in the izarah pottah from the defendants, and then sold them to a third party, must be held to have admitted the validity of the izarah pottah.

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

The Moonsiff found that there was no legal necessity which would justify the alienation; that the alienation was in no way beneficial to the minor; that the purchase and sale by Chundernath of the two *kears* of land took place after the plaintiff's purchase, and consequently could not affect his title; that Chundernath sold the one-fourth share immediately after attaining majority; and that there was no act done by Chundernath to ratify the alienation. He accordingly passed a decree in favor of the plaintiff.

On appeal, the Judge held that the case of necessity, set up by the defendants, had not been proved; that the long silence of Chundernath was a ratification of the act of his guardian; that if a minor, on attaining majority, did not repudiate any illegal sale by his guardian, nor communicate his intention of questioning his guardian's act to the purchaser, the mere circumstance of his having sold a portion of the property to a third party within five years after he attained majority, stating in the deed of sale that he repudiated his guardian's act to which the defendants were not parties, was no repudiation; and that the long silence of Chundernath and the plaintiff after his purchase was to be considered to be a ratification of the alienation by Chundernath's guardian. He accordingly dismissed the plaintiff's suit.

The plaintiff appealed to the High Court.

Mr. *Woodroffe* (Baboo *Aushootosh Dhur* with him) for the appellant.

Baboos *Mohini Mohun Roy* and *Bykuntmath Doss* for the respondents.

Mr. *Woodroffe* contended that there was no ratification on the part of Chundernath. Ratification implies an intelligent consent with knowledge of what has been done. The sale of

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.