
(1930) 11 AHC CK 0027
In the Allahabad High Court

Chandi Prasad Misir

APPELLANT

Vs

Balaji Misir and Others

RESPONDENT

Date of Decision : 21-11-1930

Acts Referred:

Citation : AIR 1931 All 136 : (1931) ILR (All) 427 : 129 Ind. Cas. 560

Hon'ble Judges : Sulaiman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sulaiman, J.—This is a defendant's appeal arising out of a suit for a declaration that a pre-emption decree obtained by the respondents is not binding on the plaintiff because he was a minor at the time when the decree was passed. One of the pleas raised in defence was that in the previous suit the plaintiff's uncle Maharaj Pat who was the karta of the joint family had been impleaded and was in a position to take all the possible pleas which could have been raised by the plaintiff because their interests were identical. The Courts below have held that the decree is not binding on the minor although Maharaj Pat had been impleaded in the previous suit.

2. It is contended before us that when the manager of a joint Hindu family was sued, and it was not necessary to describe him as such, the decree was binding upon the whole family even though a minor member was not represented by a duly appointed guardian and that the plaintiff could not get the declaration without showing that he had been prejudiced by the omission to appoint a guardian for him. We think the principle underlying the case in which it has been held that the manager of a joint Hindu family represents the whole family does not apply to a case where a minor member is impleaded as such but no attempt is made to get a guardian appointed for him. If the plaintiff does not choose to sue the manager alone but also impleads the minor member in his individual capacity it is his duty to get a proper guardian appointed for him. If this procedure has not been followed the decree cannot bind him. We therefore think

that the Court below was right. The appeal is dismissed with costs including in this Court fees on the higher scale.