

(1932) 08 MAD CK 0052
In the Madras High Court

Kolipakam Penchelu Varadappa Rao

APPELLANT

Vs

Chitoor Mahadeviah and Another

RESPONDENT

Date of Decision : 04-08-1932

Acts Referred:

Citation : AIR 1933 Mad 94 : 140 Ind. Cas. 325

Hon'ble Judges : Pandalai, J

Bench : Division Bench

Judgement

Pandalai, J.—In this case a decree for money has been passed against the petitioner on account of the deficiency left out of a sum borrowed by him on a pledge of jewels after a portion of the debt was paid out of the sale proceeds of the pledge. The defence was that the petitioner was at the time of the pledge a minor and that he is not liable on the contract of pledge. It has been found as a fact that the petitioner was a minor and also that he had entered into a number of other transactions with other persons who all like the respondent apparently believed either from the petitioner's words or conduct that he was a major. The lower appellate Court was so strongly impressed with this aspect of the case that it says that it agrees with the District Munsif's opinion that the petitioner learnt nothing else but to cheat the world at large as soon as he attained years of discretion. Although thus it may be taken that the petitioner made the respondents and others believe that he was a major, there is nothing to show that the petitioner was guilty of any specifically fraudulent conduct either as to his age or otherwise towards the respondents.

2. It appears from paras. 12 to 14 of the lower appellate Court's judgment that the learned Judge was of the opinion on the question whether there could be a decree against the petitioner on the above facts, that there are as many cases one way as the other; and in the end having said that he was convinced of the justice of the District Munsif's judgment confirmed the decree. There can be no doubt that the decision of both the lower Courts is wrong on the facts found. The respondents' learned advocate has very properly not sought to support it. The

decisions of our own Court T.R. Appasami Ayyangar Vs. Narayanaswami Iyer and Others, and Raghavayya v. Subbayya (1918) 43 IC 908, supported as they are by those of the Privy Council Sadiq Ali Khan v. Jai Kishori AIR 1928 PC 152, in Mahomed Syedol Ariffin v. Yeoh Ooi Gark AIR 1916 PC 246 and of the English Courts of Appeal in Leslie Limited v. Sheill (1914) 3 KB 607, put it beyond dispute that there can be no decree against a person on a contract made during his minority. And this cannot be avoided either on the ground that the minor having represented himself to be a major is estopped from showing that he was a minor or on the ground that by such representation he was guilty of cheating or fraudulent conduct. The decree against the petitioner must therefore be set aside.

3. But the respondents' advocate has urged that though the lower Court have gone wrong in their decisions, this Court will not interfere as they had jurisdiction to decide wrongly as well as rightly. This assumes that after the superior Courts have decided a particular question of law in one way, the Subordinate Courts are at liberty to discuss the matter over again and having done so go wrong about it. I do not think they have the power to do so. In any case the decision is undoubtedly an illegal or irregular exercise of jurisdiction with which this Court will and should interfere in so glaring a case of error. The decree so far as it is against the petitioner is set aside and the suit dismissed. The parties will suffer their costs in the Courts below. The petitioner will have his costs here.