
(1913) 01 AHC CK 0029
In the Allahabad High Court

Shami Nath Sahi and Others

APPELLANT

Vs

Lalji Chaube and Others

RESPONDENT

Date of Decision : 08-01-1913

Acts Referred:

Majority Act, 1875 — Section 3

Citation : 18 Ind. Cas. 251

Hon'ble Judges : Henry Griffin, J; Chamier, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Udit Narain Chaube died several years ago leaving a widow, Musammat Rukmina and two sons, Lalji Chaube and Gopal Chaube, respondents to this appeal. Both sons were minors when their father died. Mutation of names seems to have been effected in favour of the widow as well as the two sons. But it is common ground that the two sons only succeeded to the property with which we are now concerned, namely, a 5-anna 4-pies share in a village called Koelaswa. In September 1690, the widow was appointed by the Court to be the guardian of her two sons and in the following year, she obtained from the District Judge permission to sell half the share in the village. No action, seems to have been taken on that permission. On February 10th, 1906, the widow and the elder son Gopal, who had attained majority, sold a 2-anna 3-pies 13 1/2 chitaks share to the appellants for a stated consideration of Rs. 5,774. The younger son Lalji who alleges that he came of age less than three years before this suit was brought has sued for a declaration that the sale deed of February 10th, 1906, and a mortgage, dated 1st December 1902, are not binding on him and he prays that they may be cancelled and that he may be put in possession of the share which was sold. The Court below has decreed the claim so far as it relates to the plaintiffs' own share, that is, as to half of the property covered by the deed of sale. The purchasers have appealed. The first point taken in appeal is that the suit is barred by limitation for two reasons, namely, that the plaintiff attained majority when he completed his eighteenth year and, secondly, that even if the

plaintiff attained his majority when he completed his twenty-first year, the present suit was not instituted within three years of the date on which he attained his majority. In support of the first argument, we are referred to the decision of the Privy Council in *Gharibulla v. Khalak Singh* 25 A. 407 (P.C.); 5 Bom. L.R. 478, 7 C.W.N. 681, 30 I.A. 165. In that case, one Chet Singh died leaving three sons, two of whom were minors and his widow was appointed by the Court to be the guardian of the persons and property of the two minors. Their Lordships held that the interest of a member of a joint family was not individual property at all and that, therefore, the widow of Chet Singh, though appointed guardian of the minors by the Court, had nothing to do with the family property and had no right to join with the eldest son in making a transfer of it. Their Lordships expressly refrained from deciding the question whether the appointment of the widow as guardian of the two minors would have the effect of prolonging their minority. In the present case, when Musammat Rukmina was appointed guardian of her sons, both of them were minors. The appointment was, therefore, not open to the objection considered by their Lordships of the Privy Council and we must hold that u/s 3 of the Indian Majority Act, the sons did not attain majority until they completed their twenty-first year. The result is that the plaintiff Lalji must be held to have attained his majority when he completed his twenty-first year. On the evidence the Court below has held that the present suit was instituted within three years of the date on which the plaintiff completed his twenty-first year. We have not been asked to review that evidence. The Subordinate Judge seems to have given good reasons for the conclusion at which he has arrived and we, therefore, agree with him in holding that the suit is not barred by limitation. The second point taken by the appellants is that the sale to them was made with the sanction of the District Judge. The so called sanction was obtained in September 1891. The sale-deed in question was executed in February 1906 about fourteen and half years afterwards. The sanction is referred to in the sale deed as if it authorized the transfer of the property. But it is quite clear that the District Judge in 1891 did not intend to sanction the transfer of the minor's property fifteen years later when the circumstances of the family must have altered considerably. In our opinion, the transfer cannot be supported by the sanction given in 1891. We would observe also that this point was not definitely taken in the memorandum of appeal before us. There remains the question whether the transfer is supported by legal necessity. We were referred to some cases in which the question was considered whether transfers made by a father were binding on his sons. Those cases have no bearing on the present case. If the transfer is to be held valid, it must be on the ground that it was made for legal necessity and it was not enough for the appellants to show that part of the consideration was devoted to the discharge of pre-existing debts. Of the stated consideration of Rs. 5,774, a sum of Rs. 3,319-8-0 was left in the hands of the appellants for the discharge of a mortgage held by one Doman Bhagat. The plaintiff concedes that that mortgage is binding on him. But it is not suggested that it was necessary to sell the property merely to discharge that mortgage. As a matter of fact, the appellants have not yet discharged that

mortgage. The remainder of the consideration is made up of several items, each of which was considered separately by the Court below. We have not been taken through the evidence regarding these items. But it appears from the judgment of the Subordinate Judge that all that was attempted to be proved was that the majority of the various items were previously existing debts. There is no evidence that these debts were incurred for necessity or for the benefit of the family, and there is no evidence that the appellants made any inquiry regarding them or that they were induced to believe and did believe that the debts were incurred for legal necessity. One of the appellants was examined as a witness and he does not even suggest that he made any inquiry. The result is that the appellants have failed to prove that there was any necessity for the sale of the property. There being no cross-appeal by the plaintiff in this case, we are relieved from the necessity of considering whether the sale should have been set aside in its entirety. The decree so far as it goes appears to be correct. The appeal fails and is dismissed with costs including fees on the higher scale.