

And if he so amends the plaint, the proper issues should be raised and tried.

The decision of the Court of Small Causes is, therefore, reversed, and the case remanded for retrial with reference to the foregoing observations. Costs, including costs of this application, to follow the final decision.

Decree reversed and case remanded.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Nánabhái Haridás.

NIRVA'NA'YA (ORIGINAL DEFENDANT No. 4), APPELLANT, *v.*
NIRVA'NA'YA (ORIGINAL PLAINTIFF), RESPONDENT.*

1885
February 24.

Guardian—Minor—Lingáyat math—Compromise made by a father as guardian of his natural son—Suit by son to set aside compromise—Minor adopted by religious celebrate.

C., who was the head of a Lingáyat *math*, died in 1862. The plaintiff, who was then a minor, claimed through his natural father R. to be C.'s heir. This claim was disputed by V. on behalf of his son, the defendant, who was also a minor. In 1863, pending legal proceedings between them, R. and V. compromised the dispute, and agreed that the *math* and the property appertaining to it should be divided between the plaintiff and the defendant in equal shares. In the present suit the plaintiff sought to set aside the compromise made on his behalf by his natural father R., on the ground that R. had no authority to make it, and that there was no necessity for it.

Held, that the plaintiff's natural father was his proper guardian to assert his rights, as adopted heir, against rival claimants, and that the compromise was binding.

THIS was a second appeal from the decision of C. F. H. Shaw, Judge of the district of Dhárwár, reversing the decree of Ráv Sáheb Rághavendra Rámchandra, Subordinate Judge of Saundatti.

The Lingáyat *math* situated at Ugargol and the lands attached to it originally belonged to one Chanmaláya, the recognized head of the *math*. Chanmaláya died on the 23rd of January, 1862, and soon afterwards disputes arose between Rácháya, the natural father of the present plaintiff, and the fourth defendant's father

* Second Appeal, No. 640 of 1882.

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Virtáya, as to who should take the property belonging to the *math*. Rácháya on behalf of his son, the minor plaintiff, on the 8th of September 1862, applied for a certificate of heirship to Chanmaláya. Virtáyá in November, 1862, made a similar application on behalf of his own minor son. On the 26th May, 1863, and while these proceedings were pending, Rácháya and Virtáya entered into mutual agreements to avoid litigation, and divided the *math* and the property in equal shares.

The plaintiff on arriving at majority repudiated the agreement made by his father, and brought this suit to set aside the agreements, and recover the half of the property in the possession of the defendants Virtáya and his son.

The Subordinate Judge held the compromise effected by the plaintiff's father to be binding on him, and rejected his claim. The District Judge was of opinion that the compromise was for the benefit of the plaintiff, but that the plaintiff having been made a disciple by a Lingáyat celebrate, his natural father was not his guardian, and could not bind him by any of his acts without obtaining a certificate of guardianship from the Civil Court. He was also of opinion that a Lingáyat *math* could not be divided, and, therefore, reversed the decree of the Subordinate Judge.

The fourth defendant appealed to the High Court.

Shántárám Náráyan for the appellant.—The natural father of the plaintiff was his proper guardian, and his act bound him. The appellant's possession under the compromise extended over twelve years, and extinguished the plaintiff's right, if he had any. The compromise was a family arrangement entered into by persons having authority to make it for a lawful consideration and for a lawful object, and had been acted on ever since its execution. There is nothing in the Hindu law to forbid such a compromise.

Ghanashám Nílkant Nádkarni for the respondent.—The *math* in question is a *virakt math*, or a celebrate monastery. From the moment of plaintiff's adoption as a disciple by Chanmaláya his connection with his natural father, who is an ordinary householder, ceased. The affairs of a *math* are managed by the *math*

authorities, who are religious celebates. The appellants are not the disciples of the deceased Chanmaláya, and as a relation by blood he can have nothing to do with the lands attached to the *math*.

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SARGENT, C. J.—In the present case the plaintiff disputes the validity of a compromise, dated the 26th May 1863, entered into in his behalf, when a minor, by his natural father, on the ground that his father had no authority to make it, and, further, that there was no necessity for it. It appears that the compromise arose out of the rival claims made on behalf of the plaintiff and the fourth defendant by their respective fathers to be the heir of one Chanamaláya Svámi, a *virakt*, or religious celebrate. Both the Courts below have found that the compromise, having for its object to put an end to litigation, was, under the circumstances, for the benefit of the plaintiff; but the District Judge held that, as the plaintiff had been adopted by Chanmaláya, his natural father, who had not obtained certificate of guardianship, had no authority to enter into the agreement of compromise; and he added that the policy of Hindus was opposed to a divided *math*. The fourth defendant now appeals, and no cross objection has been filed.

As to the last observation of the District Judge, it is sufficient to say that it is not the object of the present suit to impeach the compromise as opposed to the usage and custom of *maths* in general, or this *math* in particular. As to the authority of the father to enter into the compromise, we think that whoever might be the guardian of a minor who has been adopted by a religious celebrate, in matters relating to the *math*, the natural father would be his proper guardian to assert his rights to be such adopted heir as against rival claimants.

We must, therefore, reverse the decree of the District Judge, and restore that of the Subordinate Judge, with costs on plaintiff throughout.

Decree reversed.