

## APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Fulton.

1895.

February 4.

MURA'RI (ORIGINAL DEFENDANT), APPELLANT, v. TAYA'NA (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Hindu law—Minor—Minor's estate—Power of mother of minor to sell her deceased husband's estate—Mother—Omission of the minor's name in the sale-deeds—Son bound by sale.*

Under Hindu law, the mother as guardian of her minor son has authority to sell her husband's estate in order to pay off his debts, and the omission of any reference to the minor in the deed of sale does not render it ineffectual if it is proved that it was her intention to deal with the son's interest, and not merely with any interest which she might have herself.

THIS was a second appeal from the decision of A. S. Moriarty, Assistant Judge of Sátára, reversing the decree of Ráo Sáheb G. G. Soman, Subordinate Judge of Tásgaon.

The plaintiff sued the defendant to recover possession of a part of a field, alleging that it was his property and that the defendant had been in wrongful possession for ten or twelve years during the plaintiff's minority, which had terminated about a year prior to the institution of the suit.

The defendant replied (*inter alia*) that the field in dispute had been purchased by him from the plaintiff's mother during the plaintiff's minority under two deeds, one for Rs. 100 dated the 8th February, 1876, and the other for Rs. 18, dated the 14th February, 1879, and he contended that the sales being made by the plaintiff's mother for his benefit were binding on him.

The Subordinate Judge dismissed the suit, holding that the sale to the defendant had been made for a necessary purpose by the plaintiff's guardian during his minority.

On appeal by the plaintiff the Judge reversed the decree of the lower Court, holding that the plaintiff was not bound by the sale during his minority. He found also that the sale of the plot for Rs. 100 had been effected to satisfy a debt due to the defendant by the plaintiff's father which the plaintiff was bound to pay. He passed a decree directing that the plaintiff should recover

\* Second Appeal, No. 409 of 1893.

possession of the property on payment of Rs. 100 to the defendant. The defendant preferred a second appeal.

*Mahádeo B. Chavhal* for the appellant (defendant):—The plaintiff's mother was *de facto* manager during his minority. The sale-deeds do not mention the name of the plaintiff; but from the documents it is clear that the defendant purchased the land for value, believing that he got the whole property. The plaintiff does not allege that his mother was not *de facto* manager during his minority. Further, the sale was effected in order to pay off a debt contracted by plaintiff's father. Under these circumstances the sale is binding on the plaintiff—*Succáram Moráji v. Kálidás Kallíánji*<sup>(1)</sup>.

*Ghanashám N. Nádkarni* for the respondent (plaintiff):—The sale-deeds do not say that the sale was effected by the plaintiff's mother in her representative capacity as *de facto* manager. The mother purported to sell the land as her property, and that being so, the sale cannot stand, as the mother had no saleable interest.

[SARGENT, C. J.:—She sold the property to pay off her husband's debt.]

The plaintiff is totally ignored in the documents. What she sold was her right, title and interest in the property, and, therefore, the plaintiff acquired only those rights which she could sell and not the absolute estate—*Gadgeppa Desái v. Apáji*<sup>(2)</sup>; *Jatha Náik v. Venkatápa*<sup>(3)</sup>; *Subbánná v. Venkatakrishnán*<sup>(4)</sup>.

SARGENT, C. J.:—The Assistant Judge has found that the plaintiff's mother during her son's minority sold to the defendant two plots of land for Rs. 100 and Rs. 18 respectively. The item of Rs. 100 was applied towards payment of the plaintiff's father's debts. It does not appear for what purpose the item of Rs. 18 was required. The deeds of sale dated the 8th February, 1876, and the 14th February, 1879, contained no mention of the minor's name, but purported to deal with the land as if it were the property of the mother.

As it has not been found that there was any necessity for the sale, for Rs. 18, of the second bit of land, the transaction is not

(1) I. L. R., 18 Bom., 631.

(3) I. L. R., 5 Bom., 14.

(2) I. L. R., 3 Bom., 237.

(4) I. L. R., 11 Mad., 403.

1895.

MURARI  
TAYANA.

1885.

MURARI  
v.  
TAYANA.

binding on the minor, who is entitled to recover the property in question.

But in regard to the first sale, which was effected in order to pay off the father's debts, we have to determine whether the omission of any reference to the minor in the sale-deed renders it ineffectual against him. For the respondent Mr. Ghanashám drew our attention to one passage in the deed in which the vendor said that she had sold whatever right, interest or inheritance she had, and contended that these words limited the conveyance to the mother's interest; but the earlier part of the document shows that she purported to sell the land itself, and it is clear that such must have been her intention, in as much as at the time of the sale she personally had no interest in the property excepting a charge for maintenance over the whole of her husband's estate.

It was not denied that by Hindu law the mother as guardian of her minor son had authority to sell the land in order to pay off her husband's debts. Such being the case, it appears to us that she had both the authority and the intention to sell at the time when she purported to do so, her act effectually conveyed the property to the defendant notwithstanding that it was not correctly described as belonging to her son. In arriving at this conclusion we are but adopting the opinion expressed in *Judunúth Chuckerbutty v. James Tweedie*<sup>(1)</sup> by Peacock, C. J., who pointed out that a sale by a manager with necessity may be valid although the vendor does not describe himself as manager. The decision of Mahmood, J., in *Makundi v. Sarabúkh*<sup>(2)</sup> was to the same effect; for, though it is true that in that case the minor's name was incidentally mentioned in the deed, the judgment was based, not on this circumstance, but on the fact that it was clear from the deed that it was the share of the minor which formed the subject of the sale. In each case the language of the deed and the circumstances in which it was executed have to be considered. In the present case, as above pointed out, remembering that the mother had no proprietary interest in the land, it is certain, from the wording of the deed, that it was the land itself, and not merely any interest which she might be supposed to have, which formed the subject of the sale.

(1) 11 Cal. W. R., 20.

(2) I. L. R., 6 All., 417 at p. 419.

The learned Assistant Judge has relied on three cases, *Kuvarji v. Moti*<sup>(1)</sup>, *Gadgeppa v. Apáji*<sup>(2)</sup> and *Bahur Ali v. Sukeea Bibee*<sup>(3)</sup>, but they do not seem to support his decision. In the first of these cases—*Kuvarji v. Moti*—the conclusion that the deed did not bind the minor was founded, not on the omission of his name, but on the fact that the mother had not obtained a certificate under Act XX of 1864, a defect which cannot now be held to affect the validity of the deed having regard to the more recent decisions of this Court in *Manishankar v. Bai Muli*<sup>(4)</sup> and *Honápa v. Mhalpai*<sup>(5)</sup>. The second case—*Gadgeppa v. Apáji*—referred to has no bearing on the question under consideration, for the cause of action was a money bond executed by a mother, which did not purport to charge her son's estate. In the third case noticed—*Bahur Ali v. Sukeea Bibee*—the parties were Mahomedans, amongst whom the mother has not the same power of alienation of her minor sons' property as amongst Hindus, and as the defendant had merely alleged that the vendor was herself the owner of the property, the High Court on special appeal confined its attention to the question whether she had been in possession on her own account or as guardian of her children.

Under these circumstances, we must now vary the decree of the Assistant Judge by rejecting so much of the claim as relates to the land sold for Rs. 100 by the deed of 8th February, 1876, and by awarding the remainder of the claim in respect of the land purporting to be sold for Rs. 18 by the deed of the 14th February, 1879. The plaintiff must pay the defendant's costs throughout on the portion of the claim rejected, and will recover his costs throughout on the portion awarded.

*Decree varied.*

(1) I. L. R., 3 Bom., 234.

(3) 13 Cal. W. R., 63.

(2) I. L. R., 3 Bom., 237.

(4) I. L. R., 12 Bom., 686.

(5) I. L. R., 15 Bom., 259.