

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.

BHANAJI RAOJI KHOJI, PLAINTIFF, vs. JOSEPH DE BRITO,
DEFENDANT.*

1905.

See *letter* 20.

Civil Procedure Code (Act XIV of 1882), Chapter 46—Reference—Reasonable doubt—Point clearly decided by the rulings of the High Court of Presidency.

A reference under Chapter 46 of the Civil Procedure Code (Act XIV of 1882) can only be made when the Judge of the Court entertains a reasonable doubt.

A Judge cannot ordinarily entertain a reasonable doubt on a point clearly decided by the rulings of the High Court of his Presidency unless the authority of the decision can be questioned by virtue of anything said or decided in the Privy Council.

REFERENCE from R. S. Tipnis, District Judge of Thána, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff sued to recover from the defendant Rs. 100 for principal and Rs. 46-8-0 for interest, in all Rs. 146-8-0, due upon a promissory note dated the 22nd August 1902.

The defendant replied that he was a minor at the date of the execution of the promissory note, that the plaintiff got him to affix his signature on a blank paper, that he received only Rs. 30 as consideration, that the promissory note was void and that the plaintiff got the note written after defendant affixed his signature on a blank paper.

The Assistant Judge who tried the case as the Court of first instance decreed the plaintiff's claim with costs, holding that though the defendant was a minor when he passed the promissory note and therefore the contract was void, still he was estopped from pleading minority by his conduct.

The defendant appealed. As the claim was a Small Cause one, and as there would be no appeal against the decree of the Judge, he submitted the following question under section 617 of the Civil Procedure Code (Act XIV of 1882).

"Whether defendant is estopped from denying his liability under the promissory note in dispute which he executed in favour of plaintiff on the date on

* Civil Reference No. 2 of 1905.

which he (defendant) was a minor? In other words, whether section 115 of the Indian Evidence Act applies to minors?"

My doubt is created by the conflicting rulings on the point as noticed by me in my judgment. I am aware of the ruling in *Naru v. Chima*, I. L. R. 13 Bom. 54; but I have humbly ventured to make this reference as the Bombay High Court's decision is completely dissented from by four Judges of the Calcutta High Court, one of whom is my lord the present learned Chief Justice of the Bombay High Court, and it is not merely a matter of my own view being opposed to the decision of the Bombay High Court.

Following the ruling of my own High Court my opinion on the point is in the affirmative.

In this judgment the Judge observed as follows:—

The wording and the tones of several letters of defendant satisfy me that defendant intentionally made a false representation as to his age in order to induce plaintiff to advance money to him. Not being aware of the minority of the defendant or the falsity of defendant's representation, plaintiff acted upon it. Strictly speaking the case would fall under section 115 of the Evidence Act relating to estoppel had it not been for the circumstance that that section is perhaps not intended to be applied to the case of minors. In *Ganesh Lala v. Bapu*, I. L. R. 21 Bom. 198, Jardine and Ranade, JJ., held that the doctrine of estoppel applies to minors as well as adults. I should have had no hesitation in following the decision of my own High Court in the present case, had it not been the fact that the above ruling is dissented from in *Dhurmo Dass Ghose v. Brahmo Dutt*, I. L. R. 25 Cal. 616, by Jenkins, J., and in the same case when it went before the Appellate Court (*see* I. L. R. 26 Cal. 381) Maclean, C. J., and Prinsep and Ameer Ali, JJ., the Calcutta High Court has held that section 115 of the Evidence Act has no application to contracts by infants and has pointed out that the English decisions relied upon in the Bombay case do not really support the view which Jardine and Ranade, JJ., took on that point.

The Calcutta case went in appeal before the Privy Council (I. L. R., 30 Calcutta 539). In that case their Lordships set at rest the much vexed question whether an infant's contract was void or voidable. Having held that it was void and as the question of estoppel did not arise since the false representation was made to a person who knew it to be false, the decree of the Calcutta High Court was upheld on these grounds without expressing any opinion as to whether the question of estoppel affects minors. In this state of the decisions I am of course bound to follow my own High Court's ruling which is in a way supported by the ruling in *Ram Ratun Singh v. Shew Nandansingh*, I. L. R. 29 Calcutta 126. I entertain, however, a reasonable doubt as to the correctness of my opinion in view of the conflicting rulings mentioned above.

If defendant is estopped under section 115 of the Evidence Act then it is clear that plaintiff is entitled to recover the full amount of the claim due upon the promissory note in question.

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Gadgil (with *K. J. Bilimoria*) appeared for the defendant:—The reference is made in rather wide terms and owing to this circumstance it is covered by the ruling in *Ganesh Lala v. Bapu*.⁽¹⁾ But we submit that that case is clearly distinguishable. The plaintiff in that case was not given relief on the ground of his own fraud. The question to be considered is whether the said ruling is of such an import as to mean that a minor is estopped from pleading minority as a defence to a suit on a promissory note. We contend that the fraud of a minor operates to estop him in equity but not in law, that is, in contractual relations.

[JENKINS, C. J.:—But the reference is not made in that form. The reference as framed cannot lie as the Judge could not have any reasonable doubt.]

According to the ruling in *Naru Koli v. Chima Bhosle*⁽²⁾ the Judge was bound to follow *Ganesh Lala v. Bapu*,⁽³⁾ but we contend that the facts of that case show that it cannot apply to a case like the present.

The Judge's view that a personal decree can be passed against a minor is not correct. Further the Judge has made out a new case for the plaintiff. The contention as to estoppel on the ground of fraud was nowhere set forth by the plaintiff.

D. M. Gupte appeared for the plaintiff:—The Judge was bound to follow *Ganesh Lala v. Bapu*⁽³⁾ and the reference cannot lie. As the reference was made at the instance of the defendant, he should be saddled with our costs.

Gadgil, in reply:—Under section 620 of the Civil Procedure Code, the costs will be costs in the case.

JENKINS, C. J.:—A reference under Chapter 46 of the Civil Procedure Code can only be made when the Judge of the Court entertains a reasonable doubt.

The Judge of the lower Court cannot ordinarily entertain a reasonable doubt on a point clearly decided by the rulings of the High Court of his Presidency, unless the authority of the deci-

(1) (1895) 21 Bom. 198.

(2) (1888) 13 Bom. 54.

(3) (1895) 21 Bom. 198.

sion can be questioned by virtue of anything said or decided in the Privy Council.

We therefore think that the learned Judge was not entitled to make the reference in this case as the point on which he professes to entertain a reasonable doubt is completely covered by *Ganesh Lala v. Bapu*.⁽¹⁾

Costs will be costs in the case.

Order accordingly.

G. B. R.

(1) (1895) 21 Bom. 198.

APPELLATE CIVIL.

*Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Aston.*

BHAU BIN ABAJI GURAV (ORIGINAL DEFENDANT), APPELLANT, *v.*
RAGHUNATH KRISHNA GURAV AND ANOTHER (ORIGINAL PLAINTIFFS),
RESPONDENTS.*

*Stridhan—Saudayik—Bequest by will—Power of disposal subject to
husband's consent—Gurav Service—Vritti.*

Saudayik Stridhan is that which is obtained by a married woman or by a virgin in the house of her husband or of her father, from her brother or parents.

Except in the kind known as Saudayik, a woman's power of disposal over her Stridhan is during coverture subject to her husband's consent, and without such consent she cannot bequeath it by will when she is survived by her husband, who is not shown ever to have consented to the will.

SECOND appeal from the decision of J. J. Heaton, District Judge of Násik, amending the decree of P. J. Taleyarkhan, Joint Subordinate Judge.

The right to render Gurav Vritti (office) for 2½ months each year in certain temples at Násik belonged to one Gangabai who had inherited it from her deceased husband. Before her death she made a gift of the right to her daughter and her granddaughter Krishnabai, wife of the defendant. After Gangabai's death her daughter died and Krishnabai was the sole survivor. Krishnabai made a will on the 9th and died on the 26th

* Second appeal No. 218 of 1905.

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