

1911.

LAKMIDAS
KHUSHAL
v.
BHAIJI
KHUSHAL.

But when a local inspection takes place we know that in the ordinary course of events the salient circumstances are pointed out on the spot and are discussed on the spot; and there is nothing in the case to suggest that the ordinary course of events was not followed here. I assume that it was followed, and as a consequence I find that the defect in not recording the circumstances in writing is a purely formal defect, which could not have misled the parties or caused injustice in the case. For these reasons I think the appeal must be dismissed and the decree confirmed with costs.

Decree confirmed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1911.

March 9.

BHIWA BIN JOTIBA (ORIGINAL PLAINTIFF), APPELLANT, v. DEVCHAND BECHAR (ORIGINAL DEFENDANT No. 1), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), section 462—Minor—Compromise—Sanction of Court not obtained—Compromise not binding on minor.

When a suit, to which a minor is a party, is compromised and no leave of the Court is obtained under section 462 of the Civil Procedure Code (Act XIV of 1882) the compromise does not bind the minor and is voidable. The fact that it is for the benefit of the minor, or that he has derived benefit from it, makes no difference.

SECOND appeal from the decision of R. D. Nagarkar, Joint First Class Subordinate Judge, A. P., at Poona, reversing the decree passed by E. Reuben, Subordinate Judge at Haveli.

Suit for redemption.

The plaintiff sued to redeem a mortgage that was executed by his father Jotiba Kamte in favour of Devchand Bechar (defendant No. 1) for Rs. 199-15-0 on the 23rd May 1893.

In 1904, Maruti (another son of Jotiba) on behalf of himself and as next-friend of his minor brother (the plaintiff) sued the defendant to redeem the mortgage. The suit was compromised,

* Second Appeal No 834 of 1908.

and Rs. 300 were acknowledged to be due to defendant No. 1. A decree was passed in terms of the compromise: but leave of the Court, under section 462 of the Civil Procedure Code of 1882, was not obtained.

In 1906, the plaintiff, who was still a minor, sued to redeem the mortgage from defendant No. 1. The defendant No. 1 contended *inter alia* that the compromise decree was valid and binding on the plaintiff. The Subordinate Judge found that the compromise in question was not entered into in fraud of plaintiff's rights; but his interests were not properly protected. He, therefore, held that the compromise decree was not binding on the plaintiff; and on taking accounts found Rs. 20-12 due to the defendant No. 1. The plaintiff's share in the property, which was one-half, was declared liable to pay Rs. 10-6 to the defendant No. 1. On appeal the Joint First Class Subordinate Judge, A. P., reversed the decree and dismissed the plaintiff's suit, holding that the compromise decree was binding on the plaintiff inasmuch as his interest did not materially suffer by the decree. The plaintiff appealed to the High Court:

P. V. Nitsure for the appellant.

Gadgil, with *N. M. Patwardhan*, for the respondent.

The following cases were cited in arguments:—*Manohar Lal v. Jadu Nath Singh*⁽¹⁾; *Virupakshappa v. Shidappa and Basappa*⁽²⁾; *Ghulam Ali Shah v. Shahabul Shah*⁽³⁾.

CHANDAVARKAR, J.:—The lower appellate Court has held that leave of the Court was not obtained under section 462 of the old Civil Procedure Code (Act XIV of 1882). That being the case, according to the provisions of that section the compromise could not bind the minor and was voidable. The Court under circumstances such as those in the present suit, where the minor comes forward to set aside the compromise, has no power to uphold it on the ground that it was for the benefit of the minor or that the minor had derived benefit from it. The Legislature has said in so many words that a compromise entered into by the

(1) (1906) L. R. 33 I. A. 128.

(2) (1901) 26 Bom. 109.

(3) (1904) P. R. No. 3 of 1905 (Civ.).

1911.

BHIWA
v.
DEVCHAND
BECHAR.

1911.

BHIWA
v.
DEVCHAND
BECHAR.

parties to a suit, in which minors are interested, shall not bind the minor unless leave was obtained. See the observations of the Privy Council in *Manohar Lal v. Jadu Nath Singh*⁽¹⁾ and *Virupakshappa v. Shidappa and Basappa*⁽²⁾. The compromise must be set aside as not binding the plaintiff. The lower appellate Court having disposed of the case on a preliminary point, we must reverse the decree and remand the appeal for a fresh hearing on the merits. Costs of this appeal on the respondent. Other costs to be costs in the appeal in the lower Court.

Decree reversed. Case remanded.

R. R.

(1) (1906) L. R. 33 I. A. 128.

(2) (1901) 26 Bom. 109.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1911.
March 21.

GANPATSING HIMATSING (ORIGINAL JUDGMENT-DEBTOR), APPELLANT,
v. BAJIBHAI MAHMAD ASMAL (ORIGINAL DECREE-HOLDER),
RESPONDENT.*

Gujarat Talukdars' Act (Bombay Act VI of 1888), section 29E†—Talukdari Settlement Officer managing a Talukdar's estate—Creditor submitting his claim—Time taken up before the Talukdari Settlement Officer—Exclusion of time—Limitation Act (XV of 1877).

B obtained a decree for money against G, a Talukdar, on the 22nd February 1903, and presented his first *darbhast* for execution on the 8th December 1903. On the 21st September 1905, G's estate came by notice to be in the manage-

* Second Appeal No. 591 of 1910.

† The section runs as follows:—

29E. (1) On the publication of a notice under section 29B, sub-section (1), no proceeding in execution of any decree against the Talukdar whose estate is taken under management or his property shall be instituted or continued until the decree-holder files a certificate from the managing officer that the decree-claim has been duly submitted, or until the expiration of one month from the date of receipt by the managing officer of a written application for such certificate, accompanied by a certified copy of the decree.