

## APPELLATE CIVIL.

*Before Mr. Justice Beaman and Mr. Justice Heaton.*

1917.

February 2.

DADASAHEB DASRATHRAO (ORIGINAL DEFENDANT No. 2), APPELLANT v. BAI NAHANI WIDOW OF GHANCHI NATHALAL JHAVERDAS AND ANOTHER. (ORIGINAL PLAINTIFF AND DEFENDANT No. 1), RESPONDENTS.\*

*Indian Evidence Act (I of 1872), section 115—Estoppel—Minor included in "person"—Minor passing himself off as major is bound by his contract—Sale of house.*

The plaintiff purchased a house from defendant No. 2 who was not clearly a minor in appearance and who represented to the plaintiff and caused her to believe that he was a major. In a suit by the plaintiff, to recover possession of the house, defendant No. 2 pleaded his minority :—

*Held*, negating the plea, that defendant No. 2 being "a person" within the contemplation of section 115 of the Indian Evidence Act, 1872, and having by direct declaration intentionally caused the plaintiff to believe that he was a major, was precluded absolutely from denying the truth of that assertion.

*Ganesh Lala v. Babu*<sup>(1)</sup>, followed.

SECOND appeal from the decision of B. C. Kennedy, District Judge of Ahmedabad, confirming the decree passed by M. G. Mehta, Additional Joint Subordinate Judge at Ahmedabad.

Suit to recover possession of a house.

On the 11th July 1911, the plaintiff purchased a house from defendants Nos. 1 and 2 (who were mother and son) by a registered sale deed for Rs. 825. At the time of the sale, defendant No. 2 was a minor; but he was not clearly a minor in appearance and moreover represented to the plaintiff that he had already attained his majority.

When the plaintiff sued to recover possession of the house, defendant No. 2 contended that he was not

\* Second Appeal No. 1 of 1916.

<sup>(1)</sup> (1895) 21 Bom. 198.

bound by the sale as he was a minor at its date; and that all that was conveyed by the sale was only the interest of defendant No. 1 in the house, that is, the right to reside in the house as long as she lived.

At the trial, the age of defendant No. 2 was ascertained to be sixteen. The trial Judge, however, found that defendant No. 2 was estopped from setting up his minority in answer to the suit. He, therefore, decreed the suit. On appeal this decree was confirmed by the District Judge.

Defendant No. 2 appealed to the High Court.

*T. R. Desai*, for the appellant:—The case of *Ganesh Lala v. Bapu*<sup>(1)</sup> requires to be reconsidered, especially as it has been dissented from by the Calcutta High Court in *Dhurmo Dass Ghose v. Brahma Dutt*<sup>(2)</sup> and *Brahmo Dutt v. Dharmo Das Ghose*<sup>(3)</sup>.

The term "person" in section 115 of the Indian Evidence Act means a person competent to contract. A minor clearly is not such a person: section 11 of the Indian Contract Act and *Mohori Bibee v. Dharmodas Ghose*<sup>(4)</sup>. To hold a minor liable under the plea of estoppel is indirectly to make him liable on his contract: see also *Golan Abdin Sarkar v. Hem Chandra Majumdar*<sup>(5)</sup>.

The English cases support the Calcutta view: see *Johnson v. Pie*<sup>(6)</sup>; *Wright v. Leonard*<sup>(7)</sup>; *Bartlett v. Wells*<sup>(8)</sup>; *In re Jones*<sup>(9)</sup>; *Mills v. Fox*<sup>(10)</sup>; *Liverpool Adelphi Loan Association v. Fairhurst*<sup>(11)</sup>; *Smith v.*

(1) (1895) 21 Bom. 198.

(2) (1898) 25 Cal. 616.

(3) (1898) 26 Cal. 381.

(4) (1903) 30 Cal. 539.

(5) (1915) 20 C. W. N. 418.

(6) (1665) 1 Keb. 905.

(7) (1861) 11 C. B. N. S. 258.

(8) (1862) 1 B. & S. 836.

(9) (1881) 18 Ch. D. 109.

(10) (1887) 37 Ch. D. 153.

(11) (1854) 9 Exch. 422.

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*Low*<sup>(1)</sup>; *Wright v. Snowe*<sup>(2)</sup>; *Nottingham Permanent Benefit Building Society v. Thurstan*<sup>(3)</sup>.

G. N. Thakor, for the respondent, was not called upon.

BEAMAN, J. :—The plaintiff sued to recover possession of a house which he bought under a registered sale-deed from defendants Nos. 1 and 2. The defendant No. 1 is the mother of the defendant No. 2. The defendant No. 2 pleaded minority. The lower appellate Court found as facts that the defendant No. 2 not being clearly a minor in appearance, represented to the plaintiff, and so intentionally caused the plaintiff to believe, that he was a major, and on the faith of that belief to part with her money. The learned Judge of first appeal is clearly of opinion that the belief was induced by the express declaration of the defendant No. 2 and that in all the circumstances it was a reasonable belief.

The question, then, is whether the learned Judge below was right in holding that the defendant No. 2 was now estopped from pleading minority and proving it. The point is directly covered by authority. It was held in the case of *Ganesh Lala v. Bapu*<sup>(4)</sup> that in precisely similar circumstances a person situated as the defendant No. 2 is situated here was estopped under section 115. We have been referred to numerous decisions in the Calcutta High Court which take a somewhat different view of the scope of section 115 as well as to a large number of English decisions commencing with *Johnson v. Pie*<sup>(5)</sup> and covering more than a century and a half. We are not, however, prepared to dissent from the decision of this High Court in *Ganesh Lala v. Bapu*.<sup>(6)</sup>

(1) (1739) 1 Atk. 489.

(2) [1903] A. C. 6.

(3) (1848) 2 De G. & S. 321.

(4) (1895) 21 Bom. 198.

(5) (1665) 1 Sid. 258.

We are not prepared so to contract the meaning of 'a person' in section 115 as to exclude from its connotation all persons declared under the Indian Contract Act incompetent to contract. It is upon this ground and this ground alone, as far as we can see, that the Calcutta High Court was able to get over the difficulty occasioned by section 115. The long current of authorities we have considered appears to us to reveal a constant confusion of thought between what is true estoppel and what may be the effect of fraudulent misrepresentation by a minor. We are not, however, concerned with any considerations proper to the latter point. Estoppel is a law of allegation and proof, and if we are right in our interpretation of section 115, then the defendant No. 2, being a person within the contemplation of that section and having by direct declaration intentionally caused the plaintiff to believe that he was a major, is precluded absolutely from denying the truth of that assertion, that is to say, he might not-plead—much less prove—that at the time the conveyance was executed, he was in fact a minor. The point is not, as seems too often to be assumed, what would be the effect upon such a transaction of minority as a fact, but it is this that if the law of estoppel be correctly and strictly enforced, the Court is not to know that the defendant No. 2 was in fact a minor at all. The whole trial must proceed upon the footing of that being true which he represented and caused the plaintiff to believe to be true, viz., that he was a major. Fraudulent misrepresentation is upon a totally different footing. In the large majority of cases of fraudulent misrepresentation it is the party who has suffered by it who desires the truth to be known and to obtain relief on that basis. That of course is a doctrine wholly outside the law of estoppel proper and should never be confused with it. In our opinion the learned Judge of first appeal has correctly appreciated the law and we think that no

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sufficient grounds have been shown us for dissenting from the judgment of the Division Bench in *Ganesh Lala v. Bapu*<sup>(1)</sup> where that law was clearly laid down and so disturbing the decree of the lower appellate Court.

We think that this appeal should be dismissed with costs.

HEATON, J. :—I concur in the conclusions arrived at; section 115 of the Indian Evidence Act must, in my opinion apply unless the word 'person' occurring in that section is construed in some limited way so as to exclude minors. There is nothing in the section itself which suggests that there should be any limitation put upon the meaning of the word 'person,' and when we turn to section 118 a little further on, we find there the word 'person' is used in its ordinary comprehensive sense. So it is again in section 122. We have, therefore, clear indications that in general the word 'person' when used in this Evidence Act is used in its ordinary sense, and I think that it is used in that ordinary sense in the particular case of section 115 also.

*Appeal dismissed.*

R. R.

<sup>(1)</sup> (1895) 21 Bom. 198.