

community, and the decision of the learned Judge cannot possibly be supported. The Rule, therefore, will be made absolute and the suit will be dismissed with costs throughout.

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*Rule made absolute.*

J. G. R.

### APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

JASRAJ BASTIMAL, a firm by its owners JASRAJ BOHARIDAS AND OTHERS (ORIGINAL PLAINTIFF), APPLICANT v. SADASHIV MAHADEV WALEKAR (ORIGINAL DEFENDANT), OPPONENT<sup>o</sup>.

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July 1.

*Indian Evidence Act (I of 1872), section 115—Estoppel—Minor—Representation by a minor that he is of full age—Borrowing money on passing a promissory note—Suit on the promissory note—Minor estopped from pleading minority.*

The defendant, who was nineteen years of age, had a guardian appointed by the Court. He borrowed money by passing a promissory note, representing to the plaintiff that he was a major. In a suit on the promissory note, he pleaded his minority:—

*Held*, that, if the plaintiff acting on the defendant's representation that he was a major lent him money, the defendant was estopped from pleading his minority.

*Dadasaheb Dasrathrao v. Bai Nahani*<sup>(1)</sup>, followed.

THIS was an application under Extraordinary Jurisdiction against the decision of H. V. Chinmulgund, Judge of the Court of Small Causes at Poona.

SUIT to recover money.

On the 17th March 1918, the plaintiff lent Rs. 700 to the defendant for which the latter passed a promissory note.

<sup>o</sup>Civil Extraordinary Application No. 328 of 1920.

<sup>(1)</sup> (1917) 41 Bqm. 480.

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The defendant was born on the 4th January 1899; and when he was one year old his mother was appointed by the Court as his guardian.

At the date when he passed the promissory note the defendant was a minor though he was nineteen years of age. He was conducting a shop and had filed suits in his own name as if he was a major. He represented to the plaintiff that he was then more than 21 years of age.

The plaintiff filed the present suit to recover the money due on the promissory note, but the defendant pleaded his minority.

The trial Judge allowed the plea and dismissed the suit, on the following grounds :—

Rulings relating to transfers of immoveable property where the minor had represented that he was a major suppressing the fact of the existence of a guardianship certificate which extended the period of majority to twenty-one years do not apply to this case for here there is no transfer of immoveable property by fraudulent misrepresentation as to age. This case is one relating to money lent to a minor and is governed by the cases quoted on pp. 418 and 419 of Gour's Hindu Code and relying on them, I hold that the Court cannot order the recovery of the money lent even on the ground of fraud practised by the minor by misrepresenting that he was a major.

The plaintiff applied to the High Court.

*M. B. Dave*, for the applicant :—The defendant having once made a declaration that he was a major and induced the plaintiff to lend the money cannot be heard to say that he was a minor at the date of the transaction: section 115, Indian Evidence Act. This Court has held that a minor can be estopped from pleading his minority if he has induced the other party to do something which he would not otherwise have done: *Ganesh Lala v. Bapu*<sup>(1)</sup>; *Dadasaheb Dasrathrao v. Bai Nahani*<sup>(2)</sup> and *Gurushiddswami v. Parawa*<sup>(3)</sup>.

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

<sup>(2)</sup> (1917) 41 Bom. 480.

<sup>(3)</sup> (1919) 44 Bom. 175.

The Lahore High Court has decided likewise : *Wasinda Ram v. Sita Ram*<sup>(1)</sup>. In *Surendra Nath Roy v. Krishna Sakhi Dasi*<sup>(2)</sup> section 115 has been held to apply to a minor. Though in *Mohori Bibee v. Dharmodas Ghose*<sup>(3)</sup> the Privy Council held that a contract by a minor was void, it left open the question of the applicability of section 115 to minors. The lower Court has erred in drawing a distinction between immoveable and moveable property. No such distinction exists. The cases in which minors are compelled to refund the money on the ground of equity, in contracts induced by fraud, stand on a different footing and have no bearing on the question of estoppel under section 115.

*B. G. Rao*, for the opponent :—The Bombay view is not the correct view. The cases of *Ganesh Lala v. Bapu*<sup>(4)</sup> and *Dadasaheb Dasrathrao v. Bai Nahani*<sup>(5)</sup> are not correctly decided. The Calcutta view is sound and accords with English cases, which decide that a minor cannot be asked to return anything which he has taken under a contract even though it may have been induced by fraud : *Dhanmull v. Ram Chunder Ghose*<sup>(6)</sup>. I rely upon *R. Leslie, Limited v. Sheill*<sup>(7)</sup> followed in *Mohamed Syedol Ariffin v. Yeoh Ooi Garik*<sup>(8)</sup>. If the doctrine of estoppel is applied to a minor, it would result in defeating the express provision of law which makes all contracts by a minor void. Estoppel cannot be applied so as to defeat the provisions of law. By extending the provisions of section 115 of the Indian Evidence Act to a minor, the very contract which the law declares to be void is made enforceable, thereby the protection given by law to a minor is taken away. It is an absolutely fundamental limitation on the application of the

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(1) (1920) 1 Lah. 389.

(2) (1911) 15 C. W. N. 239.

(3) (1903) 30 Cal. 539.

(4) (1895) 21 Bom. 198.

(5) (1917) 41 Bom. 480.

(6) (1890) 24 Cal. 265.

(7) [1914] 3 K. B. 607.

(8) (1916) L. R. 43 I. A. 256.

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doctrine of estoppel that it cannot be applied with the object or result of altering the law of the land; the law, for instance, imposes fetters upon the capacity of certain persons to incur legal obligations and particularly upon their contractual capacity, it invalidates certain transactions on the ground that they are illegal. This general law is no way altered by the doctrine of estoppel.

The view in *Ganesh Lala's case*<sup>(1)</sup> about the applicability of section 115, Indian Evidence Act, to the minors is based upon certain cases, which, when carefully examined, do not warrant the view taken in that case<sup>(2)</sup>.

MACLEOD, C. J.:—The plaintiffs sued to recover the principal and interest due on a promissory note, dated the 17th March 1918, for Rs. 784. The defendant's pleader said that the defendant was a minor having been born on the 4th January 1899, his mother having been appointed his certificated guardian. The following issues were raised: (1) Whether the defendant was a minor; (2) whether the promissory note was passed during his minority; (3) if so, can it be enforced? The plaintiff swore that the defendant, when the promissory note was passed, told him that he was 21 or 21½ years old. He was conducting a shop and filed suits in his own name. In cross-examination he said: "The defendant has a mother. I did not inquire if his mother had obtained a certificate. I did not consult his mother for this debt." On that evidence the Judge came to the conclusion that the defendant was a minor at the date of the suit, and that, therefore, the promissory note could not be enforced. The question whether the defendant was estopped from raising the defence of

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

<sup>(2)</sup> See *Dhurmó Dass Ghose v. Brahma Dutt* (1898) 25 Cal. 616, 623; on appeal, 26 Cal. 381, 388.

minority was considered, and the learned Judge came to the conclusion that the cases cited with regard to transfers of immoveable property by minors representing that they were majors would not apply, but that this case was governed by the cases quoted on pages 418 and 419 of Gour's Hindu Code. Relying on them the Judge held that the Court could not order recovery of the money lent even on the ground of fraud practised by the minor by misrepresenting that he was a major. It seems doubtful whether the Judge considered the question whether section 115 of the Indian Evidence Act applied, and whether the defendant was estopped from proving the truth that he was a minor.

But it was held in *Dadasaheb Dasrathrao v. Bai Nahani*<sup>(1)</sup> that section 115 of the Indian Evidence Act was applicable to the case of a minor and that the defendant 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. No doubt that was a case relating to immoveable property. But the rules of evidence are exactly the same with regard to suits relating to promissory notes. If it is proved that the defendant represented to the plaintiff that he was a major, and the plaintiff acting on that representation lent money on the promissory note, then the Court is entitled to consider the question whether in a suit on the promissory note the defendant is estopped from pleading his minority. That of course would depend upon the evidence and facts of the case, so that the decree dismissing the suit must be set aside. The case must go back to the Judge to find (1) whether the defendant represented to the plaintiff at the time the promissory note was executed that he was a major,

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(2) whether the plaintiff lent money on the promissory note relying on that representation, and (3) whether the plaintiff had any means of knowing that that representation was false.

We may refer to the case of *Gurushiddswami v. Parawa*<sup>(1)</sup> in which reference was made to *Dadasaheb Dasrathrao v. Bai Nahani*<sup>(2)</sup>. We held that as there was evidence that the defendant was not deceived by what the plaintiff had told him, the plaintiff was not estopped from pleading minority. It may be deduced from that decision that the Court approved of the decision in *Dadasaheb Dasrathrao v. Bai Nahani*<sup>(2)</sup> and that if the defendant had been deceived by what the plaintiff had told him there would have been an estoppel.

Costs costs in the cause.

*Decree set aside : case remanded.*

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<sup>(1)</sup> (1919) 44 Bom. 175.

<sup>(2)</sup> (1917) 41 Bom. 480.

## FULL BENCH.

### APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, Mr. Justice Shah, and Mr. Justice Fawcett.*

1921.

July 1.

HIRALAL MOTICHAND, PLAINTIFF v. GANPAT LAHANU AND ANOTHER, DEFENDANTS<sup>a</sup>.

*Court-Fees Act (VII of 1870), section 17—Suit on a Khata—Claim valued at the balance due on the khata—Court fee can be levied on the amount of the balance.*

The Court fee payable in a suit to recover a balance due on a Khata, which contains a number of items, is on the aggregate amount and not on each item in the Khata.

<sup>a</sup> Civil Reference No. 19 of 1920.