

APPELLATE CIVIL

Before R. N. Mittal, J.

BAGHER SINGH and another,—Appellants.

versus

TEJA SINGH and others,—Respondents.

Execution Second Appeal No. 1199 of 1973

July 15, 1975.

Code of Civil Procedure (V of 1908)—Section 47 and Order XXXII Rules 3 and 7—Indian Evidence Act (I of 1872)—Section 115—Decree against a minor not properly represented in court—Appeal on behalf of such minor properly represented by his guardian ad litem—Decree in appeal—Whether a nullity—Guardian effecting compromise after seeking permission of the Court—Whether minor estopped from challenging the validity of the compromise decree.

Held, that no doubt, a decree passed against a minor when he is not represented properly in the court by a guardian *ad litem* is a nullity and not binding on him. But as soon as an appeal is filed against that decree it again becomes subject matter of appeal. In case a minor is properly represented by his guardian his appeal becomes a valid appeal. After the decision of the appeal, the decree of the Trial Court merges into the decree of the appellate court and loses its existence. In an appeal, all objections, against the decree can be taken before the appellate court which has got the power to reverse, modify or affirm the same. In case the appellate court affirms or modifies or reverses the decree it is that decree which is executable and not that of the trial court. This also applies to an appeal in which the minor is a party. He cannot challenge the decree of the appellate court subsequently on the ground that he was not represented by a proper guardian in the suit and therefore the decree was a nullity, provided he was properly represented in appeal. Thus, if a minor is properly represented in appeal, the decree of the appellate court, in which the decree of the trial court merges is binding on him and is not a nullity.

(Paras 5 and 6).

Held, that if a minor enters into a contract by making a false representation, he is not estopped from challenging his liability under that contract. In case the representation is made by a properly constituted guardian on behalf of the minor, the minor is bound by that representation. Thus, a person under disability at the time of the suit to which he is a party represented by his guardian is bound by the acts of his guardian. A judgment rendered in such a case cannot be avoided by him except upon such grounds on which

it can be questioned by a party *sui juris* i.e. for fraud, collusion etc. Thus if a guardian acting on behalf of the minor affects a compromise after seeking the permission of the court, the minor is estopped from challenging the validity of the decree passed on the basis of such a compromise. (Para 8).

Execution Second Appeal from the order of Shri Radha Krishan Battas, Additional District Judge, Barnala, dated 13th August, 1973, affirming that of Shri N. S. Lekh, Sub Judge Ist Class, Barnala, dated 22nd January, 1972, dismissing the appeal with costs.

K. S. Raipuri, Advocate, for the appellants.

Sarjit Singh, Advocate for respondent No. 1.

JUDGMENT

Mittal, J.—(1) This execution second appeal has been filed by the judgment debtors against the judgment of the Additional District Judge, Barnala, dated August 13, 1973, by which he affirmed the judgment of the executing Court dismissing the objections of the judgment-debtors.

(2) Briefly stated, the facts leading to the present controversy are that a suit for possession by pre-emption in respect of 16 *kanals* 11 *marlas* of land was instituted by Teja Singh against Joginder Singh, Maghar Singh and Ujagar Singh. A decree for possession was passed against them by the trial Court on March 29, 1969, on payment of Rs. 3,630/-. Joginder Singh *et cetera vendees* went up in appeal against that decree. During the pendency of the appeal, a compromise was arrived at between the parties on January 1, 1971, Teja Singh pre-emptor admitted before the appellate Court that two of the vendees were minors. Joginder Singh, who was the real brother of the minors and had filed appeal on their behalf, sought permission of the Court to enter into the compromise in the appeal on behalf of the minors. The appellate Court granted him the requisite permission. He made a statement on his own behalf and on behalf of the minors that the decree of the trial Court be modified and decree for possession be passed in favour of Teja Singh on payment of Rs. 6,430/-, as the price of the land. The decree of the trial Court was amended by the appellate Court accordingly. It ordered that an additional amount of Rs. 1,800/- be deposited on or before June 15, 1971. He deposited the amount before that date.

Magher Singh etc. v. Teja Singh etc. (R. N. Mittal, J.)

(3) An execution was taken out by Teja Singh in terms of the decree. The judgment-debtors filed objections against the decree stating that Ujagar Singh and Maghar Singh were minors, and that in trial Court no guardian *ad litem* was appointed for them. They alleged that the decree of the trial Court was, therefore, a nullity. They further stated that the decree being a nullity could not be modified by the appellate Court and executed. The decree-holder contested the objection petition. On the pleadings of the parties, the Court framed the following issues :—

(1) Whether objectors-judgment-debtors are estopped by their act and conduct to file the present objection petition ?

(2) Whether the decree is inexecutable as alleged ?

(4) The executing Court decided both the issues against the judgment-debtors and dismissed their objections. An appeal by them against that judgment was also dismissed. They have come up in execution second appeal to this Court.

(5) The first contention of the learned counsel for the appellants is that the decree as passed by the trial Court was a nullity as two of the defendants, who were minors, were not sued through a guardian. He further submits that consequently the decree passed in appeal by the appellate Court would also be a nullity. I have given a thoughtful consideration to the contention of the learned counsel for the appellants, but regret my inability to accept it. No doubt, a decree passed against a minor when he is not represented properly in Court by a guardian *ad litem* is a nullity and not binding on him. But as soon as appeal is filed against that decree, it again becomes subject-matter of appeal. In case, a minor is properly represented by his guardian *ad litem* in appeal, it becomes a valid appeal. After the decision of the appeal, the decree of the trial Court merges in the decree of the appellate Court and loses its existence. In appeal, all objections against the decree can be taken before the appellate Court which has got the power to reverse, modify or affirm the same. In case, the appellate Court affirms or modifies or reverses the decree, it is that decree, which is executable and not that of the trial Court. In this view, I am fortified by the observations of their Lordships of the Supreme Court in *Collector of Customs, Calcutta v.*

East India Commercial Company Limited, Calcutta and others, (1), wherein it was observed that,—

“When an appeal is made, the appellate authority can do one of the three things, namely, (i) it may reverse the order under appeal, (ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. In all these three cases, after the appellate authority has disposed of the appeal, the operative order is the order of the appellate authority whether it has reversed the original order or modified it or confirmed it. In law, the appellate order of confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification.”

(6) These observations also apply to an appeal in which a minor is a party. He cannot challenge the decree of the appellate Court subsequently on the ground that he was not represented by a proper guardian in the suit and, therefore, the decree was a nullity, provided he was properly represented in appeal. In the present case, the minor appellants filed the appeal through their brother. Their brother entered into a compromise on his own behalf and on their behalf with the permission of the Court. The decree of the trial Court was modified in view of the compromise. In the aforesaid situation, it cannot be held that the minors were not properly represented in appeal. In case, they were properly represented, the decree of the appellate Court in which the decree of the trial Court has merged is binding on them.

(7) Learned counsel for the appellants has placed reliance on *Radhakishan Laxminarain v. Bhagwandas*, (2), wherein it has been held that the dismissal of an appeal preferred by the minor against a decree which was nullity against him, cannot have the effect of validating the decree of the Court. In view of the observations of the Supreme Court in the above mentioned case, with due respect to the learned Judicial Commissioners, I am unable to contribute to the view expressed by them. In the aforesaid circumstances, the decree of the appellate Court cannot be held to be a nullity.

(1) A.I.R. 1963 Supreme Court 1124.

(2) A.I.R. 1935 Nagpur 235.

Magher Singh etc. v. Teja Singh etc. (R. N. Mittal, J.)

(8) The next contention of the learned counsel for the appellants is that the minors are not estopped from challenging the validity of the decree by their conduct. In this case, as already stated, the minors were properly represented in appeal. The permission of the Court for compromise was also obtained by the guardian, who was their real brother. It is true that if a minor enters into a contract by making a false representation, he is not stopped from challenging his liability under that contract. In case a representation is made by a properly constituted guardian on behalf of the minor, the minor is bound by that representation. For the aforesaid view I get support from a Division Bench decision of the Allahabad High Court in *Lal Somnath Singh and others v. Ambika Prasad Dube and others*, (3). It is held in that case by the learned Bench :

“A representation made by an infant is not allowed to operate against him as an estoppel, where the estoppel, if allowed, would have the effect of depriving him of the protection against liability on his contract.”

It is further observed,—

“Where the representation was made on behalf of the infant by his guardian or next friend or other person legally competent to bind him by such a representation, the infant on attaining his majority or the person so making the representation on his behalf until that event, as the case may be, is liable to be estopped thereby.”

I am respectfully in agreement with the aforesaid observations. A person under disability at the time of suit to which he is a party, represented by his guardian is bound by the acts of his guardian. A judgment rendered in such a case cannot be avoided by him except upon such grounds on which it can be questioned by a party *sui juris*; i.e., for fraud, collusion, etc. After taking into consideration the above-said facts, I am of the opinion that the minor-appellants are estopped from challenging the validity of the decree of the appellate Court which was passed in the presence of the guardian, *ad litem* and with the permission of the Court.

(9) For the reasons recorded above, I dismiss the appeal with costs. Counsel's fee Rs. 100.00.

N. K. S.

(3) A.I.R. 1950 Allahabad 121.