

## **PRIVY COUNCIL**

Jamna Bai Saheb Mohitai Avergal

Vs.

Vasanta Rao Anand Rao Dhybar

P.C.A. No. 111 of 1913

(Lord Shaw, CJ , Sir John Edge and Sir Lawrence Jenkins. JJ)

21.3.1916

### **JUDGMENT**

#### **Sir Lawrence Jenkins J.**

1. These appeals arise out of a suit on a money bond of the 16th June 1897, expressed to be executed to the present plaintiff Vasanta Rao, by the defendant Sethuram Saheb, "represented by his grandmother and guardian," and by the defendant Jamna Bai.
2. Sethuram was then a minor and this was apparent on the face of the bond. The substantial question, therefore, now in dispute is whether Sethuram is under a personal obligation to pay the plaintiff the amount he claims, and if not, whether this furnishes Jamna Bai with an answer to the suit. The plea that the suit is premature has no real value. It does not touch the merits, and both Courts agree that the objection is not well-founded.
3. This view is in accord with the meaning placed by the defendants themselves in their written statements on the phrase in the bond which is decisive of this point, and their Lordships see no reason to doubt its accuracy. This plea therefore fails. On the more important question the two Courts are not in complete agreement. The Subordinate Judge passed a decree against both defendants. The High Court on appeal upheld the decree against Jamna Bai, but dismissed the suit against Sethuram. This has led to the two present appeals. Though the circumstances connected with the passing of the bond are intricate, the real issues involved in the suit are simple. To establish Sethuram's liability the plaintiff relies on section 462 of the Code of 1882. But even if compliance with the terms of this section would have established the claim against Sethuram - a point on which no opinion is now expressed - this in no way helps the plaintiff, for the requirements of the section have not been observed in

protection of Sethuram. The High Court, therefore, rightly held him not liable to the plaintiff under the bond. But this furnishes Jamna Bai with no answer to the plaintiff's claim against her. Stripped of all that is not relevant, the plea advanced on her behalf is that one of two promisors can plead the minority and consequent immunity of the other as a bar to the promise's claim against him. This is a position that cannot be maintained, and the plea has been properly rejected by the High Court. On possible developments in the future it would be wrong for their Lordships to make any pronouncement; they will therefore humbly advise His Majesty that each of these appeals should be dismissed. There will be no order as to costs.

Appeals dismissed.