

# BOMBAY HIGH COURT

Gadigeppa Bhimappa Meti

Vs

Balangowda Bhimangowda

(John Beaumont, Kt., C.J. Murphy and Broomfield, J.J.)

08.04.1931

## JUDGMENT

### **John Beaumont, C.J.**

1. This is a reference to a full bench in which the questions raised are whether the decisions of the Bombay High Court in *Ganesh Lala v. Bapu<sup>1</sup>*, *Dadasaheb Dasrathrao v. Bai Nahani<sup>2</sup>* and *Jasraj Bastimal v. Sadashiv Mahadev<sup>3</sup>* are impliedly overruled by the Privy Council in *Sadiq Ali Khan v. Jai Kishori* and if not whether the Bombay decisions ought to be overruled having regard to the consensus of opinion of the other High Courts in the cases referred to in the question.

2. I propose to deal with those two questions as one, because if I entertained a strong opinion that the decisions of the Bombay High Court were right in principle, I should be reluctant to hold that they were impliedly overruled by the Privy Council in a case in which those authorities were not referred to.

3. The Bombay cases in question have decided that where an infant represents that he is of full age and thereby induces some one believing the statement to enter into a contract with him, the infant is estopped in an action against him founded upon the contract from proving that in fact he was not of full age at the date of the contract. All the other High Courts in British India have come to a different conclusion, though they are by no means unanimous as to their reasons.

4. Looking at the matter as one of principle apart from authority, it is in my judgment clear that no person can, by the application of the law of estoppel, or by any rule of procedure, acquire or have assigned to him a status or legal capacity which the substantive law denies to him, and, in my opinion, it makes no difference whether the misrepresentation on which the estoppel is sought to be founded is made fraudulently or innocently. I think that is the rule of English law, but under Indian law the problem is not quite the same, because both the effect of contracts by infants and the rule of estoppel are the subject-matter of statutory enactments, and the problem which the Courts in India have to face is how to reconcile those two enactments.

5. Section 11 of the Indian Contract Act provides:

Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

6. The Privy Council in *Mohori Bibee v. Dharmodas Ghose*<sup>5</sup> have construed that provision as meaning that no one can enter into a contract who is under the age of majority, or who is of unsound mind, or who is disqualified from contracting by any law to which he is subject, so that under Indian law, a contract by an infant is absolutely void and not, as under English law, voidable only.

7. Section 115 of the Indian Evidence Act provides When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

8. That section seems to me to state the ordinary rule of estoppel as established in English law.

9. Now, the view which the Bombay High Court has taken which appears most clearly in Mr. Justice Beamans judgment in *Dadasaheb Dasrathrao v. Bai Nahaniis* really this, that if you apply Section 115 of the Indian Evidence Act literally, Section 11 of the Indian Contract Act never comes into the picture at all. You have an action on a contract, the defendant is not allowed by reason of estoppel to give evidence that at the date of the contract he was an infant, therefore there is no defense to the action. If that view of the matter is right, it seems to me to lead to startling results. I may take an illustration, which I put to Mr. Mulgaokar in the course of the argument; suppose that a man, a Christian entitled to only one wife, is desirous of inducing a woman to enter into a marriage with him, suppose that he represents that he is unmarried, suppose that relying on that representation the woman goes through a form of marriage with him and lives with him as his wife, suppose that he subsequently deserts her and she sues for restitution of conjugal rights, and the defendant tenders evidence that in point of fact at the time of the marriage ceremony he had a wife living, so that the alleged marriage with the plaintiff was a nullity. Now if the defendant is estopped from giving that evidence and the Court has no regard to it, then the plaintiff can rely on her status as a married woman and there is no answer to her claim for a decree for restitution of conjugal rights. But such an order would really amount to ordering the defendant to live in adultery with the plaintiff. It seems to me an impossible proposition that the Court has to make such an order. Or, take again the case of an alien enemy. By the English common law, which on such a point I apprehend would apply in India, an alien enemy is incapable of entering into any contract enforceable in the national Courts. Suppose a

man representing that he is a national of a friendly power induces some one to enter into a contract with him and an action is subsequently brought to enforce that contract. If no evidence can be given of the fact that the defendant was at the date of the contract an alien enemy, then the Court must enforce the contract which it is in the public interest not to enforce. Again that seems to me an impossible proposition.

10. The other High Courts of India in seeking to reconcile Section 11 of the Indian Contract Act with a 115 of the Indian Evidence Act show considerable diversity of opinion, The Court of Appeal of Calcutta in *Brohmo Dutt v. Dharmo Das Ghose*<sup>5</sup> held that Section 115 of the Indian Evidence Act has no application to an infant. They held in effect that the word 'person' in that section means a person having contractual capacity. That view has not found favour with other High Courts, and I think it is plainly untenable. I can see no reason why a person who has no contractual capacity should for that reason be immune from the rule of estoppel for instance in an action founded on tort.

11. Then the Lahore High Court in *Khan Gul v. Lakha Singh*<sup>6</sup> a decision of the full bench held that a minor is not estopped from pleading his minority, and they reconcile Section 11 of the Indian Contract Act with Section 115 of the Indian Evidence Act by applying the principle enunciated by Best C.J. in *Churchill v. Crease* (1828) 5 Bing. 177, 180, viz., that where a general intention is expressed by the legislature, and also a particular intention, which is incompatible with the general one, the particular intention is considered an exception to the general one. I have myself some difficulty in seeing how that principle can be applied as between two statutes of a public and general nature dealing with totally different subject-matters. Moreover, I do not follow why Section 11 of the Indian Contract Act which enacts what persons are capable of entering into contracts is any more particular and less general than Section 115 of the Indian Evidence Act which enacts the rule of estoppel.

12. I rather prefer myself the view expressed by the Madras High Court in *Vaikuntarama Pillai v. Authimoolam Chettiar*<sup>7</sup> that an estoppel cannot overrule a plain provision of the law. Or the matter might be put in another way, that Section 11 of the Indian Contract Act being a matter of substantive law, it must prevail over Section 115 of the Indian Evidence Act; which is merely a matter of procedure.

13. I am not quite sure myself, however, that there is any real conflict between the two sections. Section 115 of the Indian Evidence Act does not affect in any way the validity of evidence. It does not provide that what would be sufficient proof in one case will not be sufficient in another; it only provides that in certain circumstances and as between the parties no evidence of certain things shall be allowed to be given. But where the evidence to be excluded goes to show that the Court has no jurisdiction to make the order which it is asked to make, it seems to me that the

Court must, for its own protection, look at the evidence. It is not really looking at the evidence for the purpose of defeating one party, it is looking at the evidence for the purpose of seeing that its own process is not abused. In my view, therefore, it is quite clear that the view which has prevailed in this Court is not the correct view, and that the cases referred to in the question ought to be overruled.

14. Upon the subsidiary question whether the decision of the Privy Council in *Sadiq Ali Khan v. Jai Kishori* impliedly overruled the Bombay decisions, I feel some doubt, but it is not really necessary to decide that point, because this Court is not bound by the decisions in question. The passage in the judgment of the Privy Council, which is relied on as overruling the cases in question, is this (p. 1352) The fact of minority being established at the date of the execution by the mortgagors of the deed founded on is sufficient for the decision of the case ; such a deed executed by minors being admittedly a nullity according to Indian law, and incapable of founding a plea of estoppel.

15. That is a clear expression of their Lordships' opinion with which, if I may respectfully say so, I entirely agree, and I think it indicates what view of the Bombay cases their Lordships would have taken had those cases been drawn to their attention. If the cases have not been technically overruled then I think we must overrule them.

17. I think that the questions put to us should be answered in this way The Court is of opinion that where an infant represents fraudulently or otherwise that he is of age and thereby induces another to enter into a contract with him then in an action founded on the contract the infant is not estopped from setting up infancy, and that the Bombay cases in *Ganesh Lala v. Bapu*, *Dadasaheb Dasrathrao v. Bai Nahani*, and *Jasraj Bastinmal v. Sadashiv Mahadev* ought to be treated as overruled.

Murphy, J.

1. The facts are that Bhimappa, perhaps honestly and presumably acting as a major, sold a piece of land to the plaintiff, and the question now is whether defendants are estopped from proving the fact of Bhimappa's minority at the time. The relevant decisions of this Court are to the effect that on these facts an estoppel arises and that the minority cannot be proved, this view being put in the clearest manner by Beaman J. in *Dadasaheb Dasrathrao v. Bai Nahani*<sup>8</sup> following an earlier case of *Ganesh Lala v. Bapu*<sup>9</sup> Beaman J.'s view is as follows (p. 483):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.

2. The other High Courts in India have held on the point in a contrary sense, and their Lordships of the Privy Council in the case of *Sadiq Ali Khan v. Jai Kishori*<sup>10</sup> The fact of minority being established at the date of the execution by the mortgagors of the deed founded on its sufficiency for the decision of the case ; such a deed executed by minors being admittedly a nullity according to Indian law, and incapable of founding a plea of estoppel.

3. All the cases bearing on the point have been fully discussed before us and in the referring judgments and I need not repeat them here. I feel there is a logical difficulty, one solution of which is that given by Beaman J. and the best ground on which to base the contrary view seems to me to be that set out in the Madras case of *Vaikuntarama Pillai v. Authimoolam Chettiar*<sup>11</sup> that a rule of evidence such as an estoppel cannot be allowed to override the provisions of the statutory law that a minor's contract is void. I agree, therefore, with the answers given by the learned Chief Justice. -

**Broomfield, J.**

1. As regards the first part of the question referred to this full bench I have little to add to what I have said in my referring judgment, and, on the whole, I adhere to the opinion there expressed.

2. We have now before us fuller report of the facts of Sadiq Ali's case (*Bibi Jai Kishori v. Ali Ahmad Khan*<sup>12</sup>) which shows that the issue of estoppel did directly arise from the pleadings, and the report also indicates that the minors themselves made misstatements as to their ages before the Sub-Registrar. But that was at the stage of registration and not at the time of the execution of the mortgage. The trial Court's finding was not only that the minors were not parties to the fraud, which was the act of their father, but also that there was no estoppel on the facts. The facts of Sadiq Ali's case were, therefore, materially different from the present case, where we have a positive misrepresentation by the minor Bhimappa as to his age, whereby he induced the other party to enter into the contract. The observation of their Lordships on the point of estoppel may, no doubt, indicate that the view of the law which has appealed to all the High Courts in India, except this High Court, would also find favour with their Lordships should the matter come definitely before them, but this brief incidental observation cannot, I think, be regarded as a considered finding on the question which was deliberately left undecided in *Mohori Bibee's* case (*Mohori Bibee v. Dharmodas Ghose*<sup>13</sup> that is the case in which their Lordships finally decided that a minor's contract is void. I am not satisfied that the particular question of estoppel with which we are concerned with all its implications was really in the minds of their Lordships and I would, therefore, answer the first part of the question in the negative.

3. However, the second part of the question contains the point of real importance, viz., is the view which the Bombay High Court has taken hitherto the correct view and ought it to be maintained against the consensus of opinion of all the other High Courts in India? After further and fuller consideration of this question I am satisfied that, although this High Court was right in holding that Section 115 applies in terms to minors, it was wrong in holding that the provisions of that section override the provisions of Section 11 of the Indian Contract Act. The rule of estoppel inter paries cannot preclude the Court itself from taking cognizance of the true facts, or compel it to give legal effect to a transaction which the legislature has expressly declared to be void. It is not necessary for me to labour this point, partly because the learned Chief Justice has fully dealt with it, and partly because this is admittedly the law in England and in India also, according to all the High Courts except this. The High Courts have differed as to the ratio decidendi. I agree that the principle which has been adopted by the Madras High Court, viz., that there can be no estoppel against the express terms of a statute, is on the whole the simplest and most satisfactory method of reconciling the provisions of Section 115 of the Indian Evidence Act and Section 11 of the Indian Contract Act. This principle seems to me to be at the root of the English decisions, and it has been recognized by this High Court in a recent case, *Shiekh Ahmed v. Babu Devji*<sup>14</sup>

4. A minor who has been guilty of actual fraud may be deprived of the benefit of the plea of infancy, as held by Jenkins J., in *Dhurmo Dass Ghose v. Brahmoo Dutt*<sup>15</sup> That may be either by reason of statutory provisions, for instance, Section 65 of the Indian Contract Act or Section 41 of the Specific Relief Act, or on equitable grounds. But that is a matter essentially different from estoppel, and in the present case no fraud is alleged and considerations of that kind do not arise. I agree with the general answer to the two questions proposed by the learned Chief Justice.

#### Cases Referred.

- 1(1895) I.L.R. 21 Bom. 198
- 2(1917) I.L.R. 41 Bom. 480, s.c. 19 Bom. L.R. 561
- 3(1921) I.L.R. 46 Bom. 137, s.c. 23 Bom. L.R. 975
- 4(1903) I.L.R. 30 Cal. 539, s.c. 5 Bom. L.R. 421, P.C
- 5(1898) I.L.R. 26 Cal. 381
- 6(1928) I.L.R. 9 Lah. 701, F.B.
- 7(1914) I.L.R. 38 Mad. 1071
- 8(1917) I.L.R. 41 Bom. 480, s.c. 19 Bom. L.R. 561
- 9(1895) I.L.R. 21 Bom. 198
- 10(1928) 30 Bom. L.B. 1346, P.C. have observed (p. 1352)
- 11(1914) I.L.R. 38 Mad. 1071
- 12[1925] A.I.R. Oudh. 487
- 13(1903) I.L.R. 30 Cal. 539, s.c. 5 Bom. L.R. 421, P.C
- 14(1929) I.L.R. 53 Bom. 676, s.c. 31 Bom. L.R. 778
- 15(1898) I.L.R. 25 Cal. 616