

Present : De Sampayo J.

RUPASINGHE v. FERNANDO.

35 and 36—C. R. Kalutara, 7,615.

Judgment against a minor—Seizure of property under writ—Claim unsuccessful—Action under s.247, Civil Procedure Code—May unsuccessful claimant attack the judgment sought to be executed as invalid on the ground of minority of defendant?

In an action under section 247 of the Civil Procedure Code by an unsuccessful claimant, the plaintiff and the representatives of the deceased judgment-debtor attacked the validity of the judgment sought to be executed on the ground that the judgment-debtor was a minor.

Held, the judgment entered against the minor, though unrepresented by a guardian, was at most an irregularity, and that it was not open to a collateral attack. Though the plaintiff was not a party to that action, he cannot attack the judgment in that case in this action under section 247.

THE facts are set out in the judgment.

A. St. V. Jayawardene, for plaintiff, appellant in appeal No. 35.

Bawa, K.C., for added defendants, appellants in appeal No. 36.

Samarawickreme (with him *Weeraratne*), for the first defendant, respondent in both appeals.

March 28, 1918. DE SAMPAYO J.—

In the action No. 6,157, D. C. Kalutara, the first defendant-respondent obtained a decree for money against one Katirikankangey Stephen, and under a writ of execution issued in that case he caused to be seized on July 11, 1915, one-twentieth share of a certain land and buildings as the property of Stephen, and the sale was fixed for October 31, 1916. The plaintiff claimed the said share of land and buildings by virtue of a deed of transfer executed in his favour by Stephen on August 12, 1916. The plaintiff's claim was disallowed by the Court, and he brought this action, under section 247 of the Civil Procedure Code, to establish his right to the property. Stephen died before the date of this action, and the added defendants, who are his heirs, have been made parties to the action. The first defendant impeaches the deed in favour of the plaintiff as a fraudulent alienation, and both the plaintiff and the added defendants attack the validity of the judgment sought to be executed by the first defendant on the ground that Stephen was a minor.

1918.

DE SAMPAYO
J.*Rupasinghe
v. Fernando*

The Commissioner has on the evidence held that the deed in favour of the plaintiff was executed merely to defraud Stephen's creditors, and I see no reason to disturb that finding. With regard to the judgment in the previous case, the Commissioner has held that, if the judgment is invalid for the reasons stated, the proper course is to take steps in that case to have it set aside, and not to raise the question incidentally in this action. This view, so far at least as the added defendants, who are Stephen's representatives, are concerned, is, in my opinion, quite sound. It is section 480 of the Civil Procedure Code that should be availed of for that purpose. But Mr. A. St. V. Jayawardene, for the plaintiff, contends that as the plaintiff would have no status in that action, he should be allowed in this action to impeach the validity of the judgment, and he cites *Cornelis v. Carolis*¹ and *Pedrupillai v. Manuel*.² These decisions were concerned with the question whether it was open, in an action under section 247 of the Code, for the claimant in execution to impeach the decree sought to be executed on the ground of fraud and collusion, and the question was answered in the affirmative. The Indian decisions on that point are conflicting. See *Gulibai v. Jagannath Galvankar*³ and *Naranayyan v. Nageswarayyan*.⁴ Whatever may be the right view with regard to a judgment obtained by fraud and collusion, I do not think that the analogy of the decisions relied on applies to a judgment entered against a minor. When a judgment is found to be obtained by fraud and collusion, it must be taken to be void *ab initio*, and there is, therefore, nothing to execute as against a claimant from the ostensible judgment-debtor. The character of a judgment against a minor is substantially different. Even if the judgment-debtor is found to be a minor, it does not follow that the judgment is *ipso facto* void. In *Muttu Menika v. Muttu Menika*⁵ I had occasion to consider the law relating to the subject, and I came to the conclusion that a judgment entered against a minor, though unrepresented by a guardian, was at most an irregularity, and that it would stand as a valid adjudication until reversed, and was not open to a collateral attack. I have no reason now to consider that opinion to be wrong. I therefore think that the judgment in the previous case remains as a valid and executable judgment even as regards the plaintiff.

The appeals are dismissed, with costs.

Appeals dismissed.

¹ (1912) 6 *Leader Rep.* 94.

³ *I. L. R.* 10 *Bom.* 659.

² (1917) 4. *C. W. R.* 356.

⁴ *I. L. R.* 17 *Mad* 389.

⁵ (1915) 18 *N. L. R.* 510.