

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, May 16, 1910
and Mr. Justice Middleton.

WIJESORIA v. IBRAHIMSA.

D. C., Kandy, 19,291.

Minor—Contract—Sale of immovable property—No sanction of Court obtained.

Although a minor cannot, as a general rule, bind himself by contract without the authority of his tutor, yet, when he has falsely represented himself to be of full age, and has deceived the other contracting party by such representation, he will be held bound.

A sale of immovable property without the sanction of Court by a minor who represented himself to be of full age, was held not to be void under the circumstances of this case.

THE facts of this case are fully set out in the judgment of Hutchinson C.J.

A. St. V. Jayewardene, for the plaintiff, appellant.—Plaintiff was a minor at the date of the conveyance; the conveyance was executed without the sanction of Court, it is therefore void (*Andris Appu v. Abanchi Appu*,¹ *Perera v. Perera*,² *Manuel Naide v. Adrian Hamy*³). There is no estoppel in this case, as the defendants were induced to purchase, not on any representation made by the plaintiff, but owing to the affidavit sworn by plaintiff's mother. Even if the plaintiff made a representation, no estoppel could arise, as the plaintiff was a minor at the time. An estoppel cannot be applied to alter the law of the land. Section 115 of the Evidence Ordinance does not apply to minors (*Cababe on Estoppel 123*, *Dutt v. Ghose*,⁴ *Cannon v. Farmer*⁵).

Bawa, for the defendants, respondents.—Plaintiff should not be allowed to take advantage of his own fraud. Section 115 of the Evidence Ordinance applies; and plaintiff is now estopped from saying that he was not of full age at the date of the execution of the deed.

Jayewardene, in reply.

[There was also an argument as to whether the law applicable to this case was the Kandyan Law or the Roman-Dutch Law.]

Cur. adv. vult.

¹ (1902) 3 Br. 12.

² (1902) 3 Br. 150.

³ (1909) 12 N. L. R. 259.

⁴ 26 Cal. 381.

⁵ 3 Ex. 698.

May 16, 1910 May 16, 1910. HUTCHINSON C.J.—

*Wijesooriya
v. Ibrahimsa*

This is an appeal by the plaintiff against the dismissal of his action. His claim in the action was for a declaration of his title to a piece of land which was conveyed to him in 1889, and of which he complains that the defendants have been unlawfully in possession for the last five or six years.

The defendants admitted that the land was conveyed to the plaintiff in 1889, but said that the plaintiff by deed dated April 4, 1901, sold and transferred it to Dona Catherina Hamine, through whom the added defendants claim. The original defendant was the agent of the added defendants to collect the rents from the property.

The plaintiff alleged that he was a minor at the date of his execution of the deed of 1901; the defendants denied this, but asserted that if he was a minor he is estopped from denying the validity of the deed by his conduct.

The issue whether the plaintiff was a minor on April 4, 1901, was decided in the affirmative; he was then in his twenty-first year, and did not attain majority until March 21, 1902.

The Judge finds that at the time of the execution of the deed the plaintiff was over twenty years of age, and that he understood English, and was well able to comprehend the effect of the deed. It is clear that the purchaser, a woman called Hamine, had some doubt as to his age, because an affidavit was sworn by his mother on the same day and attached to the deed affirming that the plaintiff was born in or about December, 1879, and so was then of full age. The plaintiff represented himself to the purchaser as being twenty-one years of age, and he received the consideration money himself. After he attained majority he took no steps for more than seven years to avoid the transfer, and did nothing while the purchaser and the subsequent purchasers built on the land and improved it. He now asks the Court to declare that his deed was a nullity; he wants to take back the land and to keep the purchase money which he received.

Both parties and the District Court assumed that the Roman-Dutch Law and not the Kandyan Law applies; and by that law a transfer of his land by a minor is void unless it is sanctioned by the Court. But I also find it stated in *Maasdorp I.*, 247, that although the tutor's authority is necessary in all cases in which there is a question of binding a minor, yet there is an exception "where the minor has falsely represented himself to be of full age, and has deceived the other contracting party by such representation"; and in the *Censura Forensis I.*, 283, it is stated, "nor is this decree" (*restitutio in integrum*) "granted to those who have committed fraud, as, for instance, if they have lied in saying they are of age."

That is, perhaps, a fair rule in a country and age in which it is not always easy to prove a person's exact age. It appears to be still the law in Ceylon; and where a man applies to the Court to enable him

to obtain the benefit of a fraud which he has committed, I think that the Court may in accordance with that law refuse to help him. I would dismiss the appeal with costs.

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HUTCHINSON
C.J.

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MIDDLETON J.—

This was an appeal from a judgment dismissing the plaintiff's action to set aside a deed of transfer of property made by the plaintiff during his minority, and to recover damages and obtain an order of ejectment. The District Judge dismissed the plaintiff's action, on the ground that he was estopped from denying the validity of the deed he executed.

The plaintiff appealed, but the learned counsel for the respondent did not support the judgment on the ground on which it was based, and I think it is clear the authorities are against him (*Cababe on Estoppel 123, Dutt v. Ghose*¹), on the principle that the doctrine of estoppel cannot be applied to alter the law of the land. See also *Cannon v. Farmer*,² where it was held that a married woman's incapacity to contract by reason of her coverture was not removed by her representation. It is not an estoppel.

According to *Maasdorp, vol. 1., 247*, founded on *Voet 27, 9, 13*, under the Roman-Dutch Law, though a minor cannot, as a general rule, bind himself by contract without the authority of his tutor, yet, when he has falsely represented himself to be of full age, and has deceived the other contracting party by such representation, he will be held bound. But in the case of the alienation of immovable property by minors, as has been held in Ceylon (*3 Browne 12, 6 N. L. R. 367*, and *12 N. L. R. 291*), besides the guardian's authority, that of the Court is also required (*Voet 26, 8, 5; Maasdorp, vol. 1., 247*). Here the authority of the Court was not obtained. In the present case the District Judge has found that at the time of the execution of the deed the plaintiff was over twenty years of age; that he understood English, and was well able to comprehend the effect of the document he signed; that his father and mother were present at the execution of the deed and signified their consent; that his mother filed an affidavit to the effect that the plaintiff had then attained his majority, and he represented himself to the vendee as being over twenty-one years of age; that he received the consideration himself for the purchase and benefited by the transfer to the extent of the transfer.

There is no reason to doubt the correctness of these findings, and they clearly establish that the plaintiff is a fraudulent individual, who is entitled to no consideration at the hands of any Court of Justice.

It has been established by various decisions of the Court of Chancery in England that an infant cannot take advantage of his

¹ 26 Cal. 381.

² 3 Ex. 698.

May 16, 1910 own fraud (*Pollock on Torts 55*), and I do not think such persons should expect the assistance of the Courts here to extract them from a position in which their own improbity has placed them.

MIDDLETON
J.
Wijesooria
v. Ibrahimsa I do not think that a fraudulent minor, who has acted as the plaintiff has, should be permitted to set up and rely on a rule which has been laid down for the prevention of frauds on minors, for the purpose of his own aggrandisement. I hold, therefore, that the appeal of the plaintiffs should be dismissed with costs, and the judgment of the Court below affirmed.

Appeal dismissed.
