

ORIGINAL CIVIL.

Before Buckland J.

SARADAPRASAD DAS

v.

BINAYKRISHNA DATTA.*

1930

April 1, 2.

*Fraud—Minor—Mortgage by minor—Misrepresentation as to age of minor—
Presumption as to knowledge of law.*

One D. S. mortgaged the premises in suit to the defendant B. D., on the 7th August, 1919. If no guardian of the person and property of D. S. had been appointed in 1917, D. S. would have attained majority on the 31st May, 1919, but by reason of such appointment, the period of his minority had been extended to the 31st May, 1922. Shortly after he attained majority, D. S. sold the premises to the plaintiff, who sued B. D. and others for a declaration that the mortgage to B. D. was void and other consequential reliefs. The defence of B. D. was that D. S. fraudulently represented that he was of full age and induced B. D., by such misrepresentation, to lend the money upon the mortgage and that the plaintiff bought with knowledge of the fraud. There was no evidence that D. S. knew that, by reason of the appointment of a guardian of his person and property, his minority had been prolonged.

Held, that fraud depends upon the state of a person's mind and fraudulent intention cannot be imputed by reason of a presumption of knowledge of law, unless the person alleged to be fraudulent has such knowledge in fact.

A mortgage by a minor is void, even if there is a misrepresentation as to the age of the minor.

Mohori Bibee v. Dharmodas Ghose (1), *R. Leslie, Limited v. Sheill* (2) and *Khan Gul v. Lakha Singh* (3) followed.

Held, also, that since B. D. could not recover from D. S., he could not do so from the plaintiff, and the plaintiff could not be put on terms.

The facts appear from the judgment.

S. N. Banerji (with him *B. C. Ghose*) for the defendant. Where there is fraud, an infant cannot claim protection. *Saral Chand Mitter v. Mohun Bibi* (4).

[Bose. That was before *Mohori Bibee v. Dharmodas Ghose* (1).]

*Original Civil Suit No. 2072 of 1928.

(1) (1903) I. L. R. 30 Calc. 539 ; (2) [1914] 3 K. B. 607.

L. R. 30 I. A. 114. (3) (1928) I. L. R. 9 Lah. 701.

(4) (1898) 2 C. W. N. 201.

The Privy Council left the question open as to whether the minor is estopped or not, in case of fraud by him. *Surendra Nath Roy v. Krishna Sakhi Dasi* (1). The minor in this case knew of the appointment of the guardian and still represented that he was of age.

Under section 42 of the Specific Relief Act, the plaintiff can only get the declaration on paying the defendant.

S. M. Bose (with him *P. N. Sen*) for the plaintiff. Even if there is misrepresentation of the minor's age, the minor is incompetent to contract and the mortgage is void. I rely on *R. Leslie, Limited v. Sheill* (2) and *Khan Gul v. Lakha Singh* (3).

In the absence of an independent tort, the creditor cannot recover from the minor. Fraud must be proved and cannot be presumed from the fact that the minor stated that he believed he was of age. *Mahomed Syedol Ariffin v. Yeoh Ooi Gark* (4).

BUCKLAND J. This is a suit for a declaration that a mortgage, dated the 7th August, 1919, executed by one Dasharathi Singha in favour of Benaykrishna Datta, the defendant, of premises No. 2, Shashibhushan Sur's Lane, to secure an advance of Rs. 4,500 is void and not binding upon the plaintiff and for other consequential reliefs.

The circumstances of this case are the following. A man of the name of Premchand Singha, who died on the 21st November, 1900, had two wives. His first wife, Nrityamayee, predeceased him, leaving a daughter of the name of Kusumkumari. Her name does not recur. By his second wife, Katyayanee, he had a daughter, Subashini, and a posthumous son, Dasharathi, who was born on the 1st June, 1901.

On the 30th August, 1901, letters of administration to the estate of her deceased husband were granted by this Court to his widow, limited to the minority of her son.

(1) (1911) 15 C. W. N. 239.

(2) [1914] 3 K. B. 607, 608.

(3) (1928) I. L. R. 9 Lah. 701, 712.

(4) [1916] 2 A. C. 575; L. R. 43

I. A. 256.

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On the 30th July, 1917, Subashini was appointed guardian of the person and property of her brother, Dasharathi, by the district court of Hooghly.

On the 30th August, 1918, Katyayanee, as administratrix, obtained leave from this Court to raise a loan of Rs. 1,500 at a rate of interest not exceeding 10 per cent. per annum on the mortgage of premises No. 2, Shashibhushan Sur's Lane, Calcutta, and, in pursuance thereof, on the 8th October, 1918, executed a mortgage of the property in question, in favour of Chetnarayan Singh Doogar, for Rs. 1,500.

On the 7th August, 1919, the events happened, with which this suit is principally concerned. On that day, Dasharathi executed a mortgage of the premises, No. 2, Shashibhushan Sur's Lane, in favour of the defendant, Binaykrishna Datta, to secure a loan of Rs. 4,500, and, on the same date, he paid off the amount due on the mortgage, dated 8th October, 1918, and obtained a reconveyance from Chetnarayan Singh Doogar.

Had no guardian of the person and property of Dasharathi Singha been appointed in the year 1917, he would have attained majority on the 31st May, 1919, and it would be impossible to impugn the mortgage of 7th August, 1919. But, by reason of such appointment, the period of his minority was extended until the 31st May, 1922, wherefore the mortgage in favour of the defendant Binaykrishna Datta was executed by him during his minority.

On the 11th June, 1922, shortly after he had attained his majority, Dasharathi Singha conveyed the premises, No. 2, Shashibhushan Sur's Lane, to the plaintiff, free from encumbrances, in consideration of the sum of Rs. 21,217.

On the 24th June, 1922, Binaykrishna Datta instituted a suit in this Court, being suit No. 2086 of 1922 against Dasharathi Singha for the purpose of enforcing his mortgage of 7th August, 1919. To that suit, Saradaprasad Das was not made a party.

On the 30th August, 1922, a preliminary mortgage decree was made and a final decree on the 19th February, 1925.

On the 12th September, 1928, this suit was filed by Saradaprasad Das, for the purpose of having it declared that the mortgage in favour of Binaykrishna Datta, upon which, as stated, Binaykrishna Datta had already obtained a decree, was void.

Kalidasee Dasi, widow of Dasharathi, has also been made a party to the suit. No relief is claimed against her. It was stated from the bar, at the commencement of the hearing, that her co-defendant questions whether she is of full age or whether a guardian-ad-litem ought to be appointed, but learned counsel for the plaintiff stated that it was not proposed to do anything further in the matter and he would take the risk whether or not she was of full age.

On behalf of the mortgagee, Binaykrishna Datta, it has been questioned whether or not Dasharathi was in fact a minor on the 7th August, 1919, but this has not been seriously challenged, and any question there might have been has been set at rest by the production of the order appointing the guardian.

The substantial defence is based upon the allegation that Dasharathi Singha fraudulently represented that he was of full age and induced Binaykrishna Datta, by such misrepresentation, to lend the money upon the mortgage in question. It is further alleged that the plaintiff obtained the conveyance from Dasharathi with knowledge of such fraud, and finally questions are raised as to the relief to which the plaintiff is entitled.

The following issues were submitted on behalf of the defendant, Binaykrishna Datta, and accepted by Mr. S. M. Bose, on behalf of the plaintiff:—

1. Was Dasharathi Singha a minor on the 7th August, 1919 ?
2. If so, did the said Dasharathi Singha fraudulently represent that he was a major and induce the defendant to lend Rs. 4,500 and to take a mortgage of No. 2, Shashibhushan Sur's Lane ?
3. Did the plaintiff obtain a conveyance on the 11th June, 1922, with knowledge of such fraud ?

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4. Was such conveyance executed in order to defeat the claim of the defendant?
5. Is the plaintiff in the position of a trustee for the amount of the mortgage debt?
6. Is the plaintiff entitled to the declarations contained in clauses (a), (b) and (c) of the prayer?
7. Is the plaintiff estopped from obtaining relief in this suit?
8. To what relief is the plaintiff entitled, and if so, on what terms?

The first question to be determined is as to the alleged fraud by Dasharathi. The defendant, Binaykrishna Datta himself gave evidence and said that he was informed by Dasharathi that he was of full age and he would not have lent the money if he had known he was a minor. In cross-examination he said that his object was to become the first mortgagee of the property and he wanted to see the first mortgage to Chetnarayan Singh paid off and satisfied before he made his advance. His evidence does not carry the case very far.

Two other witnesses were called: one Nilmani Basu, a *mohurir* in the employ of a pleader practising in the Court of Small Causes, of the name of Phanibhushan Banerji. He was acquainted with Dasharathi and his father Premchand, because his former employer, a pleader of the name of Aghorenath Seal, used to work for Premchand Singha and his family. He was concerned with the loan of Rs. 1,500 from Chetnarayan Singh Doogar and arranged for Dasharathi to borrow Rs. 4,500 from Binaykrishna Datta, out of which Chetnarayan Singh's debt was paid off. The question was raised as to the age of Dasharathi and he said that as Dasharathi was a minor, the transaction could not be effected, but Dasharathi and also his mother stated that Dasharathi had attained majority. He advised that the matter should be put on a satisfactory basis and affidavits, dated the 6th August, 1919, were made by Dasharathi and his mother stating that Dasharathi was of full age. The witness was also questioned about the subsequent transaction resulting in the conveyance to the present plaintiff. It had been proposed to sell the property to a man named

Harishankar Pal, when the plaintiff proposed that the property should be sold to him instead and offered the witness Rs. 2,000 if he could bring that about. The witness said that he told Sarada that the property had been mortgaged to Binaykrishna Datta, to which the plaintiff said that he would see to the matter. In cross-examination, this witness was asked, "Did you ask Dasharathi or Katyayanee whether a guardian had been appointed of Dasharathi?" His answer was "No." "Nor can you tell his Lordship whether Katyayanee knew that a guardian had been appointed?" and he said "I cannot say."

The other witness was Niranjankumar Sen, an attorney of this Court of 14 years standing, and assistant in the office of Mr. M. N. Sen. He acted in the mortgage transaction on behalf of the mortgagor and the mortgagee. He said that a question arose as to the age of Dasharathi and enquiries were made, and he searched the records of the Court and found nothing there to show that any guardian had been appointed. He enquired of Katyayanee, Dasharathi, Subashini and her husband, who told him that no guardian had been appointed. Then the affidavits, to which the other witnesses have spoken, were affirmed. He says that if he had known of the appointment of the guardian, he would not have put through the transaction. He was further asked as to whether Dasharathi knew about the appointment of the guardian, but he could not say. He was shown a petition by Dasharathi which was filed in a suit by a man of the name of Lalitmohan Mukherji against Dasharathi, in which Dasharathi said that, before 1920, he did not know that a guardian had been appointed. Of this the witness said he had no personal knowledge.

I will take it that these persons, in particular Dasharathi, did say, as the witnesses have stated; that he was of full age. I will also assume that his mother and sister did so. The sister of course must have known that a guardian had been appointed. The mother probably knew it, as under the Act,

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notice would have to be served on her. Dasharathi need not necessarily have known, because the appointment may have been made without his knowledge. But it does not follow that either his mother or his sister ever told him. The conclusion that Dasharathi himself knew that a guardian had been appointed of his person and property is one to support which I can find no evidence, and such a finding could only be based upon conjecture. There is nothing which would justify such an inference, and I cannot hold that Dasharathi in fact knew that a guardian of his person and property had been appointed.

That, however, does not entirely dispose of the point. Even if these persons knew that a guardian had been appointed, as Subashini must have done, does it follow that they knew that it would extend the minority of Dasharathi for three years by reason of the operation of the Act? The appointment was made about two years before Dasharathi would have come of age had no appointment been made. What was the occasion of the application by Subashini does not appear. There is no evidence to show that the effect of the statute on the minority of Dasharathi was ever present to the mind of any of the persons concerned. True, they must be presumed to know the law. But such an assumption cannot be made for the purpose of consequentially imputing fraud to any one of them. Fraud depends upon the state of a person's mind, and fraudulent intention cannot be imputed by reason of a presumption of knowledge of law unless the person alleged to be fraudulent has such knowledge in fact. I, therefore, have come to the further conclusion, on the evidence, that it is not established that Dasharathi was aware that a guardian had been appointed of his person and property or that his minority had been thereby prolonged.

This view of the matter disposes of the second issue, as also of the third and fourth issues, because if there was no fraud on the part of Dasharathi then

there was no fraud with the knowledge of which Sarada took the conveyance on the 11th June, 1922.

I now come to the question as to the relief to which the plaintiff is entitled. Three cases to which I have been referred, in the course of the hearing, deal with the subjects which have been discussed before me in an exhaustive manner. One is the well known case of *Mohori Bibee v. Dharmodas Ghose* (1), which decided finally that, under the Contract Act, a person, who, by reason of infancy, is incompetent to contract, cannot make a contract within the meaning of the Act, with the result that a mortgage made by a minor is void. The next is *R. Leslie, Limited v. Sheill* (2), where the principles of law applicable to a case where an infant has obtained a loan of money upon the fraudulent representation that he is of full age were fully discussed by Lord Sumner. Finally, in a recent judgment, Shadi Lal C. J. in *Khan Gul v. Lakha Singh* (3), also considered these matters at length. It is clear that the plaintiff is entitled to a declaration that the mortgage of the 7th August, 1919, is void and it would be superfluous to cite any passages from these very interesting judgments in support of this proposition.

Then, the question arises as to whether or not the defendant, Binaykrishna Datta, can obtain any relief. So far as it is asserted that he is entitled to claim any relief against Dasharathi or his estate, for I am informed that Dasharathi is dead, the question does not arise in this suit, though it would appear, upon the authorities, that the possibility of proceedings with that object being successful are extremely remote. But it appears from the memorandum of consideration at the end of the document that, out of the Rs. 21,217, which Saradaprasad Das was paying for the property, he retained the sum of Rs. 8,100 in his hands for the purpose of discharging debts due by Dasharathi to Paranchandra Mallik and others. Now, it is contended that that includes the Rs. 4,500 which were

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due to Binaykrishna Datta under the mortgage of 7th August, 1919, to which Sarada said, according to the witness Nilmani Basu, that he would see. It is, therefore, submitted that, to that extent, Sarada is a trustee for Binaykrishna Datta. As to this there is no evidence as to what were the debts which Sarada agreed to pay or which of them he has paid and whether he has now any money in his hands. I agree that it is not right that he should retain any portion of the Rs. 8,100 but, apart from all other considerations, it does not appear to me to be possible to state anything in this judgment with reference to any portion of that sum until it has been shown that there is money in his hands, with reference to which an order could be made, which has not been done. It is, I think also clear, according to the authorities, that Binaykrishna Datta would not be able to recover from Dasharathi himself the Rs. 4,500, which he advanced on mortgage. Can he, therefore, recover it from Sarada or any other person otherwise? It is submitted that, inasmuch as the relief sought is discretionary, Sarada should be put on terms. But to this I think the answer is to be found in a few lines in the judgment of the Privy Council in *Mohori Bibee v. Dharmodas Ghose* (1), where Sir Fort North quoted a passage from the judgment of Romer L. J. in *Thurstan v. Nottingham Permanent Benefit Building Society* (2) as follows, "The short answer is, that a court of equity cannot say that it is equitable to compel a person to pay any moneys in respect of a transaction which, as against that person, the legislature has declared to be void." If no order as against Dasharathi could be obtained, how is it possible to say that Binaykrishna Datta can obtain an order against the present plaintiff for this sum? I see no answer to this, and, in my judgment, whatever the position may be in any other proceedings which Binaykrishna Datta may institute, I am of opinion that it is impossible in this suit to give him any relief.

(1) (1903) I. L. R. 30 Calc. 539 ;
 L. R. 30 I. A. 114.

(2) [1902] 1 Ch. 1.

The plaintiff will be entitled to a declaration that the mortgage of 7th August, 1919, is null and void, and that the decree passed upon that mortgage is not binding upon him. The plaintiff is also entitled to the costs of the suit.

Suit decreed.

Attorney for plaintiff: *C. C. Bose.*

Attorney for defendants: *N. K. Sen.*

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