

APPELLATE CIVIL.

Before Mr. Justice Phillips and Mr. Justice Kumaraswami
Sastri.

CHINNASWAMI REDDI (PLAINTIFF), APPELLANT,

v.

KRISHNASWAMI REDDI AND THREE OTHERS (DEFENDANTS),
RESPONDENTS.*

1918,
July 18 and
31.

Indian Contract Act (IX of 1872), sec. 64—Benefit, meaning of—Sale by guardian of wards' lands—Sale, not for binding purposes—Purchase of other lands for wards out of sale-proceeds—Suit by vendee for possession of portion of lands—Right of wards to avoid sale—Duty of wards to convey purchased lands or their value—Suit by wards to set aside sale held barred by limitation—Competency of wards to set up plea of invalidity of sale in defence in vendee's suit—Limitation Act, art. 44—Form of decree.

Where a guardian sold lands belonging to her wards for purposes not binding on them and, with the sale-proceeds, purchased subsequently other lands for them but the purchase of the specific lands was not in the contemplation of the parties at the time of sale and did not form part of the same transaction as the sale, the lands so purchased did not constitute a benefit arising out of the sale under section 64 of the Indian Contract Act and the wards were not bound to convey them to the vendee before they avoided the sale.

Where the vendee from the guardian under a voidable sale, having obtained possession of a portion of the lands, sued to recover the remainder, after a suit by one of the wards who had attained majority to set aside the sale had been dismissed as barred by limitation under article 44 of the Limitation Act, it is open to the wards to set up the plea of invalidity of the sale in defence in the vendee's suit in respect of the portion of the lands in their possession.

The vendee will be entitled in such suit to a decree for the value of the lands and in default of payment to a decree for possession.

SECOND Appeal against the decree of V. VENUGOPAL CHETTI, the District Judge of Chingleput, in Appeal Suit No. 304 of 1914, preferred against the decree of P. SUBBAYYA MUDALIYAR, the District Munsif of Poonamallee, in Original Suit No. 67 of 1912.

The material facts appear from the judgment of KUMARASWAMI SASTRI, J.

The Hon. the Advocate-General (S. Srinivasa Ayyangar) and A. C. Sampath Ayyangar for the appellant.

G. S. Ramachandra Ayyar for the third respondent.

* Second Appeal No. 1470 of 1916.

PHILLIPS, J.—Apart from the fact that the plaintiff has by his action precluded the Court from ordering an exchange between the parties of the lands sold to plaintiff by the mother of defendants Nos. 1 and 2, and the lands purchased by her in Srīperumbudūr, I think that it follows from the finding that the purchase of the lands in Srīperumbudūr was not contemplated at the time of the sale to plaintiff, that those lands do not constitute the benefit received by defendants Nos. 1 and 2 from plaintiff within the meaning of section 64 of the Contract Act. I therefore agree in the order proposed.

CHINNASWAMI
REDDI
v.
KRISHNA-
SWAMI
REDDI.
PHILLIPS, J.

KUMARASWAMI SASTRI, J.—The plaintiff is the appellant. He sued for possession of the house-site specified in the plaint. The case for the plaintiff is that the mother of the first and second defendants acting as their guardian sold to him certain properties consisting *inter alia* of the site specified in the plaint for the purpose of purchasing other properties, and that the defendants have not put plaintiff in possession of the property claimed by demolishing the building on the site as agreed upon. Defendants Nos. 1 and 2 contested the suit on the ground that the sale-deed executed by their mother is invalid and inoperative and would not bind them and that plaintiff has no right to the relief claimed. The defence of the third and fourth defendants who claimed an interest in the buildings on the site is not material for the purpose of this appeal.

KUMARASWAMI
SASTRI, J.

The District Munsif held that the sale by their mother as their guardian was not binding on the defendants Nos. 1 and 2 and dismissed the suit on this ground. He was of opinion that the purchase of the lands subsequently purchased was not settled at the time of the sale by defendants' mother and that it is probable that the plaintiff prevailed upon the defendants' maternal grandfather to enter into the transaction.

On appeal, the District Judge held that the sale was not binding on the defendants Nos. 1 and 2 as it was not necessary or beneficial, and dismissed the appeal.

The contention for the appellant is that it was not open to the first and second defendants to keep the lands purchased with the sale-proceeds of the family lands and to repudiate the sale by their mother made with the object of purchasing other lands and that under section 64 of the Contract Act, a person who seeks to avoid a voidable transaction should restore any benefit

CHINNASWAMI
 REDDI
 v.
 KRISHNA-
 SWAMI
 REDDI.
 —
 KUMARA-
 SWAMI
 SASTRI, J.

he has received as a condition precedent to such avoidance. It is also argued that the District Judge was wrong in thinking that the recital in the sale-deed by defendants' mother to the effect that lands in Sriperumbudūr were to be purchased was insufficient as the particular lands actually purchased were not specified.

There can be little doubt that under section 64 of the Contract Act a party seeking to avoid a voidable transaction is bound to restore any benefit he has received from the other party and the question is whether in the present case lands actually purchased in Sriperumbudūr can be said to be the benefit which the defendants Nos. 1 and 2 received in respect of the sale by their mother as their guardian.

Ordinarily, the benefit which a party receives when he sells the property is the price which the vendee pays. Any profits which the vendor might make with the moneys would be too remote in estimating what he has to return in case he is entitled to avoid the sale and elects to do so. Where however for the protection of a purchaser contracting with a guardian or a qualified owner, a particular dealing with the money was in the direct contemplation of the parties such as the purchase of other lands with the consideration and the money is so applied, the benefit which the other party obtains will be the land or other property acquired with the consideration. There must, in my opinion, be something more than a mere application of the consideration in a particular way in order to entitle the purchaser to claim restoration of the properties acquired with the consideration paid by him. Section 35 of the Transfer of Property Act makes this clear. It requires that the benefit received should be part of the same transaction and should be direct. The authorities cited by the learned Advocate-General do not support the view that the purchaser is entitled to follow up properties purchased with the consideration irrespective of whether there was any arrangement or not.

In *Rabia Bi v. Angappan*(1) it was held that the guardian of a Muhammadan minor is not entitled to mortgage her properties for the purpose of acquiring other properties but that if the minor disclaims liability to pay the mortgage moneys, she

(1) (1915) 2 L.W., 369.

must give up her rights in the property so purchased. She was directed to execute a conveyance of the property to the mortgagee. It was assumed that the benefit was the purchase of other lands and there was no discussion of the question. In *Sinaya Pillai v. Munisami Ayyan*(1), *Tejpal v. Ganga*(2) and *The Eastern Mortgage and Agency Co., Ltd., v. Rebati Kumar Ray*(3). it was held that any benefit received should be restored. In these cases it was the consideration paid that was to be refunded. There can be little doubt that if the purchase of the land at Sriperumbudūr was the benefit contemplated by the parties and arose in connexion with the same transaction as the sale of ancestral properties by the minors' mother, the plaintiff would be entitled to a conveyance of the properties so purchased. Otherwise all that he would be entitled to is repayment of the consideration he paid.

The difficulty in the present case is that both the lower Courts do not believe the evidence of the plaintiff and find that the purchase of the lands which were actually purchased were not in the contemplation of the parties at the time of the sale to plaintiff. The District Judge disbelieves the evidence of the plaintiff and his witnesses that there was an understanding at the time of the sale that lands in Sriperumbudūr should be purchased with the consideration and believes the evidence of Sami Reddi, the first defence witness, that it was only subsequent to the sale that plaintiff refused to pay the consideration unless lands were purchased and that it was at his pressure and refusal to pay that lands were purchased. The plaintiff executed an unconditional on-demand promissory note for the consideration and could have been sued on the note and the fact that there is a recital in the sale-deed to plaintiff that it was intended to purchase lands would not entitle plaintiff to withhold payment of the note if the vendor changed her mind, and decided to invest the moneys in any other way. The lands were purchased at Sriperumbudūr on the 4th March 1908 while the sale to plaintiff was on the 22nd August 1907. I do not think we can say that the findings of the lower Courts were based on no evidence and on those findings it cannot be said that the purchase of the lands under Exhibit C was part of the

CHINNASWAMI
REDDI
v.
KRISHNA-
SWAMI
REDDI.
—
KUMARA-
SWAMI
SASTRI, J.

(1) (1899) I.L.R., 22 Mad., 289.

(2) (1903) I.L.R., 25 All., 59.

(3) (1906) 3 Cal. L.J., 260.

GHINNASWAMI REDDI
v.
KRISHNASWAMI REDDI.
—
KUMARASWAMI SASTRI, J.

same transaction as the sale of lands under Exhibit B. The plaintiff would therefore be entitled only to the return of the consideration paid by him.

It has been argued that, as the suit by the first defendant to set aside the sale-deed (Exhibit B) and to recover possession of properties other than the plaint properties covered by it was dismissed as barred, the plaintiff is entitled to possession of the suit properties as the right to avoid the contract is at an end owing to the impossibility of placing the parties in *status quo ante*. I do not think there is anything to prevent the plaintiff from giving back the properties in his possession though the suit of the first defendant was dismissed as barred. He is the plaintiff and the defendants are, in a suit by him for possession, entitled to plead the invalidity of the sale by their guardian. The fact that they cannot sue to recover an item of property wrongfully alienated by their guardian cannot affect their right to remain in possession of properties not delivered to the possession of the purchaser. There is no authority for the proposition that on the expiry of the period specified in article 44 of the Limitation Act, the purchaser from the guardian is of right entitled to possession of properties in the possession of the ward.

No doubt the right to avoid a contract depends on the power of the Court to put the parties in the same position as they would have been if the transaction had not been entered into, but the plaintiff cannot be heard to say that he will not do something which is within his competence and claim the enforcement of a voidable transaction on the ground that the parties cannot be put in *status quo ante*, because of his unwillingness to do equity.

The plaintiff is in possession of other properties conveyed to him; he values the site at Rs. 250 and the value is not disputed in the written statement or in the evidence. I am of opinion that the plaintiff is entitled to a return of Rs. 250 in case the defendants elect to keep the house-site claimed. I would set aside the decrees of the lower Courts and direct that on payment by the defendants Nos. 1 and 2 of Rs. 250 in three months the plaintiff's suit be dismissed, each party bearing his own costs and that in default a decree be passed for possession as prayed with costs throughout.