

property for the purpose of lending money to a maternal uncle for a trade that was not ancestral was prima facie not a transaction for the benefit of the minors and that the suit might have been resisted upon that simple ground.

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The Head Clerk who acted as their guardian has not been examined and asked questions to elicit whether his action could from any point of view be justified.

His conduct in not defending the suit was in the absence of any reason to the contrary grossly negligent.

The Subordinate Judge's finding that the mortgage in question does not bind the plaintiffs is correct and the Appeal is dismissed with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Ramesam.

NALLAKA VENKATASAMI AND OTHERS (DEFENDANTS),
APPELLANTS,

1921,
December 5.

v.

RAJAM VIRANNA AND ANOTHER (PLAINTIFFS) RESPONDENTS.*

Guardians and Wards Act, (IX of 1890), s. 31—Alienation by guardian—Sanction of District Court—Validity of alienation—Effect of sanction on validity of alienation—Sanction only prima facie evidence of propriety of alienation—Minor's power to impeach transaction—Burden of proof—Proof of fraud on the part of purchaser, whether necessary.

Sanction of the District Court to an alienation of a minor's property by his guardian, under the Guardians and Wards Act, 1890, is only prima facie evidence that the transaction is a good one, but will not cure any inherent defect that may exist in it; and the minor may at any future time show that it was

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fraudulent or improper, and not for the benefit of the minor, but the burden of proof would be upon him to show that it was so.

Sikher Chand v. Dulputty Singh, (1880) I.L.R., 5 Calc., 363; and *Jugul Kishori Chowdhurani v. Anunda Lal Chowdhuri*, (1895) I.L.R., 22 Calc., 545, followed.

APPEAL against the judgment and decree of V. BHASHYAM AYYANGAR, Third Temporary Subordinate Judge of Guntūr, in Original Suit No. 6 of 1918.

The material facts are set out in the judgment.

C. Sambasiva Rao and *V. Lakshminarayana* for appellants.

P. Narayanamurti and *K. Kamanna* for respondents.

SPENCER, J.

SPENCER, J.—This suit was brought by the plaintiffs to set aside alienations made during their minority by their guardian and the Appeal relates to item 10 of schedule A. This property was mortgaged under Exhibit IX-B in 1901 by the plaintiffs' mother after the death of their father in 1899. In 1908 the plaintiffs' maternal uncle, Panakalu, who had been appointed as Guardian of the minors under the Guardians and Wards Act, applied to the District Court for permission to sell a portion of the property to discharge the mortgage and obtained sanction on 24th February 1908. The mortgage, according to the recital in the mortgage document, was for the purpose of borrowing Rs. 600 for the marriage of the plaintiffs. These boys were then aged 3 and 6 years respectively. One of them was married 15 years later and the other is still unmarried. As pointed out by the Subordinate Judge, the recital as to the purpose for which the money was borrowed was obviously false. The sale-deed, Exhibit IX, in favour of the 39th defendant, of 9 acres for Rs. 1,500 was dated 1st April 1908. The purchaser took a transfer of the mortgage on 26th March and five days after his sale he sold the same

property under Exhibit IX-A to the 41st defendant for Rs. 1,800 having previously received an advance on the 29th March before he got the transfer in his own name. The 39th defendant was a gumasta to the plaintiff's guardian Panakalu. The above circumstances are enough to cast a great deal of suspicion on the transaction and to suggest the existence of a conspiracy between the guardian and his gumasta and the purchaser from that gumasta to defraud the minors. There are no reasons to treat 41st defendant as a bona fide purchaser having no knowledge of the defects of the previous sale. But in Appeal it has been urged that the sanction of the Court under the Guardians and Wards Act will give a good title to the purchaser. The Court's sanction however was not given according to the requirements of the law and it is in itself not free from suspicion. The affidavit presented by the guardian to the District Court Exhibit IX-E contains an incorrect statement that the mortgage bore interest at Rs. 1-9-0 compound interest whereas the truth was that interest was due at the rate of Rs. 1-5-0 and in default interest was to be calculated upon interest at the same rate. D. W. 10 deposes that the land sold under Exhibit IX was not worth more than the price for which it was sold, but this witness is evidently interested as he admits that he is related to the 39th defendant and was living in his house during his education period.

Now as to the effect of the sanction of the District Court given to the guardian to sell the minors' property, it has to be noted in the first place that the District Judge's order has not complied with section 31(2) as it did not recite the necessity for the sale but simply ran thus :

" In the circumstances the sale of 9 acres in full satisfaction of the mortgage debt is sanctioned."

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In my opinion the District Judge's sanction will not cure inherent defects that may exist in a sale by a guardian. The effect of the sanction accorded by Courts in such cases has been considered in *Sikher Chand v. Dulputty Singh*(1), and *Jugal Kishori Chowdhurani v. Amnda Lal Chowdhuri*(2). The learned Judges of the Calcutta High Court held that sanction was prima facie evidence that the transaction was a good one but that the minor may at any future time show that it was fraudulent or improper. Where the evidence on both sides is before us, there is nothing to prevent the Court from coming to the conclusion that the sale was an improper one and not for the benefit of the minor, though the burden of proof in the first instance lies upon the person seeking to set aside the alienation. There is ample evidence for concluding that the sale in this case was not for purposes binding upon the minors. The plaintiffs are entitled to have it set aside in the suit and the Subordinate Judge's finding that it does not bind them must be upheld and the Appeal dismissed with costs.

RAMESAN, J.,

RAMESAN, J.—I agree with my learned brother and the Subordinate Judge with reference to the conclusion on the facts.

On the question of law argued by the learned counsel for the appellants I wish to add a few words. I think that the true rule as to the effect of the sanction of the District Court authorizing an alienation by the guardian of the minors is stated in *Sikher Chand v. Dulputty Singh*(1). At page 370, PRINSEP J. says :

“The fact that the District Judge on the application and representation of a guardian under section 18, Act XL of 1858,

(1) (1880) I.L.R., 5 Calc., 363.

(2) (1895) I.L.R., 22 Calc., 545, 550.

may have sanctioned an alienation, cannot in my opinion, affect the present cases, except in so far as it may rightly be considered as a general rule to throw the onus on the plaintiff to show that the alienations were improperly made contrary to the usual rule requiring the purchaser to establish the validity of the alienations or that he acted with due care and caution after making such inquiry as an honest and prudent man would make.”

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At page 381, GARTH, C.J., says :

“ If the Court upon the materials and information brought before it by the guardian makes an order for sale I think that a purchaser who buys in good faith under that order acquires a good title to the property sold, unless the minor or those claiming under him can show at some future date that the sale was fraudulent and improper.”

Again at page 388, GARTH, C.J., adds :

“ But then I also consider that as the sales took place under the order of the Civil Court, the onus lies on the plaintiffs to make out a prima facie case, such as she has alleged in her plaint, of fraud or illegality, and to show that the debt or sum of money which formed the consideration for the sale in each case was one for which the minor was not responsible ”

These observations are quoted with approval and followed in *Jugul Kishori Chowdhurani v. Anunda Lal Chowdhuri*(1).

It is contended before us that *Akhil Chandra Saha v. Girish Chandra Saha*(2), lays down a different rule namely that it is necessary to bring fraud home to the purchaser in order to impeach the transaction. I do not, understand *Akhil Chandra Saha v. Girish Chandra Saha*(2) as laying down a general rule that fraud should be made out. It may be observed that *Akhil Chandra Saha v. Girish Chandra Saha*(2), and *Gangapershad Sahu v. Maharani Bibi*(3), relate to sanction of the

(1) (1895) I.L.R., 22 Cal., 545, 543.

(2) (1917) 21 O.W.N., 864.

(3) (1895) I.L.R., 11 Cal., 379 (P.C.).

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Court for the raising of loans by mortgage whereas the present case and *Sikher Chand v. Dulputty Singh* (1), relate to sales. To give effect to the policy of the legislature in section 31 of the Guardians and Wards Act, I think it is enough to hold as in *Sikher Chand v. Dulputty Singh* (1), that the burden of proof is shifted to the plaintiff, and that it is not necessary to say that fraud has to be made out on the part of the purchaser to impeach the transaction.

I agree that the Appeal should be dismissed with costs.

K. R.

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Venkatasubba Rao.

1921,
 December
 7.

S. R. M. S. T. R. M. RAMASWAMI CHETTIAR THROUGH
 HIS AUTHORIZED AGENT KUPPANNA IYENGAR
 (RESPONDENT) APPELLANT,

v.

T. S. RAMASWAMI IYENGAR AND ANOTHER (OFFICIAL
 RECEIVER AND PETITIONER), RESPONDENTS.*

Provincial Insolvency Act (V of 1920), ss. 4, 5 and 56—Sale by Official Receiver of insolvent's property and obstruction to delivery—Power of Insolvency Court to inquire into title and to deliver.

Under sections 4, 5 and 56 of the Provincial Insolvency Act (V of 1920) a Court of Insolvency can inquire into disputed title and order delivery of an insolvent's property to a purchaser thereof from the Official Receiver, removing the obstruction of a third party; *Narasimhaya v. Veeraraghavulu*, (1918) I.L.R., 41 Mad., 440, *Maddipoti Peramma v. Gandrapu Krishnayya*, (1918) 8 L.W., 136 and *Official Receiver, Tinnevely v. Sankaralinga Mudaliar*, (1921) I.L.R., 44 Mad., 524, distinguished.

(1) (1880) I.L.R., 5 Calc., 363.

* Appeal against Order No. 295 of 1920.