APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Reilly.

L. R. M. RAMAN CHETTIAR (PLAINTIFF), APPELLANT,

1926, July 29.

v.

TIRUGNANASAMBANDAM PILLAI AND TWO OTHERS (DEFENDANT AND SUPPLEMENTAL RESPONDENT), RESPONDENTS.*

Guardians and Wards Act (IX of 1890), ss. 29, 30, 31 (2), 47 and 48—Alienation by guardian—Mortgage—Sanction by District Court—Effect of—Necessity and benefit of minor—Validity of mortgage, whether can be questioned—Sanction, whether conclusive as to necessity for the mortgage—Sanction order, not reciting necessity, whether invalid.

Where an alienation by way of mortgage or sale has been made by the guardian of a minor, appointed under the Guardians and Wards Act, with the sanction of the District Court, the alienee can rely upon it and the alienation must be upheld unless the alienee has been a party to a fraud or collusion or has been guilty of any underhand dealing: *Gangapershad Sahu* v. *Maharani Bibi*, (1885) I.L.R., 11 Calc., 379, followed; *Venkatasami* v. *Viranna*, (1922) I.L.R., 45 Mad., 429, dissented from.

The fact that the order granting sanction did not recite, as required by section 31 (2) of the Act, the necessity for the loan, does not render the sanction invalid, as this defect is nothing more than a mere irregularity; the Court must be taken as having adopted the grounds set forth in the petition and affidavits, even though the grounds are not reproduced in the order: *Rameshwar Singh* v. *Dhanput Singh*, (1910) 5 I.C., 334, and *Buddhoo* alias *Gulab Dass* v. *Sheocharan*, (1924) 22 All. L.J., 851, followed.

APPEAL against the decree of C. V. KRISHNASWAMI AYYAR, Subordinate Judge of Tuticorin, in O.S. No. 61 of 1921.

The material facts appear from the judgment of VENKATASUBBA RAO, J.

* Appeal Suit No. 71 of 1923.

RAMAN CHETTIAR v. TIRUGNANA-SAMBANDAM PILLAI.

Advocate-General (*T. R. Venkatarama Sastri*) and *E. Vinayaka Rao* for appellant.

S. Muthia Mudaliar for respondent.

JUDGMENT.

VENKATA-SUBBA RAO, J.

VENKATASUBBA RAO, J.—The question to be decided in this appeal has reference to the validity of a mortgage bond executed by the guardian of the minor defendant. The plaintiff claimed about Rs. 8,000 in his plaint, but the learned Subordinate Judge disallowed some items and passed a decree for Rs. 3,000 and odd. The plaintiff has filed the present appeal.

In the District Court of Tinnevelly, O.P. No. 41 of 1914 was filed by one Muthiah Pillai, the brother-in-law of the defendant, for the purpose of getting a guardian appointed, under the Guardians and Wards Act, of the person and property of the defendant, who was then about 12 years of age. Among the respondents to that petition were, Subramania Pillai and Satyanada Pillai whose names alone are important having regard to the facts with which we have to deal. The defendant was the adopted son of one Manickavasagam Pillai who had died previous to the petition and Subramania and Satyanada were the defendant's brothers in his natural family. In September 1914 an order was made by the Court appointing Subramania the defendant's guardian under the Act. In August 1915 Subramania applied to the District Court under the same Act, for permission to borrow Rs. 4,000 on the security of immovable property of the minor. Certain affidavits were filed in support of that application and after notice to all the parties to the petition, the Judge granted on the 24th September 1915 permission to execute a mortgage deed and raise the sum mentioned. The draft of the proposed bond was submitted to the Court and it was approved; the engrossed bond was

then produced and seen by the Court. It was directed to be registered and after registration it was again produced before the Court and there the matter ended. I may remark that the learned Judge also sanctioned the compound interest provided for in the bond, the mortgage bond having deviated in this respect from the affidavits filed. The record of what took place in the District Court shows very clearly that not only were the terms generally approved of by the District Judge but that the actual bond itself was perused by him and received his sanction.

[His Lordship then dealt with the evidence and proceeded as follows:—]

I have discussed the evidence at some length in order to show that although some vague charges have been made against the plaintiff, there is no proof of either fraud, collusion of any other kind of underhand dealing on his part. Indeed, no attempt has been made to substantiate any such charges.

On these facts, is the plaintiff not entitled to a decree for the whole amount claimed? The ordinary rule of law is that the purchaser should establish the validity of the alienation by showing either that it was made for a purpose binding upon the minor or that he (the purchaser) acted with due care and caution after making reasonable enquiry. [See *Hanuman Pershad's* case(1).] What then is the effect of a sanction given under the Guardians and Wards Act? By section 29 of that Act the guardian is forbidden to enter into certain transactions without the previous permission of the Court. Section 30 enacts that a disposal of immovable property in contravention of section 29 is voidable at the instance of

(1) (1858) 6 M.I.A., 393.

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the minor. Section 31 lays down that the permission shall not be granted except in case of necessity or for an evident advantage to the ward. Under section 47 an appeal lies to the High Court from an order of a District Court refusing permission to a guardian to do an act under section 29. The effect of section 48 is, that an order granting permission under section 29, if not set aside in revision by the High Court, is final and cannot be contested by a suit or otherwise.

What is the effect then of an alienation by a guardian made with the sanction of the Court? The answer is to be found in the judgment of their Lordships of the Privy Council in *Gangapershad Sahu* v. *Maharani Bibi*(1). This is what they say :—

"Their Lordships think that when an order of the Court has been made authorizing the guardian of an infant to raise a loan on the security of the infant's estate, the lender of the money is entitled to trust to that order, and that he was not bound to enquire as to the expediency or necessity of the loan for the benefit of the infant's estate. If any fraud or underhand dealing is brought home to him, that would be a different matter ; but apart from any charge of that kind, their Lordships think he is entitled to rest upon that order."

Their Lordships then proceed to remark,

"It is sufficient for the plaintiff to say, 'I have got the order of the Court.'"

These words are clear and unequivocal. Let us look at the reason of the thing. The legislature has cast upon the Court the duty of enquiring whether the transaction is beneficial to the minor. No sanction can be granted unless the Court is satisfied that it is. The lender or the purchaser is no longer harassed by doubts as to the character of the transaction. He looks at the order authorizing the mortgage or the sale. An order of a competent Court is produced to him and is he not

(1) (1885) I.L.R., 11 Calc., 379.

entitled to act upon it? The very object of the sections to which I have referred, is to safeguard the interests of the minor. A transaction is not authorized unless the Court comes to the conclusion that it is for his benefit. From the point of view of the guardian again, if he honestly and frankly tells the Court the circumstances which has led to his application, he will have performed his duty and as he does not trust to his own judgment but to the judgment of the Court, he can rely upon the sanction in any proceedings that may be taken at some future time against him. From the point of view of the purchaser, his title to the property stands on a better footing than if there had been no sanction, as the question of the beneficial nature of the transaction cannot be re-opened. This incidently benefits the minor, as a fair price can be obtained for his property. I understand this to be the principle underlying the sections to which I have referred and the decision of the Privy Council unambiguously declares that this is the effect of those sections. It is quite a different matter, of course, if the alienee is proved to be a party to any fraud or collusion and the proposition contained in the judgment of the Privy Council is made expressly subject to this reservation. If further authority is needed for this position, I need only refer to *Rameshwar Singh* v. *Dhanpat Singh*(1) and *Akhil Chandra Saha* v. *Girish Chandra Saha*(2). But the defendant relies strongly upon a case of this Court in *Venkatasami* v. *Viranna*(3), decided by SPENCER and RAMESAM, JJ. In hat case it has been held that the effect of the sanction is merely to shift the onus of proof; whereas, ordinarily it is for the alienee to show that the transaction is binding, the burden is, where

(1) (1910) 5 I.C., 334. (2) (1917) 21 C.W.N., 864.
(3) (1922) I.L.R., 45 Mad., 429.

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the sanction has been obtained, upon the minor to show that the transaction is not binding. SPENCER, J., relies upon *Sikher Chund* v. *Dulputty*(1) and *Jugul Kishori Chowdhurani* v. *Anunda Lal Chowdhuri*(2). As regards the former of these two cases it is sufficient to say that it was decided before the Privy Council case *Ganga-pershad Sahu* v. *Maharani Bibi*(3). Apart from that, the observations of GARTH, C.J., in *Sikher Chund* v. *Dulputty*(1) show that he understood the law as interpreted subsequently by the Judicial Committee. Though some observations in his judgment may give apparent support to the contention of the defendants, the judgment taken as a whole cannot be regarded as an authority in their favour. In regard to *Jugul Kishori Chowdhurani* v. *Anunda Lal Chowdhuri*(2), the second case relied on by SPENCER, J., it must be noticed that it is a case of specific performance of a contract where entirely different considerations would apply. Although the contract may have been sanctioned under the Guardians and Wards Act, so long as it has not been actually carried out, it is certainly open to the Court to examine, when a suit is brought for that purpose, whether it will be to the advantage of the minor that it should be specifically enforced. SPENCER J.'s judgment, it must be noticed, does not refer to the Privy Council decision. So far as RAMESAM, J.'s decision is concerned, that learned Judge distinguishes the Privy Council case on the ground that it relates to a mortgage, whereas the case with which he was dealing relates to a sale. With the utmost deference, this fact, in my opinion, does not in principle make any difference.

(1) (1880) I.L.R., 5 Calc., 363. (2) (1895) I.L.R., 22 Calc., 545.
(3) (1885) I.L.R., 11 Calc., 379.

I am disposed to hold, differing from *Jugul Kishori Chowdhurani* v. *Anunda Lal Chowhuri*(1) that where an alienation has been made with the sanction of the Court, the alienee can rely upon it and the alienation must be upheld unless the alienee has been a party to a fraud or collusion or has been guilty of any underhand dealing.

Applying this rule, I have no hesitation in deciding that the plaintiff is entitled to a decree for the full amount claimed. It only remains for me to say a word in regard to items 1 and 2. The promissory notes, as I have said, were executed by Subramania in his personal capacity and not as the minor's guardian. At their inception, therefore, these debts were the personal debts of Subramania. The plaintiff was not thus called upon, when the debts were incurred, to make any enquiries regarding any benefit or advantage accruing to the minor. When the mortgage was taken, the plaintiff, in regard to these debts, was in the position not of the minor's creditor but of a stranger. He was then shown the sanction and what meaning did it convey to him? It may be described in some such words: "A certain sum had been raised by Subramania acting for himself from the plaintiff. Subramania was able to convince the Court that this sum had been spent for the benefit of the minor. The Court being so convinced, has by the order of sanction, authorized Subramania to reimburse himself to that extent and for that purpose to borrow on behalf of the minor an amount from the plaintiff."

This is the effect of the sanction order and the plaintiff was perfectly justified in trusting to and acting upon that sanction.

Looking at the case from this point of view, it is immaterial whether it has or has not been made out

(1) (1895) I.L.R., 22 Calc., 545.

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that the sums were actually raised or utilized, for the minor's benefit or for purposes binding upon him. I express no opinion as regards Subramania's liability to the minor. Whether he misled the Court or not when he obtained the sanction, is a question with which we are not concerned. It cannot be denied that he was not as frank as he might have been, in the affidavits, filed in support of his application for sanction. But that is a question entirely foreign to the present enquiry.

There is one further point which remains to be noticed. It has been contended by the defendant that the sanction obtained is not valid as it does not recite, as required by section 31 (2), the necessity for the loan. In my opinion, this defect is nothing more than a mere irregularity and does not render the sanction invalid. As has been pointed out in *Rameshwar Singh* v. *Dhunput Singh*(1) the Court must be treated as having adopted the grounds set forth in the petition and the affidavits and although the grounds are not reproduced in the order, the clear effect is to base the order upon those grounds. The fact that the grounds are not specifically referred to in that order, cannot make it invalid. *Buddhoo* alias *Gulab Dass* v. *Sheo Charan*(2) takes the same view. This contention, therefore, is overruled.

In the result, the decree of the lower Court is modified and there will be a mortgage decree in favour of the plaintiff for the entire amount claimed in the plaint with interest as provided for in the mortgage bond and costs throughout. Time for redemption is three months.

REILLY, J.

REILLY, J.—I agree. If a man takes a mortgage on the property of a minor for whom no guardian has been appointed or declared under the Guardians and Wards

(1) (1910) 5 I.C., 334. (2) (1924) 22 A.L.J., 851.

Act, what is required of him before he can succeed in a suit on his mortgage? It is sufficient if he shows that he acted in good faith and that he satisfied himself by reasonable inquiry that the advance was required for the necessities or for the clear benefit of the minor. If a man proposing to take a mortgage on the property of a minor finds in the course of his inquiries that a guardian has been appointed under the Guardians and Wards Act and that that guardian has obtained the sanction of the District Judge for the proposed mortgage, what further inquiry are we to require of him? The minor in such a case is a ward of the Court, and the duty of the District Judge to guard the minor's interests is higher, far higher, than the mortgagee's. Is the mortgagee to sit in judgment on the order of the District Court and to inquire whether that order was made upon sufficient grounds? I think such a position would be entirely unreasonable and for that view we have the very highest authority. I venture to repeat the words which my learned brother has quoted in his judgment from *Gangapershad Sahu* v. *Maharani Bibi*(1):

> "Their Lordships think that, when an order of the Court has been made authorizing the guardian of an infant to raise a loan on the security of the infant's estate, the lender of the money is entitled to trust to that order, and that he is not bound to inquire as to the expediency or necessity of the loan for the benefit of the infant's estate."

Now, that is perfectly plain and unequivocal, and it is not suggested that the new Guardians and Wards Act has made any change in the law since that pronouncement. Our attention has been drawn to the fact that there is a case of this Court in which the principle of that decision of the Privy Council was not strictly followed. That is *Venkatasami* v. *Viranna*(2). It is

(1) (1885) I.L.R., 11 Calc., 379. (2) (1922) I.L.R., 45 Mad., 429.

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true that this Madras case was one of a sale while the case before the Privy Council was one of a mortgage; but I find it difficult to see that there is any real distinction in principle in this matter between a sale and a mortgage. With very great respect I find it impossible to follow the decision of the learned Judges in 45 Mad., 429, so far as it is to the effect that the sanction of the District Judge in such a case is not a complete protection to an alienee who acts in good faith saving him from the necessity of pressing his inquiries further. In his judgment SPENCER, J., does not mention this very important decision of the Privy Council; and I gather that the other learned Judge, RAMESAM, J., though he refers to the Privy Council decision, would have hesitated to depart from it if the case before him had been one of a mortgage. I may mention that Mr. Muthiah Mudaliar for the defendant has stated explicitly before us that he does not suggest that the plaintiff in this case was a party to any fraud in obtaining the sanction of the District Judge.

There is one peculiarity of this case to which I must refer. It appears that part of the consideration for the mortgage now in question was not money advanced directly to the guardian for the minor's estate but money which had been advanced long before the date of the mortgage to the guardian himself on his own responsibility without any reference to the minor's estate. If a mortgagee, in whose case the District Judge has sanctioned the mortgage of a minor's property for a certain amount, instead of advancing that amount to the guardian sets off part of it against a debt incurred already by the guardian on his own responsibility and not as guardian, then in an ordinary case there will be a very heavy burden on the mortgagee to show that he acted in good faith and that he really pursued inquiries

sufficiently far to satisfy him that that debt was one for which the minor's estate was ultimately liable. Fortunately for the plaintiff in this case, we cannot require him to discharge any such burden in respect of the two items of consideration representing loans to the guardian on his own responsibility, because it appears that the facts regarding those two loans were placed before the District Judge. Those items of consideration are fully described with the information that they represent loans taken by the guardian on his own responsibility in the mortgage deed itself, and the records show that the draft of the mortgage-deed was laid before the District Judge and approved by him, a procedure which is not always adopted when the District Judge sanctions mortgages in such cases. The plaintiff, it appears to me, therefore is entirely protected in this case from any such necessity of pushing his inquiries behind the District Judge's sanction or showing that he acted in good faith in adjusting those loans, which had been made to the guardian personally, against the mortgage amount. I may add that it has been urged before us that the District Judge's order sanctioning the loan was invalid, because it did not recite the necessity which he found for the mortgage as required by section 31 (2) of the Guardians and Wards Act. In regard to that, all that I think necessary to say is that it has been decided in *Rameshur Singh* v. *Dhanpat Singh*(1) and *Buddhoo* alias *Gulab Dass* v. *Sheo Charan*(2) that, even where the District Judge does not recite the necessity specifically in his order of sanction, if the record shows that the affidavits or the petitions before him set out the necessity clearly and he says "Sanction granted" or words to this effect, we may read into his order the necessities and reason,

(1) (1910) 5 I.C., 334. (2) (1924) 22 A.L.J., 851.

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alleged and presume that he adopted them. In this case there is no reason, whatever, to suppose that the District Judge did not inquire into the matter as carefully as was necessary and apply his mind to it and adopt the reasons and necessities alleged before him in the affidavits filed in the matter.

I agree that the appeal must succeed and that orders should be made as proposed by my learned brother.

K.R.

APPELLATE CIVIL.

Before Sir Kumaraswami Sastri, Kt., *Offg. Chief Justice, and Mr. Justice Curgenven.*

1926, August 13.

BOBBALADI GETTAPPA (PLAINTIFF), APPELLANT

v.

BOBBALADI ERAMMA AND OTHERS (DEFENDANTS 1 to 8), RESPONDENTS.*

Hindu Law—Adoption by a Jain widow—Consent of husband or his sapindas, whether necessary—Hindu Law of adoption, whether applicable to Jains—Custom—Onus.

It is concluded by the authority of a series of decisions, extending over several years, that the presumption is that the Jains are governed by the ordinary Hindu Law, unless it is shown that by custom a different law prevails among them. *Sheo Singh Rao* v. *Dakho*, (1878) I.L.R., 1 All., 688 (P.C.), and *Chotay Lall* v. *Chunnoo Lall and others*, (1879) I.L.R., 4 Calc., 744, relied on.

A Jain widow is not competent to adopt a son to her husband without the authority of her husband or the consent of his sapindas, in the absence of proof of a custom to the contrary.

The onus of proving such a custom among the Jains in derogation of the ordinary Hindu Law, is upon the party setting it up; the fact that among certain special sects of Jains in the

* Appeal No. 422 of 1922.