

1908
May 15.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

UMMI BEGAM (PLAINTIFF) v. KESHO DAS (DEFENDANT).^{*}

Lunatic Muhammadan law—Guardian de facto—Sale of lunatic's property by mother and wife for benefit of lunatic.

The mother and wife of a lunatic Muhammadan, acting *de facto* as the guardians of the lunatic, sold certain property belonging to the lunatic in order to discharge debts due by him. *Held* that the transaction could not be impeached, although the mother was not under the Muhammadan law the legal guardian of the lunatic. *Mafazzal Hosain v. Basid Sheikh* (1), *Ram Charan Sanyal v. Anukul Chandra Acharjya* (2) and *Majidan v. Raj Narain* (3) followed.

THE plaintiff in this case sued as daughter and heiress of one Mahmud Husain, who was a lunatic, to recover possession of her share in a certain plot of land. The land in suit had been sold on the 22nd of June 1867 by the wife and mother of the lunatic acting as guardians on his behalf, and the purchaser on the 19th of May 1877, sold it to the father of the defendant in the present suit. The second purchaser built a house on the land, said to have been of considerable value. The lower appellate Court (Additional District Judge of Moradabad) found that the sale had been effected by the wife and mother of the lunatic as his *de facto* guardians, and that the sale was for his benefit, debts due by him having been paid off out of the proceeds thereof. That Court accordingly dismissed the suit. The plaintiff appealed to the High Court.

Mr. *Muhammad Ishaq Khan* and Babu *Jogindro Nath Mukerji*, for the appellant.

Mr. *M. L. Agarwala* and Dr. *Satish Chandra Banerji*, for the respondent.

STANLEY, C.J., and BANERJI, J.—The appellant is the daughter of one Mahmud Husain, who was a lunatic. She brought the suit out of which this appeal has arisen for possession of her share of the site of a house now in the possession of the defendant. Mahmud Husain, as we have said above, was a lunatic. On the 22nd of June 1867 his wife and mother executed a sale deed in respect of the land now in suit. The purchaser under

* Second Appeal No. 790 of 1907, from a decree of A. Kendall, Additional District Judge of Meerut, dated the 6th of April 1907, reversing a decree of H. David, Subordinate Judge of Meerut, dated the 4th of December 1906.

(1) (1906) I. L. R., 34 Calc., 36. (2) (1906) I. L. R., 34 Calc., 65.

(3) (1903) I. L. R., 26 All., 22.

that sale sold his rights to the defendant's father on the 19th of May 1877. After his purchase a house was built by the purchaser on the land, and it is alleged that the house is of considerable value. The present suit was brought by the plaintiff on the last day of the expiry of limitation calculated from the date of the lunatic's death. The Court below has found that the sale was effected by the mother and wife of the lunatic as his *de facto* guardians, and that the sale was for the benefit of the lunatic, debts due by him having been discharged with the proceeds of the sale. It is contended that the mother and the wife were not the legal guardians of the lunatic under the Muhammadan law, and it is urged that they had no power to sell the lunatic's property. It is true that under the Muhammadan law a mother is not the legal guardian of the property of her minor son, but it has been held that when she, acting as *de facto* guardian, deals with the property, the transaction, if it is for the benefit of the minor, ought to stand. We may refer to the rulings of the Calcutta High Court in *Mafazzal Hosain v. Basid Sheikh* (1) and *Ram Charan Sanyal v. Anukul Chandra Acharjya* (2) and to the ruling of this Court in *Majidan v. Ram Narain* (3). In our judgment the decision of the Court below is right. We accordingly dismiss the appeal with costs.

Appeal dismissed.

- (1) 1906) I. L. R., 34 Calc., 36. (2) (1906) I. L. R., 34 Calc., 65.
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