

This is our answer to the reference.

The appeal was then returned to the Bench which had made the reference, by which it was dismissed in accordance with the opinion pronounced by the Full Bench.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir George Knox, Acting Chief Justice, and Mr. Justice Richards.

SHIAM LAL AND ANOTHER (PLAINTIFFS) v. RAM PIARI (DEFENDANT).*

Act No. IX of 1872 (Indian Contract Act), sections 11, 64, 65, 70—Minor—Sale by a minor—Discharge of mortgage by vendees—Sale not completed—Suit by vendees to recover consideration paid.

H and R, two Hindu widows, of whom R was a minor, sold a shop to the plaintiffs. Registration of the sale deed was refused, and the vendees thereupon sued to recover Rs. 231 alleged to have been paid to certain mortgagees in discharge of a mortgage on the shop, and Rs. 100 as paid in cash to the vendors, and they asked for sale of the shop. *Held* that, the sale being by a minor, the plaintiffs acquired no interest to support their discharge of the mortgage, and that the remaining sum of Rs. 100 not having been paid for necessaries was also not recoverable.

THIS was a suit to recover Rs. 346-1 by sale of a shop. The facts were briefly these:—The shop in dispute was the property of two brothers Chhote Lal and Bhagwan Das. Both the brothers died about the same time leaving them surviving their mother, Musammât Hulaso, Musammât Ram Piari, widow of Chhote Lal, and Musammât Goma, daughter of Bhagwan Das. Musammâts Hulaso and Ram Piari executed a sale-deed of the shop in suit in favour of the plaintiffs on September 20, 1903, in lieu of Rs. 600. The consideration was made up thus :

(1) Rs. 100 for the maintenance and support of the defendants.

(2) Rs. 231 paid to Mattru Mal and Basdeo, who held a mortgage over the shop and a house, created by Bhagwan Das and Chhote Lal on December 12, 1903.

(3) Rs. 269 left in deposit for the vendors.

The plaintiffs then applied to have the sale-deed registered, but registration was refused on the ground that Ram Piari was a minor. Thereupon the plaintiffs brought the present suit to recover the first two items with interest. Ram Piari alone defended the suit and it was contended on her behalf that she was a

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* Appeal No. 27 of 1908, under section 10 of the Letters Patent.

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minor ; that there was no hypothecation of the shop in favour of the plaintiffs, nor was there a charge on it ; that she took no money from the plaintiffs, nor did Hulas-o take any money for her benefit, and that she was in possession by right of inheritance from her husband. Upon these pleadings, the court of first instance granted a personal decree to the plaintiffs against the defendants. It held the mortgage of 1903 proved and that Rs. 231 had been paid to the mortgagees, and that Rs. 100 had been taken by the defendants "for domestic expenses and for funeral ceremonies of Bhagwan Das and Chhote Lal." Ram Piari alone appealed to the District Judge and the plaintiffs filed cross-objections. The lower appellate court, without going into other questions, held that the contract, being that of a minor, was void. It accordingly dismissed the suit. The plaintiffs appealed. The case came before Banerji, J., who disposed of it by the following judgment :—

"The suit which has given rise to this appeal was brought by the appellants to recover Rs. 346-1 from the defendants and for sale of a shop alleged to be the property of the defendants. The facts are these. The said shop belonged to two brothers, Bhagwan Das and Chhote Lal, who mortgaged it to Matru Mal and Basdeo in 1903. They died leaving them surviving Musammat Hulas-o, their mother, Musammat Ram Piari, widow of Chhote Lal, and Musammat Goma, daughter of Bhagwan Das. On the 20th of September, 1905, a sale-deed is alleged to have been executed in favour of the plaintiffs in respect of the said shop for a consideration of Rs. 600 by Hulas-o and Ram Piari. It has been found that Ram Piari was a minor at the date of the sale and is still a minor. The Sub-Registrar before whom the sale-deed was presented for registration, being also of opinion that Ram Piari was a minor, refused to register it as a document executed by her. The plaintiffs say that out of the amount of consideration for the sale they paid Rs. 100 in cash and Rs. 231 in discharge of the mortgage held by Matru Mal and Basdeo, and they seek to recover the said sums with interest not only from the defendants personally but also by sale of the shop. The court of first instance refused to order a sale of the shop, but made a personal decree against the defendants. From this decree Ram Piari appealed and the plaintiffs filed objections under section 561 of the Code of Civil Procedure. The lower appellate court dismissed the objections, decreed the appeal, and dismissed the suit as against Ram Piari on the ground that, as Ram Piari was a minor, the sale by her was absolutely void and that the plaintiffs could not recover the amount paid by them. Against this decree of the court below the present appeal has been preferred. As regards the Rs. 231 alleged to have been paid in discharge of the mortgage held by Matru Mal and Basdeo, I think the plaintiffs have no right of action. As the sale to them by Ram Piari was a sale by a minor, it was void, as held by their Lordships of the Privy Council in *Mohori Bilee v. Dharmo Das Ghose* (1). As they did not acquire any interest in the property, they had no interest to

protect, and therefore the payment made by them in discharge of the mortgage was nothing more than a payment by a volunteer. The learned *vakil* for the appellants has relied upon a passage in Pomeroy's *Equity Jurisprudence*, Vol. III, paragraph 1212. The passage it seems to me is against his contention. There the learned author says:— "Such relations must exist towards the mortgaged premises or with the other parties that the payment is not merely a voluntary act, but is an equitably necessary or proper means of securing the interest of one making it from possible loss or injury. The payment must be made by or on behalf of the person who had some interest in the premises or some claim against other property which he is entitled in equity to protect and secure. A mere stranger, therefore who pays off a mortgage as a merely voluntary act can never be an equitable assignee." As I have already said, the plaintiffs acquired no interest in the shop in question under the sale-deed said to have been executed in their favour by Musammam Ram Piari, the latter being a minor. Therefore they had no interest to protect, and if they made any payment to discharge a mortgage existing on the property it was a voluntary act on their part and does not confer on them any right to recover the money so paid by them from the mortgaged property. The Privy Council has held in the case referred to above that in the case of a contract by a minor which is void the person advancing money on the contract cannot recover it under the provisions of sections 64 and 65 of the Contract Act. Therefore from any point of view the plaintiffs are not entitled to get back the sum of Rs. 231 alleged to have been paid by them to the mortgagor. As for the remaining sum of Rs. 100, which is said to have been paid by them in cash, it is contended that the payment was made for necessaries. That was not the case set up in the courts below. All that was said was that the money was paid for the maintenance of the vendors. That does not amount to a payment for necessaries, and cannot create any lien in favour of the plaintiffs on the minor's property. I therefore agree with the conclusion at which the court below has arrived and dismiss the appeal with costs.

From this judgment an appeal under the Letters Patent was preferred by the plaintiffs.

Dr. *Satish Chandra Banerji* (for Babu *Jogindro Nath Chaudhri*), for the appellants: The learned judge is wrong in holding that the appellants were mere volunteers, and so could not be equitable assignees. The mortgage which had been paid off by them was binding on the defendant, and they paid it off for her benefit and at her instance. A person acting as the appellants have done is not a volunteer. It is not necessary that there should have been some previous interest; Pomeroy, *Equity Jurisprudence*, 3rd edition, section 1212, p. 2423. The right of subrogation is an equitable right and does not depend upon the capacity of the parties to enter into a contract; *Spaulding v. Harvey* (1), Jones, *Mortgages*, 6th edition, section 874, (a), (b), (1) (1891) 13 L. B. A., 619, 621.

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pp. 922, 923. The Madras High Court has applied this doctrine and granted relief to a person who went into possession of property purchased by him, and paid off an incumbrance, though the purchase subsequently turned out to be invalid; *Chama Swami v. Padala Anandu* (1). The fact that the plaintiff there had temporarily obtained possession does not alter the principle. It is also submitted that section 70, Indian Contract Act, fully covers the case. Under this section no previous request or assent on the part of the party on whom the benefit is conferred need be proved. The section is directed against an officious interference with another man's property. All that is necessary is that the benefit should have been enjoyed and the act must have been lawfully done; *Damodara Mudaliar v. Secretary of State for India* (2). The meaning of lawfully is that the thing done should not serve an illegal end. Section 23, Indian Contract Act, may throw some light on the meaning of the word.

There is no rule of law which prohibits the payment of a debt which a minor is bound to pay. The plaintiff's act therefore was lawful; *Desai Himatsingji Joravarsingji v. Bhavabhai Kayabhai* (3). It is submitted that the section is applicable to a minor as much as to an adult. Both Pollock and Whitley Stokes are of that opinion; Pollock and Mulla, *Indian Contract Act*, 1st Ed., 246. The appellants are therefore entitled to compensation. As to the Rs. 100, the findings of the first court show that they were expenses incurred for necessaries, and under section 68, Indian Contract Act, they are recoverable from the property of the minor.

Munshi *Gulzari Lal*, for the respondent. The Privy Council having held that a minor's contract is void, it must be conceded that the appellants acquired no interest in the property under the sale-deed, and so they cannot recover moneys paid in reliance upon such sale; *Mohori Bibee v. Dharmodas Ghose* (4). In order that the appellants may be entitled to the right of subrogation there must be a distinct agreement with the debtor for that purpose; Ghose, *Law of Mortgage*, 3rd Ed., p. 402. In the present case there is no such agreement. The case in I. L. R., 31 Mad., 439 is distinguishable. The vendee there got into possession of the property and had an interest to protect. Section 70, Indian

(1) (1908) I. L. R., 31 Mad., 439. (3) (1880) I. L. R., 4 Bom., 643, 653.

(2) (1894) I. L. R., 18 Mad., 88, 91. (4) (1902) I. L. R., 30 Calc., 539, 549.

Contract Act, was not distinctly relied upon before the single Judge. That section, however, does not apply as it presupposes an existing interest in the person who claims its benefit. It is submitted that the section is not meant to apply to the case of a person with whom there can be no contract at all. A cash payment can never be called "necessaries" and cannot be recovered.

Dr. *Satish Chandra Banerji*, in reply. In the case in I. L. R., 30 Calc., 539, sections 64 and 65 of the Contract Act were held to be inapplicable, although it was observed that if a proper case under section 41, Specific Relief Act, were made out, relief might be given. The money-lender was not allowed to recover anything that he had paid under the contract, under the special circumstances of that case. In the case of *Thurston v. Nottingham Permanent Benefit Building Society*, (1) the court of appeal held the Building Society entitled to recover the money which had been paid for the minor to her vendor who had acquired a lien for unpaid purchase-money, although the mortgage itself was declared void. The analogy applies to this case. The mortgagees had a valid lien and it had been discharged by the appellants. They are entitled to step into the shoes of the former. As for the contention that section 70 does not apply to the case of a minor, it is submitted that the section occurs in a chapter of the Act which treats of relations resembling contracts. A comparison with section 65 shows that the later section is intended to provide for a case where there is neither an agreement nor a contract. Section 68, it has been held in *Mohori Bibee's* case, provides for the case of a minor. It is submitted that all these are cognate sections which deal with cases of quasi-contract, as distinguished from contract. There is no agreement between the parties, but relief is afforded on the ground of unjust enrichment, the defendant having profited at the expense of the plaintiffs. The Indian Law has been deliberately made wider than the English Law, and even under the latter law it is only when a payment has been made *against the will or without the consent* of the other party that a person is not permitted to make

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1) (1902) F.C.R. 1; (1908) A. C., 6.

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himself a creditor of the latter; Anson, *Law of Contract*, 8th (American) ed., 442, 443.

The following cases were also referred to: *Dakhina Mohan Roy v. Saroda Mohan Roy* (1), *Peruvian Guano Co. v. Dreyfus Brothers* (2) and *Seth Chitor Mal v. Shib Lal* (3).

KNOX, ACTING C.J. AND RICHARDS, J:—After carefully listening to the very able and elaborate arguments addressed to us on behalf of the appellants, we are of opinion that the judgment delivered by our brother BANERJI is a judgment in accordance with the law as prevailing and as understood in these Provinces. We therefore are not prepared to interfere. We dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

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August 7.

Before Mr. Justice Richards and Mr. Justice Alston.

EMPEROR v. ABDUL RAHMAN AND OTHERS.*

Criminal Procedure Code, sections 157, 159, 476—Police report by Sub-Inspector—Further investigation by Superintendent—Subsequent inquiry by Magistrate—Order for prosecution of witnesses examined in the Magistrate's inquiry—Act No. XLV of 1860 (Indian Penal Code), section 193.

On the strength of a police report the District Magistrate ordered the Superintendent of Police to investigate a certain case. The Superintendent made an investigation and came to the conclusion that the case was not a true one; but at the same time suggested that a magistrate might be sent to inquire into it. The District Magistrate accordingly deputed a magistrate of the first class to inquire. He made an inquiry which resulted in an order for the prosecution of certain witnesses who had given evidence before him. *Held* that there was no legal authority for the inquiry held by the Magistrate, and his order for the prosecution of the witnesses was therefore invalid. *In the matter of the petition of Kandheiya Lal* (4) and *Mouli Darzi v. Nauranji Lal* (5) referred to.

THE facts of the case are fully stated in the judgment of the court.

Babu Satya Chandra Mukerji, for the applicants.

Mr. R. Malcomson (Assistant Government Advocate), for the Crown.

* Criminal Revision No. 314 of 1909, from an order of L. Marshall, Sessions Judge of Mainpuri, dated the 8th of June, 1909.

(1) (1898) I. L. R., 21 Calc., 142. (3) (1892) I. L. R., 14 All., 273.
(2) [1892] A. C., 166. (4) Weekly Notes, 1899, p. 87.
(5) (1900) 4 C. W. N., 351.