

Before The Hon'ble Mr. H. G. Richards, Chief Justice, and
Mr. Justice Banerji.

1911
May, 12.

ULFAT RAI AND ANOTHER (PLAINTIFFS) v. GAURI SHANKAR AND OTHERS
(DEFENDANTS).*

Act No. IX of 1872 (*Indian Contract Act*), sections 10 and 11—Guardian and minor—Sale of his own property by guardian to minor—Sale valid if for benefit of minor.

A certificated guardian transferred some immovable property belonging to himself to his minor wards in satisfaction of money which he owed to them. After the guardian's death the minors sued his heirs for possession of the property. Held, on the finding that the transaction was *bona fide* and for the benefit of the minors, that the transfer in their favour was valid and could be enforced by them as against the heirs of their late guardian.

THIS was an appeal, under section 10 of the Letters Patent appeal, from a judgement of KARAMAT HUSAIN, J. The facts of the case sufficiently appear from the judgement under appeal, which was as follows :—

“One Mul Chand, who was a certificated guardian of the two plaintiffs, Ulfat Rai and Balak Ram, executed a sale-deed of some immovable property belonging to himself in favour of his minor wards, and applied for mutation of names, but died before the passing of possession to the minors. After his death the minors brought an action for possession of the property. The court of first instance, on the authority of *Mohori Bibee v. Dharmodas Ghose* (1), dismissed the suit on the ground that a contract to which a minor is party is void. On appeal the decree of the court of first instance was affirmed by the lower appellate court. The lower appellate court in its judgement says, ‘Mul Chand, deceased, who executed the sale-deed in their favour, happened to be their certificated guardian, but there is nothing in the sale-deed or the plaint to show that he acted in his dual capacity in this transaction. He did not make the contract with himself as guardian of his wards. His contract was clearly with the wards themselves, and it was therefore void *ab initio*.’ The plaintiffs have preferred a second appeal to this court, and two points are argued before me. The first is that when the guardian contracted and sold the property to his wards he must be deemed to have purchased it himself as guardian, and that the minors must not be deemed to be a party to the conveyance of sale. In the face of the finding recorded by the lower appellate court I cannot accede to this contention. The minors must be deemed to be a party to the conveyance of sale. The second is that as the sale was made in favour of a minor the ruling of their Lordships of the Privy Council in *I.L.R.*, 30 Calc., 539, has no application. In support of this contention the learned vakil relies on certain observations made in *Meghan Dube v. Pran Singh* (2). Those observations are as follows :—‘The first plea raised on behalf of the appellants is that

* Appeal No. 105 of 1910 under section 10 of the Letters Patent.

(1) (1902) *I. L. R.*, 30 Calc., 539. (2) (1907) *I. L. R.*, 30 All., 63.

1911

ULFAT RAI
v.
GAURI
SHANKAR.

the contract on which the suit is based is void, inasmuch as the mortgagee was a minor at the date of the execution of the mortgage-deed. The learned vakil for the appellants relies upon the ruling of the Privy Council referred to above upon which the court of first instance had based one of its conclusions. That was a case in which their Lordships of the Privy Council held that a contract made by a minor was absolutely void and not merely voidable. That, however, is not the case here. The contract in this case was made by persons of full age, but the person in whose favour the mortgage-deed was executed was a minor. The question of validity of the mortgage does not in our opinion arise.' The learned vakil on the basis of the above observations says that in the case before me the sale was made by a person of full age and the minors in whose favour the sale was made were vendees and that, therefore, the ruling of their Lordships of the Privy Council does not govern this case. I am of opinion that a contract to which a minor is a party, be he a promisee or a promisor is void, and with the greatest respect to the observations made by the learned judges in *Meghan Dube v. Pran Singh*, I find myself unable to hold that the sale in favour of the minors, because the vendor was of age, is not void. The result is that the appeal fails and is dismissed with costs."

The plaintiffs appealed.

Munshi *Gulzari Lal*, for the appellants, submitted that the Privy Council ruling had no application and that there was no prohibition in law against a minor being a transferee. In this case it must be held that Mul Chand acted as guardian in the matter of sale. He relied on *Meghan Dube v. Pran Singh* (1).

Munshi *Govind Prasad*, for the respondents, relied on *Nanakoti Narayanga Chetty v. Logabina Chetty* (2), and an unreported judgement of KNOX and PIGGOTT, JJ., in E. F. A. 92 of 1910, decided on the 10th of May, 1911, and contended that the plaintiffs as minors could not enter into a contract of sale. The finding of the lower appellate court was that Mul Chand did not act as their guardian in the matter of the sale and this finding was binding in second appeal.

RICHARDS, C. J., and BANERJI, J.—The facts out of which this appeal arises are very simple. One Mul Chand was the certificated guardian of the plaintiffs. He managed their property for some time and shortly before his death he found himself indebted to them in the sum of Rs. 2,500. In order to discharge this liability he transferred by a document, which on the face of it appears to be a sale-deed, certain immovable property to the minors. He next proceeded to make an application

(1) (1907) I. L. R., 30 All., 63. (2) (1909) I. L. R., 33 Mad., 312.

1911

ULFAT RAI
v.
GAURI
SHANKAR.

to have mutation of names effected for the benefit of the minors, but before this matter could be carried out Mul Chand died. The defendants, who are the heirs of Mul Chand, then entered into possession. One of the minors has now come of age, and he brings this suit on behalf of himself and his minor brother to recover the property which was transferred into their names by Mul Chand. The defence is that a contract for sale with a minor is absolutely void, and reliance is placed on *Mohori Bibee v. Dharmodas Ghose* (1). This defence on the face of it is very unmeritorious. It certainly would be a very fraudulent defence, if it had been put forward by Mul Chand, but it is to be said in his favour that if he had lived he never would have put forward the defence which is now put forward by his heirs. In our opinion the proper inference to be drawn from the peculiar facts of this case is that Mul Chand acting on behalf of the minors transferred into their names the property in question. If Mul Chand, as guardian of the minor, had negotiated with a third party and purchased on their behalf certain property and had it transferred into the names of the minors, we do not think it could for a moment be said that the transfer would be void. We do not think that the mere fact that the property in question was the property of Mul Chand can make any difference where we find that transaction was for the benefit of the minors. No doubt if a certificated guardian had fraudulently transferred certain property of his own for more than it was worth to the minors, the minors would be able to repudiate the transfer on the ground of fraud. There is, however, nothing in the Transfer of Property Act which makes a minor incapable of being the transferee of immovable property. He cannot transfer immovable property, it is true, but that is a different thing from becoming a transferee.

We consider that under the circumstances of this case we are entitled to make and ought to make every reasonable presumption in favour of the minors, and we consider that we are quite justified in presuming that Mul Chand in his capacity as guardian of the minors accepted the transfer on their behalf. In the view that we hold it is not necessary to express any opinion upon

(1) (1902) I. L. R., 30 Cal., 539.

1911

ULFAT RAI
v.
GAURI
SHANKAR.

the broad question as to what would be the effect of a transaction in which it was clearly shown that a minor acting entirely in his own behalf contracted for and purchased immovable property. This case is devoid of all merits. We allow the appeal, set aside the decree of this court and of the courts below and remand the case to the court of first instance for determination of the other question. The plaintiffs will have their costs of the appeal to this court and of the lower appellate court. The costs in the court of first instance will abide the event.

Appeal allowed.

Before Mr. Justice Karamat Husain and Mr. Justice Chamier.

DASONDHAY AND OTHERS (DEPENDANTS) v. MUHAMMAD ABU NASAR AND OTHERS—(PLAINTIFFS).*

Civil Procedure Code (1882), sections 30 and 539,—Civil Procedure Code (1908), section 92—Waqf—Alienation of waqf property—Suit to set aside such alienation and for declaration that property is waqf—Right to sue.

Held that a suit by two Muhammadans for a declaration that a certain property is waqf and to set aside the alienation of such property by the persons in charge thereof is not a suit contemplated by section 539 of the Code of Civil Procedure, 1882, or section 92 of the Code of Civil Procedure, 1908, and is maintainable without permission obtained under section 30 of that Code.

Muhammad Abdullah Khan v. Kattu (1), Jamal-ud-din v. Mujtaba Husain (2) and Kazi Hassan v. Sagun Balkrishna (3) followed.

THE facts of this case are as follows:—

A certain piece of land in village Gangoli, district Saharanpur, measuring 3 bighas and 10 biswas, was alleged by the plaintiffs to be part of an endowment comprising a mosque, a grave-yard, a *takia* (*fakir's* shrine) and a shrine of one Hazrat Abdulla Nekmard. The Muhammadan defendants and their ancestor, Haji Shah, were *mujawars*, attendants who received a part of the offerings at the shrine, but had no right of transfer. They held the property subject to the will of the plaintiffs and other Muhammadans, and the superintendence of the property was in the hands of the plaintiffs and their ancestors. Defendants

* Second Appeal No. 1031 of 1910 from a decree of B. O. E. Leggatt, District Judge of Saharanpur, dated the 27th of May, 1910, confirming a decree of Maula Baksh, Subordinate Judge of Saharanpur, dated the 10th of August, 1908.

(1) (1899) I. L. R., 21 All., 187. (2) (1903) I. L. R., 25 All., 631.
(3) (1899) I. L. R., 24 Bom., 170.