

meaning of the words "purport to be" was considered, and it was held that a document which had not been stamped, and was therefore not admissible in evidence, might nevertheless be a valuable security. The same point was again decided in the case of *Queen Empress v. Ramasami* (1). I am satisfied that the two papers in respect of which the appellant has been convicted do purport to be documents whereby a legal right is created within the meaning of section 30 of the Indian Penal Code. The appellant has therefore been rightly convicted.

As regards the question of sentence, I must say that I should feel it more satisfactory if I were in a position to consider this question after having before me the result of the proceedings which I understand have been instituted in respect of the mortgage deed propounded by Jawahir subsequently to the discovery of these two documents in his possession. As the case now stands before me, I am not prepared to say that the sentence passed is unduly severe. I dismiss this appeal.

Appeal dismissed.

APPELLATE CIVIL.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Piggott.

IMAMI (PLAINTIFF) v. MUSAMMAT KALLO (DEFENDANT.) *

Guardian and minor—Contract—Specific performance—Specific performance of contract not favourable to minor refused.

The District Judge sanctioned the sale by the certificated guardian of a minor of a house belonging to the minor for a price of Rs. 1,800. There arose, however, some dispute about the drafting of the deed of sale and the purchase was not carried through. Meanwhile other offers were made for the property, and ultimately the District Judge directed that the house should be sold to one Abdullah for Rs. 2,000

Held, on suit brought by the person in whose favour the sale had originally been sanctioned, that the court was in the circumstances justified in refusing to grant a decree for specific performance. *Chhitar Mal v. Jagan Nath Prasad* (2), referred to.

THE facts of the case were as follows :—

One Shahzada who is the uncle of the minor defendant's husband and was appointed guardian of her person and property by

* First Appeal No. 30 of 1915, from a decree of Gokul Prasad, Subordinate Judge of Allahabad, dated the 19th of August, 1914.

(1) (1888) I. L. R., 12 Mad., 148.

(2) (1907) I. L. R., 29 All., 213.

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the court, applied for permission to sell the house in suit to pay off certain debts due by the minor. The District Judge, by his order dated the 19th of June, 1912, allowed Shahzada to sell the house to the highest bidder. It was put up for auction sale on the 23rd of June, 1912, and Imami the appellant offered Rs. 1,300 for it. He was directed by the District Judge to deposit the money in the bank which he did. The appellant then made out a draft sale-deed and it was put before the District Judge for his approval. That officer made certain amendments in the deed and on the 3rd of August 1912, ordered that the sale-deed be drawn up according to the amended draft. Imami the appellant was supplied with a copy of the amended draft and being under the misconception that the amendments had been made by Shahzada, refused to purchase the house until Shahzada and his brother, one Raja Ram, also executed an indemnity bond. On the 3rd of February, 1913, one Gayadin applied to the District Judge to be allowed to purchase the house for Rs. 1,600, on the terms of the amended sale-deed and Imami getting notice of this application, expressed his willingness to purchase the house for Rs. 1,300, according to the amended draft. The District Judge holding that the sale to Imami had been completed dismissed the application of Gayadin. Gayadin then offered Rs. 2,000 for the house and one Haji Abdulla offered Rs. 2,200 for the house in suit. The District Judge therefore ordered the guardian Shahzada to sell the house to the highest bidder. Imami thereupon instituted this suit for specific performance of a contract of sale against the minor Musammat Kallo and for compulsory execution of the sale-deed. The Subordinate Judge, holding that a contract detrimental to the minor's interest could not be specifically enforced, dismissed the suit. The plaintiff appealed to the High Court.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellant:—

When there was a contract and in pursuance of that contract the plaintiff had done something, he is entitled to a decree for specific performance. Here the vendee appellant deposited Rs. 1,300 in the bank. The learned Subordinate Judge has clearly found that the contract for sale was complete. If so, I am entitled to a decree. The appellant at first thought that the amendment had been made by the minor's guardian and

therefore he demanded an indemnity bond. As soon as he discovered that the amendments had been made by the District Judge he consented to purchase. A minor's interest should certainly be protected, but not at the cost of others. The house according to the guardian's own statement is worth Rs. 900. The case of *Mir Sarwarjan v. Fakhr-uddin* (1) has been distinguished in a later case, viz. *Babu Ram v. Said-un-nisa* (2). In *Mir Sarwarjan's* case the contract was made by a manager of a minor's estate. In the present case the contract was made by a certificated guardian and sanctioned by the court. Section 21, clause 2, of the Specific Relief Act, is no hardship to the minor. The value of the property is Rs. 900. If some person for some particular reason peculiar to himself is offering Rs. 2,200, that does not make any difference to the intrinsic value of the property. A suit of this kind has been held to be maintainable in *Krishnasami v. Sundarappayyar* (3). A decree for specific performance of contract can be given against a minor when it is for the benefit of the minor *Khair-un-nissa v. Loke Nath* (4).

The sale will admittedly be for the benefit of the minor and that is the reason why it was allowed by the District Judge. The mere intervention of some extrinsic facts does not make this sale any the less beneficial. A sale for a larger amount will certainly be more beneficial but that does not prove that a sale to us will not be beneficial. That the sale to my client is for the benefit of the minor is clear from the fact that it was sanctioned by the District Judge. Sections 28, 29 and 30 of the Guardian and Wards Act create a presumption in my favour.

Dr. *Surendra Nath Sen* (Babu *Anurup Chandra Mukerji* with him) for the respondent :—

The case in 35 Allahabad is not in point as it was not a case for specific performance. *Ohittar Mal v. Jagannath* (5) is entirely in my favour. The District Judge as the absolute guardian of every minor should always have a *locus poenitentiae*. When new facts came to the knowledge of the District Judge he was certainly justified in recalling his previous order and directing a fresh auction sale.

(1) (1912) I. L. R., 39 Calc., 232. (3) (1895) I. L. R., 18 Mad., 415.

(2) (1913) I. L. R., 35 All., 499. (4) (1900) I. L. R., 27 Calc., 276.

(5) (1907) I. L. R., 29 All., 213.

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The Hon'ble Dr. *Tej Bahadur Sapru*, was heard in reply.

BANERJI and PIGGOTT, JJ. :—This appeal arises out of a suit for specific performance of an alleged contract of sale in respect of a house. The plaintiff also asks for a declaration that he has become the absolute owner of the house. The facts are these. The house in question belongs to the minor defendant Musammat Kallo. One Shahzada was appointed guardian of the minor under the orders of the District Judge of Allahabad. The guardian Shahzada applied to the District Judge for permission to sell the house in question for the payment of debts due by the minor. The District Judge ordered the property to be sold by auction to the highest bidder. The highest bid made was by the present plaintiff Imami, who offered to pay Rs. 1,300 for the property. On the 8th of July, 1912, the District Judge made an order to the effect that Shahzada, the guardian of the minor, was permitted to execute a sale-deed in favour of Imami, the draft being put up before the court for approval prior to the execution of the sale-deed. A draft was submitted and the District Judge made certain alterations in it. Imami, however, refused to purchase the property on the ground that the alterations in the draft which he believed had been made by or on behalf of the guardian did not meet with his approval. This is clear from the notice which he issued to the brother of the guardian in February, 1912, in which his pleader distinctly stated that he had refused to purchase the property. Subsequently it seems he consented to accept the purchase, but nothing was done for a long time. Meanwhile other persons had offered to purchase the property for a larger value and on the 25th of November, 1913, the learned District Judge granted permission to the guardian to sell the property for Rs. 2,000 to another party. Thereupon the present suit was brought by the plaintiff on the 3rd of February, 1914. He stated in the plaint that he had by reason of the sanction given by the District Judge to sell the property to him, acquired the ownership of the property and that he was entitled to obtain a sale-deed of it from the guardian. As we have stated above, Shahzada was the guardian appointed by the District Judge, but Shahzada is no party to the present suit. When the suit was instituted he was named as the guardian of the minor,

but he refused to act as guardian and thereupon another person, namely Mata Ghulam, was appointed guardian *ad litem*. Shahzada was not impleaded in his own person as a defendant. It would therefore be difficult, if the claim were allowed, to order Shahzada, who is no party to the suit, but who is the certificated guardian of the minor, to execute a sale-deed in the plaintiff's favour. The court below has dismissed the claim on the ground that the sale to the plaintiff would be detrimental to the interests of the minor. There can be no doubt that in a suit for specific performance it is in the discretion of the court to decree specific performance or not and in no case would the court be justified in enforcing performance against a minor "when such enforcement would be to his detriment." This was held by this Court in *Chittar Mal v. Jaganath Prasad* (1). In the present case it is clear that there being a purchaser who has offered more than Rs. 2,000 for the property and for a sale to whom the learned District Judge has granted permission to the guardian, the sale to the plaintiff would surely not be to the benefit of the minor. On this ground alone the court would be justified in refusing to grant a decree to the plaintiff. Furthermore, there are in this case circumstances which would make it unreasonable to grant the plaintiff's prayer. The original permission for the sale of the property was given so far back as July, 1912. In September of that year the court said that if the draft approved by the court was accepted, a sale-deed might be executed in the plaintiff's favour. Apparently the plaintiff did not accept the draft, and as his own notice to which we have referred above shows, he refused to purchase the property. It was not until other purchasers offered larger sums of money for the property that the plaintiff expressed his willingness to accept the terms offered. Under these circumstances we think the plaintiff is not entitled to the decree asked for. It is clear that he has not acquired any interest in the ownership of the property as he asserted in his plaint. We dismiss the appeal with costs.

Appeal dismissed.

(1) (1907) I. L. R., 29 All., 213.