

1915
November, 5.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Muhammad Rafiq.

MUNNI KUNWAR (PLAINTIFF) v. MADAN GOPAL (DEFENDANT.) *
*Act No. IV of 1882 (Transfer of Property Act), sections 5, 6, 7 and 127—Minor—
Validity of transfer in favour of a minor.*

Held that, inasmuch as there is nothing in the law to prevent a minor from becoming a transferee of immovable property, so a minor in whose favour a valid deed of sale has been executed is competent to sue for possession of the property conveyed thereby. *Ulfat Rai v. Gauri Shankar* (1) and *Raghunath Baksh v. Haji Sheikh Muhammad Baksh* (2) referred to. *Mohari Bibee v. Dharmodas Ghose* (3) and *Navakotti Narayana Chetty v. Logalinga Chetty* (4) distinguished.

THIS was an appeal under section 10 of the Letters Patent from the judgement of a single Judge of the Court. The facts of the case are fully stated in the judgement under appeal, which was as follows :—

“This case has had an unfortunate history. Musammat Munni Kunwar, the plaintiff, sued for recovery of possession over a certain house. Her case was that the defendant Madan Gopal, who was her father-in-law, conveyed the house in question to her by a sale-deed, dated the 24th of September, 1901, and that she subsequently permitted him to reside in the same up to the year 1912. Being then desirous of occupying the house herself to the exclusion of the defendant, she served the latter with a notice to vacate the house, and the cause of action is stated to have accrued to her on the 24th of February, 1912, the date of the defendant’s refusal to vacate the house in accordance with the notice. The defendant replied that he had executed the sale-deed in suit in favour of his daughter-in-law without any consideration, as a colourable and fictitious transaction, and had remained in possession of the house ever since as proprietor. He alleged that his son, Bishnath Singh, husband of the plaintiff, having subsequently died the plaintiff had gone to live with her own father and was now bringing this suit in collusion with her father, although both of them were perfectly aware of the fictitious nature of the sale-deed of the 24th of September, 1901. The case went to trial upon a plain issue of fact as regards the alleged fictitious nature of the sale-deed and the passing or otherwise of the consideration. At a very late stage of the case it seems to have occurred to the learned Munsif that there was evidence on the face of the record to show that the plaintiff Musammat Munni Kunwar must have been a minor in the month of September, 1901. He seems to have thought that this incident might furnish a short cut to the determination of the suit, without necessitating a trial of any of the questions of fact raised by the pleadings of the parties. He framed a fresh issue, and eventually dismissed the suit on the ground that whatever may or may not have happened at the time of the execution of the sale-deed of 1901, the fact that the plaintiff was

* Appeal No. 32 of 1915, under section 10 of the Letters Patent.

(1) (1911) I. L. R., 33 All., 657.

(3) (1909) I. L. R., 30 Cal., 589.

(2) (1915) 18 Oudh Cases, 115.

(4) (1909) I. L. R., 33 Mad., 312.

then a minor was conclusive against her. This decision was affirmed by the District Judge on appeal. When the matter came before me in June last I found it necessary, for reasons which need not now be discussed, to remand the case in order that the plaintiff might have an opportunity of placing on the record certain evidence which had, in my opinion, been wrongly excluded at the trial in the court of the Munsif. I asked the lower appellate court, after recording this evidence, to reconsider its decision in the light of that evidence, and to state whether the pleas taken in the first two paragraphs of the memorandum of appeal to the lower appellate court ought or ought not to prevail in the light of the evidence on the record taken as a whole. I am now inclined to think that, as I was remanding the case, I should have exercised a wiser discretion if I had insisted on a clear finding of fact as to the passing of consideration and as to the alleged fictitious nature of the sale-deed. It appears that, when the plaintiff originally led evidence in the Munsif's court, the fact that she was a minor in the year 1901 was not present to her mind or to that of her legal adviser. The case put forward by her was that the money which formed the consideration for the sale was a gift to her from her father, and that she had negotiated the sale and paid over to the defendant the money thus received by her as a gift. When the question of minority was raised, the plaintiff appears, as the learned District Judge has remarked, to have very distinctly shifted her ground. She then led evidence to prove that her father had negotiated on her behalf the transaction of sale with the defendant, had paid over the money to the defendant on her behalf and caused a sale-deed of the house to be executed in her name. If this were so in fact, the transaction would really amount to an acquisition by the plaintiff's father from the defendant of a certain house and a gift of that house to the plaintiff by her father. The provisions of section 127 of the Transfer of Property Act (Act IV of 1882) show that a gift in favour of a minor is not void, though it may be voidable at the option of the minor. I should feel no hesitation in holding that, if the facts were as above stated, the present suit would be maintainable. As the case stands the learned District Judge has definitely disbelieved and rejected the evidence tendered by the plaintiff subsequently to my order of remand. He holds that, whatever else may have happened in connection with this contract of sale, it is not a fact that the sale was negotiated by the plaintiff's father and the purchase made by him on the plaintiff's behalf. I think it unfortunate that the courts below should not have proceeded further, and considered the effect of the plaintiff's change of attitude and the conflicting nature of the evidence tendered by her, with regard to the plain issues of the fact raised by the pleadings as they originally stood. As the case stands I have no finding before me that consideration did or did not pass, or as to whether the execution of this sale-deed of the 24th of September, 1901, was not after all, as the defendant has all along pleaded, a purely fictitious transaction. I have to look at the question of law raised in this way. Assuming for the sake of argument that in the month of September, 1901, the plaintiff, being at the time a minor, negotiated the sale of the house in suit with the defendant and paid over certain money to the defendant, receiving in return the sale-deed which is the basis of the present suit, is that contract of sale void on the ground of the

1915

MUNNI
KUNWAR
v.
MADAN
GOPAL.

1915

MUNNI
KUNWAR
v.
MADAN
GOPAL.

plaintiff's minority or can the plaintiff be said to have become by virtue of this transaction the owner of the house in suit? The leading cases on the subject are the recent decisions of their Lordships of the Privy Council in *Mohori Bibee v. Dharmodas Ghose* (1) and in *Mir Sarwarjan v. Fakhr-ud-din Mahomed Chowdhuri* (2). The Madras High Court in *Navakotti Narayana Chetty v. Logalinga Chetty* (3) has interpreted these rulings as laying down in the broadest terms the principle that a sale in favour of a minor is void. The reasoning of the learned Judges in arriving at this decision commends itself to my mind and I do not think it necessary to reproduce it here. It has been suggested that the current of decision in this Court has always been in another direction, from the time of the earliest case on the point, that of *Behari Lal v. Beni Lal* (4) in which a mortgage in favour of a minor was affirmed. Their Lordships of the Privy Council in *Mohori Bibee's* case pointed out that there had been some conflict of decisions in the Indian Courts, and considered it necessary to review the whole question of a contract to which a minor was a party with reference to the special provisions of the Indian Contract Act (Act IX of 1872). Any rulings prior in the date require to be re-considered with reference to the principles laid down by the Privy Council.

"The nearest case in the plaintiff's favour is that of *Ulfat Rai v. Gauri Shankar* (5). It was there pointed out that the Transfer of Property Act in itself contains no provision which makes a minor incapable of being a transferee of immovable property. That case, however, requires to be considered with reference to its own facts. The transfer was one by the minor's certificated guardian in favour of the minor. The transaction as a whole certainly admitted of being regarded as a gift subject to a condition, and such transfer by way of gift would be voidable at the option of the minor under the provisions of the Transfer of Property Act to which I have already referred. It is quite true, as has been pointed out by this Court in more than one case, (vide, 9 A. L. J., 196 at page 201) that there is a fundamental distinction between a contract and a conveyance; but it seems to me that this point might be stated with equal accuracy by saying that a conveyance is a contract *plus* something more. At any rate, as the learned Judges of the Madras High Court have pointed out in the ruling already referred to, a conveyance by way of a sale, either is in itself a contract, or at any rate involves or implies an antecedent contract. On the principles laid down by their Lordships of the Privy Council in the cases already referred to it seems to me impossible to avoid the conclusion that a contract of sale negotiated by a minor, the minor having settled the terms, paid consideration and received in return a deed purporting to convey immovable property by way of sale, is altogether void *ab initio* and that no title thereby passes to the minor.

"The suit as brought must therefore fail. It has been suggested that, in the alternative, the plaintiff should be given a decree for the refund of the purchase money. I may remark at once that I could not do this without

- (1) (1903) I. L. R., 30 Calo., 539. (3) (1909) I. L. R., 33 Mad., 312.
 (2) (1911) I. L. R., 39 Calo., 232. (4) (1881) I. L. R., 3 All., 403.
 (5) (1911) I. L. R., 33 All., 657.

1915

MUNNI
KUNWAR
v.
MADAN
GOPAL.

once more remanding the case to the court below for a finding as to whether the alleged sale consideration did or did not pass from the plaintiff to the defendant. It seems to me, however, that from any point of view the claim is not one which can be entertained in the present suit. It was not expressly put forward in the plaint and it is now sought to base it on the general prayer for any other relief which is contained in the last paragraph of the plaint. If the plaintiff is regarded as claiming this refund of the sale consideration as money payable by the defendant for money received by the defendant for the plaintiff's use (article 62 of the first schedule to the Limitation Act, IX of 1908), then the claim is time-barred, because it does not appear to have been brought within three years from the plaintiff's attaining majority. For the same reason the claim cannot be sustained, as it perhaps might otherwise have been, as a claim for relief on the ground of fraud.

"The only other suggestion which has been, or can be, put forward on behalf of the plaintiff is that the claim for refund of purchase-money might be sustained as a claim for money paid upon an existing consideration which afterwards fails. In that case article 97 of the schedule already referred to would apply; but it would be for the plaintiff to show when it was that the consideration failed. There is authority in the case of *Anuma Bibi v. Udit Narain Misra* (1) for giving the plaintiffs in a case somewhat analogous to the present a decree for refund of the money paid, and for applying article 97 of the first schedule to the Limitation Act to such a suit. In that case, however, as also in a similar case reported in I. L. R., 24 Mad., page 27, there had been a previous suit resulting in an adjudication between the parties in consequence of which the plaintiff had failed to obtain the property for the price of which he claimed in the second suit; limitation was held to run against the plaintiff from the date of the final decision in the first litigation holding the plaintiff's claim to the property to be unenforceable. If these principles are in fact applicable to the present case, it may be that the plaintiff will have a cause of action from the date of the dismissal of the present appeal; but that is not a matter as to which it is necessary for me to express a final opinion in order to dispose of this appeal. So far as this claim for refund of purchase money goes, I hold that the plaintiff, supposing her to be in fact entitled to such refund, has either a cause of action which has become barred by time, or a cause of action which has not yet arisen and will arise only on the failure of the present suit. For these reasons I dismiss this appeal with costs."

The plaintiff appealed.

At the first hearing of the appeal the Court referred an issue to the District Judge:—

"Was the sale-deed of the 24th of September, 1901, a fictitious transaction, or was it supported by consideration?"

The finding returned was that the transaction was not fictitious and that the consideration was paid by the plaintiff's father.

1915

MUNNI
KUNWAR
v.
MADAN
GOPAL.

Dr. S. M. Sulaiman, for the appellant :—

Conveyance is something more than a contract ; as soon as the sale-deed is executed the transaction passes from the domain of contract into that of conveyance. Now contracts are governed by the Contract Act which requires mutuality ; but conveyances are governed by the Transfer of Property Act. Section 5 defines transfers, and it does not necessarily require anything to be done by the transferee before the transfer is complete. Section 7 of the Transfer of Property Act, requires that a transferor must be a person competent to contract ; whereas section 6 (h) contains no such requirement in case of a transferee ; it only says that he must not be legally disqualified from being a transferee. Now there is no provision of law which legally disqualifies a minor from being a transferee. Section 136 of the Transfer of Property Act shows the kind of persons who are so disqualified, and a minor is not included therein. On the other hand, section 127 expressly shows that a minor can be a donee. Section 54, which defines sale, does not require anything to be done by the vendee before it is complete ; hence competency to contract cannot be essential. In the case relied upon by PIGGOTT, J. viz., *Navakotti Narayana Chetty v. Logalinga Chetty* (1) it seems that the minor had promised to pay the price and hence it must be said that there was no mutuality. The Privy Council case of *Mohori Bibee v. Dharmodas Ghose* (2) does not apply, as it was a case of contract. The cases in point are *Raghunath Baksh v. Haji Sheikh Muhammad Baksh* (3) and *Ulfat Rai v. Gauri Shankar* (4). A minor therefore, it is submitted, can be a transferee. Here it has been found that the father of the minor paid the money by cheque.

Mr. A. P. Dube, for the respondent :—

The original finding of the District Judge in this case was, and his finding on remand has been, that the sale was negotiated by the minor herself throughout. The case has all along been dealt with on that footing, as is evident from the judgement of the single Judge of this Court. Upon the issue as to whether consideration did actually pass, the finding has been returned in the affirmative. The fact that

(1) (1909) I. L. R., 33 Mad., 312. (3) (1915) 18 Oudh Cases, 115.

(2) (1908) I. L. R., 30 Cal., 539. (4) (1911) I. L. R., 33 All., 657.

the learned District Judge says that the father paid the money by cheque cannot be allowed to disturb his previous findings, because this was not the issue sent down on remand. The Privy Council in *Mohori Bibee v. Dharmodas Ghose* (1) has distinctly held that a contract by a minor is void and not voidable. No distinction can be drawn between contract and a conveyance. A conveyance is nothing but an executed contract. Conveyance is that portion of an executed contract in writing which actually purports to convey property from the seller to the buyer. The transaction as evidenced by the sale-deed is a contract of sale and the actual clauses conveying property cannot be treated as something entirely different from the executed contract as put down in the deed. Those clauses cannot be taken out of their setting. The deed, it is true, is not signed by both parties; but a mortgage-deed is not signed by both parties, yet it was in *Mohori Bibee's* case dealt with as a contract. A minor may take by gift, which is a unilateral transaction, but a sale pre-supposes both offer and acceptance by a minor being a bilateral one. The Privy Council were dealing with a mortgage under the Transfer of Property Act, but on consideration of sections 4 and 7 of that Act, held that the matter must be decided in accordance with the provisions of the Contract Act. If a minor can enforce a contract, we get back to the old state of a voidable contract. Conveyance is not different from contract. See Blackburn on Sale, Preface, and pages 129, 130, 131. The same distinction between a contract to sell and contract of sale is maintained by the Transfer of Property Act, section 54. In *Mir Sarwarjan's case* (2) a sale was made in favour of a minor. The manager had intervened and actually paid the consideration. But their Lordships held that the minor could not get specific performance because there was no mutuality. This case is nothing but a case of specific performance. A contract was entered into which purported to pass title and possession. The minor claims possession in virtue of the title so passed. When the contract goes everything founded upon it or resulting from it ought to go. Trevelyan in his book on Minors says that the effect of the Privy Council ruling is that no effect could be given to the transaction

1915

 MUNNI
KUNWAR
v.
MADAN
GOPAL.

(1) 1908 I. L. R., 30 Calc., 569.

(1) (1911) I. L. R., 39 Calc., 282.

1915

MUNNI
KUNWAR
v.
MADAN
GOPAL.

at the instance of either party. I rely on the reasoning of I. L. R., 33 Mad., 312, and on the reasoning of the learned single Judge of this Court.

RICHARDS, C. J., and MUHAMMAD RAFIQ, J.:—By our order, dated the 9th of July, 1915, we referred an issue to the court below. The finding on this issue has now been returned. We think it desirable very shortly to refer to the nature of the suit. The plaintiff is the daughter-in-law of the defendant. The suit is a suit to recover possession of a house. The house admittedly belonged at one time to the defendant. The house was under attachment in execution of a decree against the defendant. Before the sale a deed of transfer was executed by the defendant in favour of the plaintiff. She was his daughter-in-law, and her husband (the son of the defendant) was then alive. It was alleged on behalf of the plaintiff that she paid the purchase money of the house and became the purchaser. It was alleged on behalf of the defendant that the whole transaction was fictitious and that no consideration of any kind ever passed. As the result of the finding of the court below on the issue we referred, it is now established that the money was really paid by the father of the plaintiff at the time of the attachment and was duly received by the defendant. There can be no doubt (whether the money actually belonged to the plaintiff or belonged to her father) that the purchase was intended for her benefit. The question is whether under these circumstances the plaintiff was entitled to recover possession of the property, it being borne in mind that at the date of the deed of transfer she was under age. It is contended on behalf of the defendant that the contract for sale of the house was absolutely null and void, and the decision of their Lordships of the Privy Council in the case of *Mohori Bibee v. Dharmodas Ghose* (1) and also the case of *Navakotti Narayana Chetty v. Logalinga Chetty* (2) are relied upon. On the other side the case of *Ulfat Rai v. Gauri Shankar* (3) and also the case of *Raghunath Baksh v. Haji Sheikh Muhammad Baksh* (4) are relied upon. Section 5 of the Transfer of Property Act defines "transfer of property" as an act by which a living

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

(3) (1911) I. L. R., 33 All., 657.

(2) (1909) I. L. R., 33 Mad., 312.

(4) (1915) 18 Oudh Cases, 115.

person conveys property to one or more other living persons, or to himself and one or more living persons. Section 6, clause (h), of the same Act sets forth the class of transfers of property which cannot be made. It does not state that a transfer cannot be made to a minor. Section 7 provides that every person competent to contract and entitled to transferable property is competent to transfer such property. Nowhere in the Act is it provided that a minor is incapable of being a transferee of property, and as a matter of practice, we are well aware that transfers of immovable property are every day made to minors. Section 127 by necessary implication shows that a person who is not competent to contract may be the donee of immovable property, and that even in the case of property burdened with an obligation if after he has become competent to contract and aware of the obligation he retains the property he becomes bound. It seems to us that the argument on behalf of the defendant amounts to this that the present suit to recover possession of the house must be regarded in exactly the same way as if the plaintiff was bringing a suit for specific performance of a contract. In our opinion it ought not to be so regarded. It could hardly be said, if it was shown beyond all doubt that the father of the plaintiff entered into a contract for the sale of this property and instead of taking the conveyance himself had directed the vendor to execute the conveyance in favour of his daughter, that she would not be entitled to recover possession. This in all probability was exactly what happened in the present case, but even if we assume on behalf of the defendant that it was the girl herself who entered into the contract and that it was her money which was paid to the defendant, it can make no difference. As soon as the defendant received the purchase money and executed the conveyance the plaintiff became entitled to the possession of the property. Very different considerations would arise if after having agreed to sell the property the defendant before receiving the price had refused to execute a conveyance and the plaintiff was driven to a suit for specific performance. In such case the plaintiff would have to set up the contract. In our opinion the decision of the court below and also of the learned Judge of this Court were not correct. We accordingly allow the appeal, set aside both the decrees of the

1916

MUNNI
KUNWAR
v.
MADAN
GOPAL.

1915

MUNNI
KUNWAR
v.
MADAN
GOPAL.

1915
November, 15.

courts below as also the decree of the learned Judge of this Court and decree the plaintiff's claim with costs in all courts.

Appeal decreed.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

HAR PRASAD (OBJECTOR) v. MUKAND LAL (APPLICANT).^{*}
Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 111

(1) (b)—*Partition—Non-applicant required to file suit in civil court—Non-compliance with order—Appeal*

A Collector trying a partition case made an order under section 111 (1) (b) of the United Provinces Land Revenue Act, 1901, against the non-applicant. He failed to comply with this order, but alleged that in a civil suit between the parties to the partition case it had been decided in respect of certain non-revenue-paying property that both sides were members of a joint Hindu family. The Collector, however, overruled his objection, finding that the ruling did not apply to revenue-paying property.

Held that no appeal lay to the District Judge from this order.

THE facts of this case were as follows :—

One Mukand Lal presented an application in the Revenue Court against Har Prasad alleging that he was entitled to $\frac{2}{3}$ ths of the recorded property and claiming partition. Har Prasad filed an objection that Mukand Lal's share was only one-half and the other half belonged to him. This matter having come before the Collector he made an order under section 111 of the Land Revenue Act requiring Har Prasad to bring a suit in the Civil Court within three months to determine the question. Har Prasad never brought any such suit. He alleges, however, that there was pending in the Civil Court a suit for partition brought by Mukand Lal in respect of non-revenue-paying property, and that it was decided in that suit that they constituted a joint Hindu family and were therefore on partition entitled to all the joint property half and half. After the expiry of three months, when the case again came before the Collector it was found that Har Prasad had not complied with the order. He tried to make out that the finding of the Civil Court had settled the question. The Collector made an order in which he stated that the Civil Court's decision had nothing to do with the revenue-paying property. The Collector accordingly overruled the objection which had been

^{*} First Appeal No. 112 of 1915, from an order of F. S. Tabor, District Judge of Saharanpur, dated the 15th of May, 1915.