

These latter are, therefore, entitled to 8/9ths of the property sold under the deed of the 9th of August, 1923, on payment of 8/9ths of the sale consideration. The appeal is accordingly dismissed with costs.

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AMAR SINGH.

Appeal dismissed.

Before Mr. Justice Iqbal Ahmad and Mr. Justice Kendal

SUBHAN ALI (DEFENDANT) v. CHITTU AND ANOTHER
(PLAINTIFFS).*

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May, 2.

Act No. VIII of 1890 (*Guardians and Wards Act*), section 29—*Guardian and minor—Sanction of court to sale of minor's property—Condition subsequent imposed on guardian—Effect of guardian's failure to comply.*

A District Judge, while granting permission to a certified guardian of a minor to transfer the minor's property, can impose conditions on the guardian; but a distinction must be drawn between a condition precedent and a condition subsequent imposed on the guardian. The only duty cast upon the transferee by law is that he must satisfy himself that the order sanctioning the transfer has been strictly complied with by the guardian up to the time of the execution of the deed of transfer and that no conditions precedent imposed by the order have been violated. If by the order sanctioning the transfer, the guardian and not the transferee is directed to do certain acts after the execution of the deed of transfer, the failure of the guardian to comply with that direction cannot affect the validity of the transfer. *Dyam Khan v. Sarat Chandra De* (1) and *Kunja Mal v. Gauri Shanker* (2), referred to. *Sri Thakur Kishori Ramanji Maharaj v. Duley Ram* (3), distinguished.

THE facts of this case are fully stated in the judgment of the Court.

Munshi Narain Prasad Ashthana, for the appellant.
Babu Piari Lal Banerji, for the respondents.

*Second Appeal No. 533 of 1925, from a decree of A. G. P. Pullan, District Judge of Agra, dated the 16th of December, 1924, confirming a decree of Alakh Murari, Subordinate Judge of Agra, dated the 23rd of January, 1924.

(1) (1916) 26 C.W.N., 218.

(2) (1905) 3 A.L.J., 30.

(3) (1924) 22 A.L.J., 155.

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IQBAL AHMAD and KENDALL, JJ. :—This is a defendant's appeal and arises out of a suit brought by two minor plaintiffs for a declaration that a sale-deed, dated the 25th of July, 1916, executed by their mother, Musammat Kelo, who was appointed their guardian by the District Judge, in favour of the defendant appellant, was null and void and was ineffectual to affect adversely their title to the house conveyed by that sale-deed. The plaintiffs alleged that there was no legal necessity for the transfer made by their mother, and that the sale by her was made without the permission of the District Judge and as such was voidable at their option. It was also alleged in the plaint that the sale-deed was not read over and explained to Musammat Kelo nor did she understand the nature of the transaction, and though this allegation of the plaintiffs was denied in the written statement, no issue was framed on the point by the trial court, and there is no discussion about this point in the judgements of the courts below and, as such, it is permissible to presume that the plaintiffs did not attack the validity of the sale-deed on this ground in either of the courts below.

The defence to the suit was that the sale-deed in dispute was executed by Musammat Kelo for valid necessity with the previous permission of the District Judge, and the plaintiffs were not entitled to avoid the same.

Both the courts below have held that the sale-deed must be taken to have been executed without the permission of the District Judge and is, therefore, voidable at the instance of the minor plaintiffs; but inasmuch as it was proved that a sum of Rs. 594 out of the sale consideration was taken for the benefit of the minors, the plaintiffs were entitled to a decree declaring the invalidity of the sale-deed subject to the payment of Rs. 594 to the defendant.

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It is common ground that on the 8th of April, 1916, Musammat Kelo applied to the District Judge for permission to sell a house belonging to the plaintiffs in order to pay certain debts, and the District Judge, because of certain mistakes in the draft of the proposed sale-deed which was filed along with the application for permission to sell the house, rejected the application with liberty to the applicant (the plaintiffs' mother) to file a fresh application. On a second application being filed, the District Judge, on the 15th of July, 1916, granted permission to Musammat Kelo to sell the house for Rs. 925 and passed the following order :—“ Permission is granted as prayed on condition that proof of payment of the decretal debt be filed.” On the 25th of July, 1916, the house was sold to the defendant for Rs. 925, out of which Rs. 50 had been paid by the defendant to Musammat Kelo prior to the execution of the sale-deed and Rs. 875 were paid before the Sub-Registrar. Musammat Kelo paid the debts for the discharge of which the sale had been sanctioned by the District Judge, but did not file proof of the payment of the debts, as enjoined by the order, dated the 15th of July, 1916, and the District Judge, on the 5th of August, 1916, without issuing any notice either to Musammat Kelo or to the defendant appellant, revoked the sanction given by him on the 15th of July, 1916.

Thereafter, on the 1st of September, 1916, Musammat Kelo filed an application for cancellation of the order revoking the permission to sell the house given by the District Judge, and along with the application, filed receipts in proof of payment of debts, but the learned District Judge rejected the application on the 9th of September, 1916. It does not clearly appear whether or not the defendant appellant succeeded in getting possession of the house sold to him.

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The suit giving rise to the present appeal was filed about seven years after the execution of the sale-deed in favour of the defendant, *viz.*, on the 16th of July, 1923.

Both the courts below were of opinion that the permission granted to the guardian by the District Judge was a "conditional sanction" and the condition not having been complied with, the sale-deed was voidable at the instance of the minor plaintiffs. We are unable to agree with the view taken by the courts below.

It is true that a District Judge, while granting permission to a certified guardian of a minor to transfer the minor's property, can impose conditions on the guardian, but a distinction must be drawn between a condition precedent and a condition subsequent imposed by the District Judge on the guardian. Non-compliance with a condition precedent will vitiate a transfer made by the guardian. But the same cannot be the effect of non-compliance with a condition subsequent, unless there is something in the order, granting permission to transfer the minor's property, casting an obligation on the transferee of that property to do some act subsequent to the execution of the deed of transfer in his favour. The only duty cast upon the transferee by law is that he must satisfy himself that the order sanctioning the transfer has been strictly complied with by the guardian up to the time of the execution of the deed of transfer, and that no conditions precedent imposed by the order have been violated. If the conditions precedent have been complied with by the transferee in conformity with the permission granted by the District Judge, a good title will pass to the transferee, and the failure of the guardian to comply with the subsequent conditions cannot divest the title already vested in the transferee by the transfer. If by the order sanctioning the transfer, the guardian and not the transferee is directed to do certain acts after the execution of the deed of transfer, the failure of the guardian to comply with that

direction cannot affect the validity of the transfer. The view that we take is in consonance with the view taken in the case of *Dyam Khan v. Sarat Chandra De* (1) and with the view taken by RICHARDS, J., in the case of *Kunja Mal v. Gauri Shankar* (2). In the case last mentioned BANERJI, J., took a view opposed to the view taken by RICHARDS, J. But it appears that the transferee in that case had not complied with the permission granted by the District Judge directing him to pay the full consideration for the transfer and had retained a substantial portion of the consideration in his own hands. It does not appear from the judgement of BANERJI, J., whether he regarded the condition imposed by the District Judge in that particular case as a condition precedent or a condition subsequent to the execution of the sale-deed.

The courts below have also relied on the case of *Sri Thakur Kishori Ramanji Maharaj v. Duley Ram* (3). It was pointed out in that case that the decision in that case was confined to the facts of that particular case, and the learned Judges who decided that case refrained from "entering into the question whether in all cases revocation of the sanction will affect or not a transfer made previously to the revocation." Moreover, in that case a much larger property than was sanctioned to be sold by the District Judge was sold by the guardian. It appears to us that the view that we are taking is not in conflict with the view taken in the case of *Sri Thakur Kishori Ramanji Maharaj*. In the present case we are unable to hold that the condition that was imposed by the District Judge and was not complied with by the guardian was a condition precedent, and not a condition subsequent. The condition that the District Judge imposed was that proof of payment of the debts should be submitted to him. Obviously the debts could only be paid by the consideration for the sale-deed, and that consideration could only

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(1) (1916) 26 C.W.N., 218.

(2) (1910) 8 A.L.J., 30.

(3) (1924) 22 A.L.J., 155.

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come into the hands of the guardian by executing the sale-deed in favour of the defendant. It is clear, therefore, that proof of payment could not be submitted before the District Judge until the sale-deed had been completed. Therefore, in our judgement, the condition as regards the filing of proof of payment of the debts was a condition subsequent and the failure of the guardian to comply with that condition cannot affect the validity of the sale-deed in favour of the defendant appellant.

We may note in passing that, as a matter of fact, proof of payment of the debts was filed by Musammat Kelo along with the application that she made to the District Judge on the 1st of September, 1916.

For the reasons given above, we hold that the rights of the case were entirely with the defendant and not with the plaintiffs. Accordingly we allow the appeal, set aside the decrees of the courts below and dismiss the plaintiffs' suit with costs in all courts.

Appeal allowed.

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May, 2.

Before Mr. Justice Iqbal Ahmad and Mr. Justice Kendall.

SANOMAN SINGH AND OTHERS (OBJECTORS) v. RAJA RAM AND OTHERS (OPPOSITE PARTIES).*

Pre-emption—Decree conditioned on payment of purchase money within specified period of its becoming final—Meaning of "final."

Held that an appealable decree against which an appeal has not been filed becomes final on the expiry of the period of limitation prescribed for filing an appeal, and not from the day on which it was passed. *Hingan Khan v. Ganga Prasad* (1), and *Narain Das v. Lachman Singh* (2), dissented from. *Disa Singh v. Jaula Singh* (3), *Shaikh Ewaz v. Mokuna Bibi* (4), *Ram Sahai v. Gaya* (5), *Gopal Das v. Mamma Kunwar* (6) and *Fazal Husain v. Fazal-ud-din* (7), followed.

* Second Appeal No. 722 of 1925, from a decree of Radha Kishan, Subordinate Judge of Basti, dated the 15th of September, 1924, confirming a decree of Jagannath Singh, Munsif of Bausi, dated the 26th of April, 1924.

(1) (1876) I.L.R., 1 All., 293.

(2) (1880) I.L.R., 3 All., 135.

(3) *Weekly Notes*, 1881, p. 165.

(4) (1876) I.L.R., 1 All., 132.

(5) (1884) I.L.R., 7 All., 107.

(6) (1907) 5 A. L. J., 136.

(7) (1925) I.L.R., 47 All., 533.