

1934

JAHAN  
SINGH  
v.  
HARDAT  
SINGH

which he has paid, then they must show that they have a right to get it back. This they can only do by showing that no debt was due from their father or that the debt in payment of which the property was sold was immoral and illegal and therefore the family estate could not be sold in execution of a decree against their father.

*Rachhpal  
Singh, J.*

For the reasons given above I am of opinion that the appeal must be dismissed.

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
Mr. Justice Rachhpal Singh*

1934  
August, 6

DHAPO AND ANOTHER (DEFENDANTS) v RAM CHANDRA  
AND OTHERS (PLAINTIFFS)\*

*Hindu law—Joint family—Major and minor coparceners—Contract by manager to sell family property for necessity—Specific performance—Enforceability as against the minors—Guardian and minor—Contract by guardian—Extent of powers.*

A contract for the sale of joint ancestral property for legal necessity or benefit of the family, entered into by the manager of a joint Hindu family, of which some coparceners are minors, can be specifically enforced against the joint family including the minor coparceners.

The rule laid down by the Privy Council in *Mir Sarwarjan v. Fakhruddin Muhomed Chowdhuri* (1) is not applicable to contracts made by the head of a joint Hindu family consisting of himself and minor coparceners. Contracts made by the manager of a joint Hindu family which comprises minor coparceners stand on a different footing from contracts made by a guardian of a minor or a mere manager of a minor's estate. In the former case the manager represents the whole family, consisting of major and minor coparceners, as one unit to the outside world for the purposes of its dealings, so that the contracting party is the whole family as one unit acting through the manager, whereas in the case of a minor owner the contracting party is the minor, who, however, acts through his guardian. In the former case, therefore, no question of want of mutuality on the ground of minority can arise, and the contract to alienate family property can be specifically enforced against the whole family as one unit, provided the circum-

\*Appal. No. 4 of 1933, under section 10 of the Letters Patent.

(1) (1911) I.L.R., 39 Cal., 232.

stances authorising the manager to make such alienation exist, e.g. legal necessity or the benefit of the family.

Mr. *Chandra Bhan Agarwal*, for the appellants.

Mr. *Panna Lal*, for the respondents.

1934

---

 DHARO  
 v.  
 RAM  
 CHANDRA

RACHHPAL SINGH, J. :—This is a Letters Patent appeal against the decision of a learned Judge of this Court under which a suit instituted by the respondents against the appellants was decreed.

Reoti and Khawani, who is a minor, are brothers and are joint in estate. They owned one half share in a house. Mst. Dhapo owns the other half. Reoti acting for himself and for his minor brother Khawani entered into a contract with Ram Chandra Lal, Munshi Lal and Ranjit Lal, plaintiffs, under which he contracted to sell to them the aforesaid half share in the house for a sum of Rs.950, and he was paid Rs.50 as earnest money. He, however, did not abide by this agreement and later on sold the above mentioned property to one Bulaki Das for a sum of Rs.850.

The plaintiffs filed a suit for the specific performance of the contract for sale made by Reoti. Bulaki Das the purchaser was also impleaded as a defendant in that suit. The suit was decreed. It was ordered that Reoti and Khawani should obtain partition of their one half share in the house and then to execute a sale deed in favour of the plaintiffs. The decree further ordered that in case Reoti and Khawani failed to do so, then it was open to the plaintiffs to sue for partition themselves.

Reoti and Khawani did not file a partition suit to have their one half share separated by partition. So, the plaintiffs sued for partition of one half share in respect of which Reoti had entered into a contract for sale with them. The trial court gave plaintiffs a decree for partition of one-fourth share. The court of first appeal dismissed the suit *in toto*. The principal ground taken in defence and which was accepted by the first appellate court was that the court could not order specific performance of a contract against a minor.

1934

DHAPU  
P.  
RAM  
CHANDRA

*Rachhpal  
Singh, J.*

The learned single Judge of this Court who heard the second appeal came to a different conclusion and held that in this case a decree for the specific performance of a contract could be passed against the minor. He, accordingly, decreed the appeal of the plaintiffs and granted them a decree for the partition of one half share in the house in suit. Now, Khawani minor and Mst. Dhapo, the owner of the remaining one half share, have preferred this Letters Patent appeal.

It may be pointed out that on the question as to whether or not the contract of sale was entered into by Reoti for family necessity the finding is against the appellants. It has been held that the contract was made for the purpose of satisfying a family necessity.

The sole question for the determination in this appeal is whether specific performance of a contract for the sale of ancestral property entered into between a manager of a joint family for himself and on behalf of a minor member of the joint family can be decreed against the minor or the manager.

The case for the appellants has been argued with great ability before us by Mr. *Chandra Bhan Agarwal*. On behalf of the appellants reliance is placed on a ruling of their Lordships of the Privy Council in *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri* (1). That was a case in which a minor, after attaining majority, sued to enforce the specific performance of a contract made by his guardian during his minority. Two points were decided by their Lordships in that case. The first was that they were unable to accept the view of the learned Judges of the Calcutta High Court in *Mir Sarwarjan v. Fakharuddin Mahomed Chowdhury* (2) that there was no difference between the position and powers of a manager and those of a guardian. The other was that it was not within the competence of a manager of a minor's estate or within the competence of a guardian of a minor to bind the minor

(1) (1911) I.L.R., 39 Cal., 232.

(2) (1906) I.L.R., 34 Cal., 163.

or minor's estate by a contract for the purchase of immovable property. They also held that in the case before them the minor on attaining majority could not enforce the contract for want of mutuality.

The contention raised by the learned counsel appearing for the appellants is that the above rule laid down by their Lordships was a rule of universal application and governed all cases where a minor was a party to the contract and that it governed contracts entered into by the manager of a joint family also. That is the principal question for consideration before us.

The learned single Judge of this Court held that the rule laid down in *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri* (1) is not applicable to contracts made by the head of a Hindu joint family consisting of himself and minor coparceners. After a consideration of the question I am of opinion that the view taken by him is correct and must therefore be affirmed. The point under consideration came up for decision in *Hari Charan Kuar v. Kaula Rai* (2) before a Full Bench. CHAMIER, C.J., who delivered the judgment of the Full Bench in that case made the following remarks: "I apprehend that the decisions of their Lordships in the cases of *Mohori Bibee v. Dharmodas Ghose* (3) and *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri* (1) do not apply to contracts made by the managing member of a joint Hindu family for family necessities or for the benefit of the family, i.e., contracts made by the managing members which bind the minor members of the family. Such contracts can be enforced on behalf of the family by the persons who make them and I find nothing in the decisions of their Lordships which requires us to hold that such contracts cannot be enforced against the family. Contracts made not by minors but by persons who have power to make contracts on behalf of a joint family do not appear to come within those decisions. I

1934

---

 DRAPO  
 v.  
 RAM  
 CHANDRA

*Rachpal  
 Singh, J.*

(1) (1911) I.L.R., 39 Cal., 232. (2) (1917) 2 Pat. L.J., 513 (517).  
 (3) (1903) I.L.R., 30 Cal., 539.

1934

DHAPO  
v.  
RAM  
CHANDRA

Rachhpal  
Singh, J.

am not prepared to dismiss this suit for specific performance on the ground that the contract lacks mutuality having been made by or on behalf of minors who are not competent to contract." I agree, if I may say with great respect, with the view taken in the above mentioned Full Bench case decided by the Patna High Court.

It appears to me that a contract made by the manager of a joint family stands on a different footing from a contract made by a mere guardian of the minor or a manager of the minor's estate. A Hindu woman may be a guardian of a minor or a manager of an estate of a Hindu minor. Now, a mere guardian or a manager cannot make a contract which can be enforced against a minor, for want of mutuality. A minor can not enforce a contract specifically which has been made by his guardian or by the manager of his estate. So, on the same principle such a contract can not be enforced against him. But where a contract is made by a karta of a joint family then the position is different. Unlike the case of a guardian or a manager of the estate of a minor, he has his own interest in the joint family estate. To the outside world he represents the entire joint family consisting of himself and other major and minor coparceners. Unlike the guardian or a manager of a minor's estate he can enter into binding contracts on behalf of the whole family. As pointed out by CHAMIER, C.J., in *Hari Charan Kuar v. Kaula Rai* (1): "The interest of a member of a joint Hindu family in the family property is not individual property at all. The manager of such a family is not an agent of the other members nor is he a mere manager. He is much more like a trustee for the other members. It is settled law that a father or a managing member of a joint Hindu family may under certain circumstances and subject to certain conditions enter into agreements which may be binding on the minor members of the family." The distinction between contracts made by a guardian of a

(1) (1917) 2 Pat. L.J., 513 (516).

minor or a manager of the estate of a minor on one hand and contracts made by a managing member of a joint Hindu family consisting of minors is clear. In the first case such a contract cannot be specifically enforced for lack of mutuality, while in the second case there is no want of mutuality because a manager of a joint Hindu family has power to make binding contracts on behalf of the joint family.

According to the law as it stands now, the manager of a joint Hindu family may sue or be sued as representing the family in respect of transactions entered into by him as manager of the family or in respect of joint family property, and a decree passed against him would bind all other members of the family. The only limitation to his power that is, is that it must be shown that he acted for the benefit of the joint family. In the case before us, it was open to the plaintiffs to have sued Reoti alone for the specific performance of the contract as representing the joint family. If a decree had been passed it would have been binding on the other member of the joint family, the minor. The only ground on which he could have challenged that decree would have been that the transaction was not for his benefit. Now, we see that in the case before us a suit was instituted for the specific performance of a contract by the plaintiffs. It was open to them to have sued only the manager as representing the entire family but somehow—in my opinion unnecessarily—they made the minor a party to the suit. The suit was decreed *ex parte* against the minor. It appears that the minor can avoid that decree against him only by showing that the transaction was not for the benefit of the estate and as that point has been decided against him he can not now avoid that decree.

If the contention raised by the learned counsel for the appellants were accepted then the logical consequence of it would be that a manager of a joint Hindu family would never be able to enter into contracts, even

1934

---

 DHAPO  
v.  
RAM  
CHANDRA

*Rachpal  
Singh, J.*

1934

DEAFO  
v.  
RAM  
CHANDRA

if they be for the benefit of the estate, which could be specifically enforced against the members of a joint family. The result would be that the powers of the karta of the family to make binding contracts for the benefit of the joint family would be curtailed.

Rachhpal  
Singh, J.

Another ruling on which reliance was placed by the learned counsel for the appellant is *Srinath Bhattacharjee v. Jotindra Mohon Chatterjee* (1). That case is clearly distinguishable. There the contract was made by several persons who were adults and a guardian of a minor. It was not a case where the contract sought to be specifically enforced had been made by a manager of the joint Hindu family. The learned Judges who decided the case held that there could be no specific performance of the contract, for want of mutuality. In the case before us, as I have shown above, mutuality is not lacking, because the head of the joint family was competent to make a binding contract, in his capacity as a manager, for himself as well as for the minor.

The learned counsel appearing for the appellant has laid particular stress on the following observations made by their Lordships of the Privy Council in *Hunooman Persaud Panday v. Babooee Munraj Koonweree* (2): "The power of the manager for an infant heir to charge an estate not his own is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate." The appellant's learned counsel contends that as there is no difference between the powers of a guardian of a minor or a manager of the minor's estate on one hand and the karta of a joint family on the other hand, so the contracts made by a manager of the same family stand on the same footing as those made by a manager of a minor's estate or by a guardian of an infant heir. I do not think that there is anything in the above cited judgment of their Lordships of the Privy Council to support the contention put forward by the learned counsel

(1) A.I.R., 1926 Cal., 445.

(2) (1856) 6 Moo. I.A., 393 (423).

appearing for the appellant. I may point out that their Lordships of the Privy Council in *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri* (1) clearly stated that they were unable to accept the view that there was no difference between the position and powers of a manager and those of a guardian. I would go further and add, for the reasons given by me above, that there is difference between the position and powers of a manager of the minor's estate and the powers of a manager of a joint Hindu family. In the case of contracts made by a guardian of a minor or manager of minor's estate there is lack of mutuality while in the second case there is no want of mutuality because the manager of a Hindu family has powers to make contracts which would bind the entire family subject to certain limitations. In *Hunooman Persaud's* case their Lordships were only considering the question as regards the extent of the power of a manager of the estate of the minor to make an alienation. The question which has to be decided here did not come up for consideration before their Lordships of the Privy Council.

For the reasons given above I am of opinion that where a manager of a joint Hindu family makes a contract for himself and on behalf of a minor coparcener then such a contract can be specifically enforced against the minor if it is proved that it was made for family necessity or for the benefit of the minor.

I wish to add that in the case before us there are other reasons for which the appeal must fail. The one half of the house in suit has been sold by Reoti to a third party who is in possession under the terms of the second sale deed. The decree for the specific performance of the contract made in favour of the plaintiffs has already been passed against the minor and that decree can be set aside only by showing that the contract made by his brother was not for his benefit. In the case before us

1934

---

 DHAPO  
 2.  
 R.A.M  
 CHANDRA

*Rachhpal  
 Singh, J.*

(1) (1911) I.L.R., 39 Cal., 232.



1934

DEHAPO  
v.  
RAM  
CHANDRA

Ruchhpal  
Singh, J.

it has been found that there existed a family necessity for the same, in favour of the plaintiffs.

For the reasons given above I hold that the decision of the learned single Judge of this Court which is under appeal is correct and I would therefore dismiss the appeal with costs.

SULAIMAN, C.J.:—I agree. If the case had been purely *res integra* there might have been something to be said for the contrary view, but the learned advocate for the appellants has to concede that while there is a Full Bench decision of the Patna High Court, followed by the Nagpur Court, against him which is directly in point, there is no case of any other High Court expressly in his favour.

As pointed out by IQBAL AHMAD, J., there is a marked distinction between the position of a manager of a joint Hindu family and a mere guardian of a minor owner. In the former case the manager represents the whole family as one unit to the outside world and the property is vested in him jointly with the other members. In the case of a mere guardian the property of the minor is not vested in him at all and he is acting merely as the agent of a minor who would not otherwise be capable of acting. In the case of the managing member the contracting party is the whole family as one unit acting through the manager, whereas in the case of a minor owner the contracting party is the minor who, however, acts through his guardian. That the Hindu family is a distinct unit which can sue and be sued and is not merely a group of independent individual members is quite clear. It can own property, it can acquire tenancy rights, *sir* rights, and it can be taxed under the Income-tax Act as a unit and not merely as a group of separate members. Another consideration makes the point clearer still. There may be a joint Hindu family which has not minor members at all but consists of junior members who are all adults. In such a case it would be incongruous to regard the manager of a joint Hindu

family as guardian of the other coparceners, treating them as if they were his minor relations. Such a position would be wholly untenable. In the case of a minor, on whose behalf his guardian acts, there may in certain cases be a lack of mutuality and if the contract cannot be enforced against the minor it may also not be allowed to be enforced on his behalf. In the case of a managing member there are also some limitations and conditions. His authority to alienate family property is not absolute, but is conditional on the existence of a legal necessity or the benefit of the family, or, in a case when he is the father of the other members, the need for the payment of his antecedent debts. But when such conditions exist, then his authority to alienate property is complete and in no way limited. The authority to alienate property necessarily implies authority to contract to alienate it first and then to fulfil the promise by alienating it.

The learned advocate for the appellant contends before us that although his clients would not have had any *locus standi* to challenge the alienation after it had taken place when the existence of legal necessity was established, they are entitled to rescind from it so long as there has been only a decree passed by the court and actual separation of the share by partition or execution and registration of the sale deed has not been effected. Now in ordinary cases a person who has entered into a binding contract for which he had full authority is not allowed to rescind from it. Whether the court would enforce specific performance or not is another matter, which is dependent on various circumstances. The question then is whether the junior members of a joint Hindu family, of which there is a manager who for legal necessity entered into a contract for the sale of the family property, although he has received consideration, can avoid the transaction. As in my opinion there is a clear distinction between the position of the manager of a joint Hindu family and that of a guardian of a minor owner, the rulings relating to such guardians do not

1934

---

 DELAFO  
 v.  
 RAM  
 CHANDRA

*Sulaiman,*  
 C.J.

1934

DEHAPO  
v.  
RAM  
CHANDRA

Sulaiman,  
C.J.

directly apply to the case of managing members. If the authority to alienate existed at the time of the contract then in my opinion a subsequent change of circumstances affecting the family should not make any difference so far as the binding character of the contract is concerned. As pointed out by my learned brother, the manager represents the joint Hindu family to the outside world for the purposes of its dealings, and if the managing members are not allowed to enter into contracts on behalf of the families, which are within the scope of their authority, it would be impossible for the family to carry on any transactions.

I may also add that the authority of the manager to alienate the property or the derived authority to enter into a contract to alienate is vested in the manager under the Hindu law, but once the transaction has matured into a binding agreement the case is really governed by the Indian Contract Act and its specific performance is governed by the Specific Relief Act. Courts have a discretion to refuse specific performance when they are satisfied that the case is not a fit and proper one in which such performance should be ordered. Obviously if it were established that there was no legal necessity for transfer or that it was not for the benefit of the minors concerned, the court would decline to enforce it specifically. But where the contrary is the case and it has been affirmatively established that legal necessity existed or that it was for the benefit of the family, it is difficult to hold that the contract can be avoided simply because the court has only passed a decree which has not yet been fully executed.

I may also add that I am not prepared to accept the contention urged on behalf of the respondents that the minor coparcener has no *locus standi* to raise objections because there is a decree outstanding against him in which he had been impleaded under the guardianship of his elder brother and which has not yet been formally set aside. Section 44 of the Indian Evidence Act has

no application to such a case. If the minor was not in reality properly represented in that suit then he was not a party to that judgment and it cannot stand in his way. The mere fact that he has not yet brought a suit to have it set aside does not debar him from raising the same objection as a defendant in the present suit. I therefore agree that the appeal should be dismissed.

1934

---

 DHAPO  
 v.  
 RAM  
 CHANDRA

 Sulaiman,  
 C. J.

---

 REVISIONAL CRIMINAL
 

---

Before Mr. Justice Bajpai

SUKHDEO v. RAI KISHANJI\*

*Criminal Procedure Code, section 197—Magistrate using insulting language to witness—Complaint against Magistrate under section 504, Indian Penal Code—Sanction of Local Government necessary.*

---

 1934  
 August, 7

A complaint under section 504 of the Indian Penal Code against a Magistrate, on the allegation that he used abusive and insulting language towards the complainant while the latter was giving evidence as a witness in the court of the Magistrate, can not be entertained without the previous sanction of the Local Government, as required by section 197 of the Criminal Procedure Code. All that the court should see in a case like this is whether the officer concerned has been accused of having committed the offence complained of while he was acting or purporting to act in the discharge of his official duty; and if so, the sanction of the Local Government is necessary for the entertainment of the complaint.

Mr. Harnandan Prasad, for the applicant.

The Assistant Government Advocate, (Dr. M. Waliullah), for the Crown.

BAJPAI, J.:—The petitioner was a witness in the court of Rai Kishanji Saheb, Special Magistrate of Benares, and the complaint of the petitioner is that while he was in the witness box the aforesaid Magistrate used insulting language towards the witness. The words alleged to be used are "*haramzada badmash baiman*". The petitioner therefore filed a complaint in the court of the City

---

\*Criminal Revision No. 362 of 1934, from an order of S. B. Chandra mani, Sessions Judge of Benares, dated the 6th of April, 1934.