APPELLATE CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

1938
March, 4

JAI NARAIN LAL AND OTHERS (DEFENDANTS) *v.* BECHOO LAL (PLAINTIFF)*

Guardians and Wards Act (VIII of 1890), section 30—Applies to all certificated guardians, whether also natural guardians or not—Mortgage by certificated guardian without permission of court—Suit on the mortgage—Avoidance of mortgage by the minors—Restoration of benefit—Contract Act (IX of 1872), sections 196, 197—Ratification.

Section 30 of the Guardians and Wards Act applies equally to all certificated guardians, whether they are also the natural guardians or not; the section draws no distinction between a certificated guardian who is also the natural guardian and a certificated guardian who is not the natural guardian.

In a suit to enforce a mortgage of the minor's property, made by the certificated guardian without the permission of the court, the minor or *quondam* minor is entitled to avoid the mortgage, but only on restoration of the benefit actually received by him under it, and to that extent the minor's estate must be held liable.

Where at the date of such mortgage one of the wards had in fact become a major, and the finding was that he had also benefited from the mortgage equally with the other wards who were minors, it was *held* that, having regard to the doctrine of ratification, his position was similar to that of the others and he could not be allowed to avoid the mortgage without restoring the benefit received.

Sir *Syed Wazir Hasan*, Messrs. *Shiva Prasad Sinha*, *S. B. L. Gaur*, *Ram Nama Prasad* and *Hari Ram Jha*, for the appellants.

Mr. *G. S. Pathak*, for the respondent.

COLLISTER and BAJPAI, JJ.:—This is a defendants' appeal arising out of a suit for enforcement of a mortgage. The mortgage deed is dated the 22nd of August,

*Second Appeal No. 143 of 1934, from a decree of C. I. David, Additional Civil Judge of Allahabad, dated the 29th of April, 1933, reversing a decree of Khaliluddin Ahmad, Munsif, East Allahabad, dated the 17th of November, 1931.

1919, and was executed for Rs.2,200 by Mst. Basanti Bibi, defendant No. 6, purporting to act as guardian of defendants Nos. 1 to 5. Actually Jai Narain Lal, defendant No. 1, was *sui juris* at that time. On the 8th of July, 1919, Mst. Basanti Bibi, who is the mother of defendants Nos. 1 to 5, had applied to the District Judge to be appointed guardian of her minor sons, defendants 2 to 5, and on the same day she was duly appointed. There is a finding of fact that defendant No. 1 had attained majority at the date of the mortgage deed in suit and the point is not in controversy before us. Mst. Basanti Bibi, defendant No. 6, is wife of one Manni Lal, but it was the mother and not the father who was appointed guardian by the District Judge.

The rate of interest stipulated in the mortgage bond was ten annas per cent. per mensem with six-monthly rests and the claim was for Rs.4,776-3-6.

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As the case developed at the trial, the following further allegations were disclosed. On behalf of the plaintiff it was said that Manni Lal had squandered the ancestral patrimony and that the house which was the subject-matter of this mortgage had passed into the hands of a man named Paras Ram. Subsequently a dispute arose between Paras Ram on the one hand and Manni Lal and his sons on the other, and the matter was referred to the arbitration of three gentlemen. In November of 1918 the arbitrators gave their award to the effect that if either Mst. Basanti, defendant No. 6, who is the wife of Manni Lal, or Mst. Titto Bibi, who is the mother of Manni Lal, paid a sum of Rs.2,000 to Paras Ram within a year with interest at 12 annas per cent. per mensem, Paras Ram would re-transfer the house to the sons of Manni Lal, i.e., to defendants 1 to 5. On the 20th of August, 1919, Mst. Basanti Bibi agreed to borrow Rs.2,200 from the plaintiff, out of which sum an amount of Rs.2,053 was to be paid to Paras Ram. Next day

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Paras Ram executed a sale deed in favour of the sons of Manni Lal, and on the following day, i.e. on the 22nd of August, 1919, Mst. Basanti Bibi executed the mortgage bond in suit.

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The trial court dismissed the suit on the ground that no consideration had passed; but the lower appellate court has reversed the decree of the trial court and has decreed the suit. The learned Judge finds that there was consideration for the mortgage bond in suit, that those defendants who were minors are bound for the reason that the mortgage was executed for their benefit and that defendant No. 1 is bound because he did not repudiate the transaction and must be held to have tacitly ratified it.

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The next point taken on behalf of the defendants appellants is that since the permission of the District Judge was not obtained for the execution of the mortgage bond in suit, it was void, or at least voidable, as against those defendants who were minors at the date of its execution.

Section 29 of the Guardians and Wards Act provides that a certificated guardian shall not transfer immovable property of his ward without permission of the court; and section 30 provides that ('A disposal of immovable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby."

It will be observed that the word used is "voidable", and not "void". Learned counsel for the defendants, however, pleads that this section is only applicable to a certificated guardian who is also the natural guardian; he contends that if the certificated guardian is not the natural guardian, then a transfer without permission of the court is absolutely void inasmuch as the only warrant that such a guardian can have for making any transfer of the ward's property is the permission of the District

Judge. We do not think that there is any force in this contention. There is nothing in the language of section 30 to justify any such distinction; and in section 4(2) of the Act "guardian" is defined as "a person having the care of the person of a minor or of his property, or of both his person and property". It is thus, we think, clear that the "guardian" contemplated in section 30 of the Act is not only a certificated guardian who is the natural guardian of the ward but also a certificated guardian who is not the natural guardian.

Learned counsel for the defendants next contends that if the mortgage bond in suit is merely voidable and not void, then those defendants who were minors at the time of its execution are entitled to avoid it without making any restitution to the mortgagee.

It is conceded by learned counsel for the plaintiff respondent that it is not necessary that a minor on attaining majority should institute a suit to set aside a transfer effected by the guardian; it is sufficient if he declares his will to rescind the transaction by way of defence when an action is brought to enforce the mortgage against him. But learned counsel for the plaintiff contends that those defendants who were minors are not entitled to avoid this mortgage without restoring the benefit which they have received.

The only authority cited by learned counsel for the defendants appellants which can really be said to be in his favour is the case of *Sultan Singh* v. *Hashmat Ullah* (1). In that case certain minors were sued for recovery of a sum of money which had been advanced to their guardian, and the suit was dismissed. The learned Judges of the Punjab Chief Court at page 805 observe as follows:

"But plaintiff's counsel argues that in any case he is entitled to refund of his actual advances, and he quotes rulings dealing with the well known doctrine that a minor, even if he is entitled

(1) (1915) 29 Indian Cases 804.

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in law to repudiate a transaction done on his behalf by his guardian, should restore to the other party benefits received. The law on that subject is clear and can be stated in a few words, and we need not discuss the rulings in which it is to be found. If a plaintiff sues to undo a transaction entered into by his guardian in his name during his minority, then, *if the other party has acted in good faith and the plaintiff or his estate has actually received benefit*, the plaintiff must, as a condition precedent to the undoing of the said transaction, restore the said benefit. If, however, the minor or *quondam* minor is the *beatus possidens* and is being sued by the other party, ordinarily, according to the authorities, a claim against the minor for refund of the benefit would fail."

The decision of the High Court, however, was apparently based on the finding that the plaintiff had not acted in good faith and that the minors had not benefited from the transaction.

On the other hand, there is abundant authority for the proposition that in a case where property of a minor has been conveyed by the guardian without permission of the District Judge, the minor, in a suit brought against him, cannot avoid the transfer without restoring the benefit which he has received. In *Sinaya Pillai* v. *Munisami Ayyan* (1) certain guardians who had been appointed under the Guardians and Wards Act had mortgaged property belonging to a minor in order to enable them to discharge debts binding on his estate. The necessity had been urgent, the terms of the deed fair and the money had been duly applied, but the guardians had not obtained the sanction of the court as directed by section 29 of the Act. When a suit was instituted, it was pleaded that the mortgage was invalid and incapable of being enforced, and it was held that a mortgage so executed was not void but merely voidable and that the defendant was entitled to avoid the mortgage but only on the condition of restoring any benefit received by him thereunder to the person from whom it had been received.

(1) (1899) I.L.R. 22 Mad. 289.

The next authority to which we will refer is a case of this Court: *Tejpal* v. *Ganga* (1). There a mortgage purporting to bind the estate of a minor was executed on behalf of the minor by his mother, who was not only the natural guardian of the minor but a certificated guardian under the Guardians and Wards Act. The guardian, however, had not obtained the permission required by section 29 of the Act. It was held by this Court that the mortgage was not void, but that, if the minor had in fact benefited by the money borrowed, to that extent the minor's estate ought to be held liable before he was entitled to be relieved against the mortgage. The Madras case, to which we have referred above, was cited, approved and followed.

The next case of this Court is *Maqsud Ali Khan* v. *Abdullah Khan* (2), where the same view seems to have been taken. In that case a lady had executed a mortgage in favour of the plaintiff on her own behalf and on behalf of her minor sons in respect of property which belonged to them both. She was a certificated guardian, but had failed to obtain permission from the District Judge. A month later, with the sanction of the District Judge she sold part of the property to other persons and left with the vendees the amount due on the basis of a prior mortgage and of the mortgage in suit for payment to the respective mortgagees. The vendees discharged the prior mortgage, but did not pay the amount left with them for payment to the plaintiff in respect to the mortgage in suit, and hence the plaintiff sued to recover his mortgage debt by sale of the property mortgaged. The learned Judges remitted certain issues to the lower appellate court and one of those issues was, "To what extent did the minor . . . benefit by the money advanced under the mortgage in suit?"

In *Muhammad Ismail* v. *Gauri Parshad* (3) the plaintiff sued to recover a certain sum of money with interest at 9 per cent per annum, as agreed, due on the foot of

(1) (1902) I.L.R. 25 All. 59. (2) (1927) I.L.R. 50 All. 218.
(3) (1915) 34 Indian Cases, 916.

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two mortgage deeds executed by a lady on behalf of herself and as guardian of her two minor sons and one daughter. She was a certificated guardian and had obtained permission from the District Judge for executing the mortgage but not for agreeing to the payment of interest. It was held by a Bench of the Punjab Chief Court that the guardian's agreement to pay interest and to make that interest a charge upon the property, though not sanctioned by the District Judge, was, under section 30 of the Guardians and Wards Act, merely voidable at the instance of the minor; but that, inasmuch as the guardian could not have succeeded in borrowing money unless she had agreed to pay interest and the loan was in the interests and for the benefit of the minors, they could be allowed to go back upon the agreement only on the condition that they on their part restored all benefits which they had received under it, i.e., the principal amount and a reasonable interest thereon.

In the case with which we are concerned there is a finding of fact that the mortgage was for the benefit of the minors; and there can, in our opinion, be no doubt that defendants Nos. 2 to 5 are only entitled to avoid liability under the mortgage bond in suit if they make restitution to the extent of the benefit which they have received.

The third contention which has been urged before us by learned counsel for the defendants appellants is that Jai Narain, defendant No. 1, was *sui juris* at the time of execution of the mortgage bond and his mother had no authority to make the conveyance on his behalf and in a false capacity as his guardian, and therefore the mortgage bond in suit is absolutely void and ineffectual *qua* this defendant.

The learned Judge of the lower appellate court in dealing with this matter observes that defendant No. 1 "must have known about the transaction" and that "he did nothing to repudiate the transaction or to dissociate himself from his mother's act, and must therefore be

taken to have acquiesced in it or to have tacitly ratified it."

The first argument which is addressed to us on behalf of the plaintiff respondent is to the following effect: Jai Narain affixed his signature on the 21st of November, 1918, to the award in which it was stated that the house would be transferred by Paras Ram to these persons and that Rs.2,000 would be paid to Paras Ram within a year. He, therefore, knew that money was required for the purpose of this house, that the transaction would be for the benefit of the family and that his mother was purporting to act for him; and therefore it is argued that defendant No. 1 must be held to have given at least an implied authority to his mother to act on his behalf.

We are not very impressed by this argument. Jai Narain Lal is in service at Cawnpore, and for all we know to the contrary he may have left Allahabad after the award and before the mortgage deed was executed. If he was present in Allahabad, there is no apparent reason why he should not have been required to sign the mortgage bond, since he was *sui juris* and had already signed the award. The award certainly shows that he was aware that the house was to be purchased from Paras Ram, but it does not show any knowledge on his part that the money was to be raised by means of a mortgage; all that the award indicates is that the money was to be paid by Mst. Titto Bibi or Mst. Basanti Bibi. His knowledge of the intention to purchase the house from Paras Ram and subsequently of the fact of purchase does not necessarily lead to any inference that he was aware of or acquiesced in this mortgage, or that it was executed with his authority.

It is next argued that there is a finding of fact in the judgment of the lower appellate court to the effect that the mortgage was ratified by defendant No. 1 and that this finding is not challenged in the grounds of appeal before us.

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The lower appellate court's finding on this subject is not very satisfactory and does not seem to us to follow logically from his premises, but it is not necessary for us to pursue this matter because our decision will rest upon another ground.

Section 196 of the Contract Act provides that "Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority." Section 197 reads: "Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done." These sections occur in the chapter headed "Agency". Now, Mst. Basanti Bibi was purporting to act on behalf of defendant No. 1 when she executed the mortgage bond in suit; and it cannot be contested that if she had had his authority she would have been competent so to act. The sections of the Contract Act which we have quoted above show that an act done by a person who is not authorised to do it, but who purports to act as an agent for another person, can be retrospectively ratified by such other person. From this it follows logically that such act on the part of the person purporting to act as agent is not void but voidable. If it is not ratified, it will become void; but if it is ratified, it will be validated. This being so, the position of Jai Narain Lal appears to us to be in no way different from the position of defendants Nos. 2 to 5. There is a finding of fact that Jai Narain Lal was benefited by the transaction, and we think that that finding is unassailable. If he was not in possession, actual or constructive, he would have no motive for contesting the suit. He has acquired an interest in the house and has therefore benefited by the transaction to the extent of that interest. In these circumstances we are of opinion that he, like the other defendants, cannot be allowed to avoid the mortgage without first restoring the benefit which he has received.

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The question which now remains to be decided is what amount the defendants should be called upon to pay before avoiding enforcement of the mortgage. Obviously they must pay the principal plus a reasonable rate of interest. A reasonable rate would be 12 per cent per annum simple interest; but the rate contracted for in the mortgage bond, though compoundable, works out at less than this. The rate, therefore, at which the defendants will be required to pay interest cannot be less than the contractual rate. We accordingly modify the decree of the lower appellate court in this way that the defendants are allowed six months in which to repay to the plaintiff the principal plus interest at the rate contracted for in the mortgage bond. If the money is paid within the period allowed, the mortgage bond will not be enforced. If it is not paid, a preliminary decree will therefore be prepared under order XXXIV, rule 4, of the Civil Procedure Code. The plaintiff is entitled to his costs of this appeal.

Before Mr. Justice Bennet and Mr. Justice Verma

DIN DAYAL (DEFENDANT) *v.* SHEO PRASAD (PLAINTIFF)*

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Agra Pre-emption Act (Local Act XI of 1922), sections 4(1); 12(1) class V—"Co-sharers in the village"—Village comprising several mahals—Co-sharer in one such mahal—Right to pre-empt sale of land in another such mahal—"Petty proprietor"—Ownership of a particular plot of abadi land, not liable to pay any land revenue—Interpretation of statutes—Statement of objects and reasons—Proceedings of Legislative Council.

The owner of a share in a mahal or the sole proprietor of a mahal has a right of pre-emption in a different mahal in the same village, as coming under class V, "Co-sharers in the village", of section 12(1) of the Agra Pre-emption Act, read with the definition of "co-sharer" in section 4(1) of the Act.

The statement of objects and reasons of the Agra Pre-emption Act, and the proceedings of the legislative council

*First Appeal No. 462 of 1933, from a decree of B. D. Kankan, Additional Civil Judge of Moradabad, dated the 25th of September, 1933.