

## APPELLATE CIVIL

Before Mr Justice G. H. Thomas, Chief Judge, and  
Mr. Justice Ziaul Hasan

MST. BACHAI (DEFENDANT-APPELLANT) v. HAYAT MOHAM-  
MAD (PLAINTIFF-RESPONDENT)\*

1939  
November,  
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*Contract by minor—Vendee aware of minority before contract of sale—Minor's liability to pay compensation before avoiding contract.*

While it cannot be held that in every case in which relief is granted to a minor he should be made to return the benefit derived by him from his contract, it cannot also be ruled that in no case can any person who seeks to avoid a contract entered into by him in his minority be made to pay compensation to the other party.

Where there is no fraud or misrepresentation on the part of a minor at the time of the sale and the vendee was cognizant of the minority at the time of the sale the vendee is not entitled to claim any compensation. *Mahori Bibee v. Dhurmodas Ghose* (1) referred to.

Mr. K. P. Misra, for the appellant.

Mr. H. H. Zaidi, for the respondent.

THOMAS, C.J., and ZIAUL HASAN, J.:—This is a defendant's appeal under section 12(2) of the Oudh Courts Act against a judgment and decree of a learned Judge of this Court sitting singly.

The plaintiff-respondent brought a suit for possession of two adjacent houses Nos. 612 and 613 in the Court of the Munisif, Sultanpur, against the present appellant on the allegation that the houses originally belonged to his father Chhedi who died leaving him (plaintiff) and a wife and two daughters as his legal heirs but that the defendant took possession of the northern portion in October, 1922, and of the southern portion in July, 1925, in collusion with the plaintiff's mother Mst. Jamni, defendant No. 2, without any right. He there-

\*Section 12(2) Oudh Courts Act Appeal No. 21 of 1937, against the judgment and decree passed by Hon'ble Mr. Justice W. Y. Madeley, Judge of the Chief Court of Oudh, dated the 30th August, 1937.

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fore sued for possession of a 7/16ths share of the houses.

It was found by the trial court that No. 612 was sold by the plaintiff's mother to the present appellant with the permission of the District Judge who had appointed a guardian for the plaintiff and that No. 613 was sold on the 13th August, 1925, by the plaintiff, his mother and his two sisters by sale-deed Ex A-16. The plaintiff's minority was to cease according to the certificate of guardianship issued by the District Judge in 1928. The sale of the houses so far as it affected the plaintiff's 7/16th share was therefore held to be void on account of the plaintiff's minority at the time of the sale. Accordingly a decree was given to the plaintiff for possession of a 7/16ths share "in the southern half portion of the house in suit" and for Rs.86-10 as damages instead of Rs.180 claimed by the plaintiff. Both parties appealed against the trial court's decree but the appeals were dismissed and the trial court's decree affirmed. The defendant then appealed to this Court and the main point argued was that compensation should have been awarded to the appellant by the courts below under section 65 of the Indian Contract Act and section 41 of the Specific Relief Act. The learned Judge of this Court who heard the appeal was however of opinion that this was not a fit case in which compensation should be awarded to the vendee in respect of a contract which was void *ab initio*. The learned Judge however granted permission to the defendant to appeal under section 12(2) of the Oudh Courts Act. Hence the present appeal.

We have heard the learned counsel for the appellant but see no reason to differ from the opinion of the learned Judge of this Court. It has been found by the courts below that there was no fraud or misrepresentation on the part of the minor at the time of the sale and it was admitted that the defendant-appellant knew that Hayat Mohammad had a certificated guardian. It was

argued that the sale was made to raise money for paying earlier mortgages which had been made by the plaintiff's mother for the plaintiff's marriage and that therefore the plaintiff who benefited by the sale should be put to terms and made to pay compensation to the appellant before obtaining possession of the property. A large number of cases have been cited on behalf of the parties but as they lay down no more than that compensation can be awarded against a minor, seeking to avoid a contract, in the discretion of the court if the circumstances so require, they are not of much help to us in deciding the present case. No hard and fast rule can be laid down on the point and while it cannot be held that in every case in which relief is granted to a minor he should be made to return the benefit derived by him from his contract, it cannot also be ruled that in no case can any person who seeks to avoid a contract entered into by him in his minority be made to pay compensation to the other party. We think however that in the present case the fact that the appellant was cognizant of the plaintiff's minority at the time of the sale totally disentitles her to claim any compensation. In *Mahori Bibee v. Dhurmodas Ghose* (1) their Lordships at page 125 referring to sections 38 and 41 of the Specific Relief Act remarked as follows:

"These sections, no doubt, do give a discretion to the court; but the court of first instance, and subsequently the appellate court, in the exercise of such discretion, came to the conclusion that under the circumstances of this case justice did not require them to order the return by the respondent of money advanced to him with full knowledge of his infancy, and their Lordships see no reason for interfering with the discretion so exercised."

We may also remark that the plea now raised was not raised by the appellant in the trial court and no issue was framed on the point.

The appeal has in our opinion no force and is dismissed with costs.

*Appeal dismissed.*

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