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 ADITYA
 DEB.

As each party has succeeded to a certain extent the parties will bear their own costs in this appeal.

ADAMI, J.—I agree.

Decree varied.

APPELLATE CIVIL.

Before Das and Fazl Ali JJ.

THAKUR GOBARDHAN LAL

v.

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 July, 12.

Guardian and Wards Act, 1890 (Act VIII of 1890), sections 28, 29 and 31—contract by guardian to sell minor's property—District Judge, sanction of, obtained subsequently—contract, whether can be specifically enforced—certificated guardian, sale by, in contravention of sections 28 and 29, whether void—sanction under section 31, effect of.

A certificated guardian may enter into a contract with an intending purchaser to sell the minor's property, but such a contract is subject to sanction being accorded by the District Judge to the proposed transaction, and, when the sanction has been accorded, the transaction becomes a completed contract by virtue of that sanction and can be specifically enforced.

Chhitar Mal v. Jagan Nath Prasad (1) and *Shaikh Abdul Haq v. Mohammad Yehia Khan* (2), distinguished.

A sale by a certificated guardian in contravention of sections 28 and 29, Guardian and Wards Act, 1890, is not void but voidable at the instance of any other person affected thereby.

*Second Appeal no. 407 of 1926, from a decision of M. S. Hasan, Additional Subordinate Judge of Ranchi, dated the 23rd February, 1926, reversing a decision of Babu Ramesh Chandra Sur, Munsif of Daltonganj, dated the 16th June, 1924.

A sanction to sell the minor's property accorded by the District Judge under section 31 is complete authority to the certificated guardian to sell to any person he likes who is willing to comply with the terms upon which permission is given by the District Judge.

Appeal by the plaintiffs.

The facts of the case material to this report are stated in the judgment of Das, J.

Sir Sultan Ahmad, (with him *Ragho Saran Lall*, *Deoki Prasad Sinha*, *S. M. Gupta* and *P. Deyal*), for the appellants.

S. Sinha (with him *B. P. Varma*), for the respondents.

DAS, J.—This was a suit by the appellants for specific performance of a contract to sell to them an 8-annas share of tola Dhobni appertaining to mauza Kutumu for the sum of Rs. 1,800. The date of the contract is not mentioned in the plaint; but there is little doubt on the pleadings and on the evidence in the case that, according to the plaintiffs, the contract was concluded on the 27th of February, 1923. The defendant no. 1 is a minor, and it is the plaintiffs' case that the contract was concluded with them by the certificated guardians of the defendant no. 1. The certificated guardians applied to the learned District Judge for sanction to sell the property in question to the plaintiffs for the sum of Rs. 1,800. On the 3rd of May, 1923, the sanction was accorded. On the 27th of May, 1923, however, the certificated guardians sold the disputed property to the defendants-second-party for a sum of Rs. 1,900. It is not disputed that the minor did not make a better bargain by selling the property in question to the defendants-second-party, for though the defendants-second-party gave Rs. 100 more to the minor they got certain additional advantages which were not secured to the plaintiffs under their agreement with the defendants-first-party. The Court of first instance found that the agreement

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was established and that as the defendants-second-party had notice of the prior agreement with the plaintiffs that Court gave a decree to the plaintiffs substantially as claimed by them. The lower Appellate Court has dismissed the suit on the ground that there was not a concluded contract between the plaintiffs and the defendants-first-party.

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The view of the lower Appellate Court appears to be that in a case of this nature a contract cannot be said to be concluded until the sanction has been accorded by the District Judge; and on the facts it found that nothing took place between the plaintiffs and the defendants-first-party after the 3rd of May 1923 when the sanction was actually accorded by the learned District Judge. The finding of the lower Appellate Court on this point may be stated in its own words. Dealing with this point the learned Subordinate Judge says as follows:—" Now in this case it is clear that the sanction under Ex. 12 to sell the property in suit to the plaintiffs was obtained on the 3rd of May 1923. No amount of argument can therefore be entertained that the contract was completed before the necessary sanction of Court so as to be enforceable for being specifically performed. The fact that between the contracting parties in the case the consideration for the property to be sold was settled on 27th February 1923 can in no sense be said to have assumed the shape of a completed contract when the Court sanction was not given to it until about three months later"; and the learned Subordinate Judge referred to the case of *Chhitar Mal v. Jagan Nath Prasad* (1) in support of his conclusion. In view of this finding the learned Subordinate Judge did not enter upon the other question, viz., whether the defendants-second-party had notice of the prior contract upon which the plaintiffs rely; and in accordance with that view he has dismissed the plaintiffs' suit.

(1) (1907) I. L. R. 29 All. 218.

I am of opinion that the view of the learned Subordinate Judge cannot be sustained. Mr. Sachchidananda Sinha has supported the decision of the learned Subordinate Judge by reference to what was alleged to have been held by Foster, J. in *Shaikh Abdul Haq v. Mohammad Yehia Khan* (1). That was a case where the plaintiff sued for specific performance of an agreement entered into between him and the certificated guardian of a minor without the previous sanction of the District Judge. This Court had no difficulty in holding that such an agreement could not be carried into effect. Dealing with this point Foster, J. said as follows:—"In this case it is not denied that the mother defendant no. 2 was the legal guardian of the minor defendants, appointed by the District Judge of Patna, under Act VIII of 1890. Under section 27 of that Act she could do all acts which are reasonable and proper for the realization, protection or benefit of the minors' property; but under sections 29 and 30 she could not validly mortgage, or charge or transfer any part of the immoveable property of the minors without the previous permission of the Court." Stopping here for a moment, it is not open to doubt that the law was correctly laid down by Foster, J. in the case to which I have just referred; but that learned Judge proceeds to say as follows:—"The word 'previous' is important, for it explains how a contract of sale made by a certificated guardian without the permission of the District Judge has been treated by the Court as 'a contract made by a trustee in excess of his powers' and so incapable of being enforced specifically under section 21 of the Specific Relief Act"; and the learned Judge refers to the case of *Narain v. Aukhoy* (2) in support of his conclusion. We must read the judgment in connection with the facts in that case. As I have mentioned, the facts were that the certificated guardian sold certain

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(1) (1928) 4 Pat. L. T. 553 (561).

(2) (1886) I. L. R. 12 Cal. 152.

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property to the plaintiffs in that case without obtaining the sanction of the District Judge, and the point established in that case was that such a contract could not be specifically enforced. Foster, J. may have put the proposition a little more broadly than the facts warranted; but there is no reason to take the view that it was the opinion of Foster, J. that a contract entered into by the certificated guardian without the sanction of the District Judge is not capable of being specifically enforced if sanction is afterwards obtained by the certificated guardian. The case to which the learned Judge refers certainly does not support the broad proposition for which Mr. Sachchidananda Sinha contends before us. I read the head-note of that case which correctly lays down what was decided in that case:—

“ A certificated guardian of certain minors entered into an agreement with the plaintiff to sell certain land belonging to them for a fixed price contingent upon the leave of the Court, which was necessary, being obtained to the transaction, and a portion of the purchase-money was paid by the plaintiff. The court sanctioned the sale, but at a higher price than that agreed on between the plaintiff and the guardian, and the latter sold to a third party. The plaintiff, thereupon sued the minors by their guardian as next friend and the third party for specific performance of the agreement to sell to him at the price mentioned in the agreement.

Held, that the contract was not one which could be specifically enforced, and that section 26 of the Specific Relief Act did not apply. The contract as it stood was never a complete contract at any time, as it was contingent upon the permission of the Court, and the permission of the Court did not extend to the whole contract as agreed upon between the parties.”

I entirely agree with the decision in that case; but what has that decision laid down? It is this, that a contract between a certificated guardian and a person for the sale of a property of the minor of that guardian is contingent upon the permission of the Court. I have no doubt that this is a correct proposition of law; but, when the contingency happens, then by virtue of the sanction the contract becomes a completed one, and, in my opinion, no case has gone to this extent that, after the sanction is actually accorded, it is necessary for the certificated guardian to solemnly enter upon another contract with the

proposed purchaser. And a consideration of the various sections of the Guardian and Wards Act (Act VIII of 1890) will lead to the same result. Section 29 provides that, where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immoveable property of his ward. It is obvious that section 29 bars the right of a certificated guardian to mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immoveable property of his ward; it does not bar his right to enter into a contract with an intending purchaser for the sale of any portion of the property belonging to the ward to him. Section 31 provides that, permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward. It is obvious, therefore, that there is no bar in the Guardian and Wards Act upon the right of a certificated guardian to enter into a binding contract with an intending purchaser subject to the sanction of the Court. No doubt such a contract will not give a right to the certificated guardian to sell the property unless sanction of the Court is obtained under section 31 of the Guardian and Wards Act, nor will it give a right to the intending purchaser to sue the minor for specific performance of the contract unless the sanction has been accorded by the District Judge; but it seems to me that it is going too far to suggest that a certificated guardian cannot enter into a contract with an intending purchaser without the sanction of the District Judge, and that the intending purchaser has no right to sue the minor for specific performance after the sanction has actually been accorded afterwards. The true view, in my opinion, is that a certificated guardian can enter into a contract with an intending purchaser, but

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such a contract is subject to sanction being accorded to the proposed transaction and that, when the sanction has been accorded, the contract becomes a completed contract by virtue of that sanction. I hold, therefore, that in this case there was a concluded contract between the plaintiffs and the defendants-first-party.

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I should like to say one word upon the case to which the learned Subordinate Judge refers—the case of *Chhitar Mal v. Jagan Nath Prasad* (1). In that case the certificated guardian of a minor obtained the sanction of the District Judge for sale of the minor's property for Rs. 725 to the plaintiff. Subsequently the guardian discovered that he could sell the property to another person for the sum of Rs. 825. He went up to the District Judge for sanction to the second contract, obtained the sanction and sold the property for Rs. 825. The plaintiff thereupon brought a suit for specific performance of his agreement. In refusing to give a decree for specific performance to the plaintiff the Court relied upon the principle that a Court will never enforce specific performance against a minor when such enforcement is to his detriment. It is a principle which is well recognized in the Courts of equity; but it has no bearing on the present case, for, as I have already pointed out, the sale to the defendants-second-party is on terms identical with those upon which the certificated guardian proposed to sell the property to the plaintiffs.

Then arises the question whether the defendants-second-party had notice of the prior agreement upon which the plaintiffs rely. Sir Sultan Ahmad, appearing on behalf of the plaintiffs-appellants, contends that as the District Judge did not sanction the sale to the defendants-second-party, the question of notice does not arise, for the sale must be held to be void. The answer to this argument is to be found in section 30 of the Guardian and Wards Act, which provides that a disposal of immoveable property by

(1) (1907) I. L. R. 29 All. 218.

a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby. It is obvious, therefore, that a sale by a certificated guardian in contravention of sections 28 and 29 of the Guardian and Wards Act is voidable and not void. But there is a more fundamental objection to the argument which has been advanced by Sir Sultan Ahmad, and that objection has been put before us with great clearness and precision by Mr. Sachchidananda Sinha. It is to be noted that, all that the District Judge has to consider in an application by the certificated guardian for sale of the minor's property is, whether such a sale is necessary or is for the evident advantage of the ward, and in granting permission all that the Court should do is to say that the transaction may take place at a certain figure which should be mentioned by the District Judge. But it is no part of the duty of the District Judge under the Guardian and Wards Act to direct the certificated guardian to sell to a certain party: so that, it follows that, the sanction under section 31 of the Guardian and Wards Act is complete authority to the certificated guardian to sell to any person he likes who is willing to comply with the terms upon which permission to sell is accorded by the District Judge. It seems to me, therefore, that the sale to the defendants-second-party is a perfectly good sale, unless it is established that they had notice of the prior agreement upon which the plaintiffs rely. On this point the Court of first instance gave an emphatic decision in favour of the plaintiffs. The lower Appellate Court has not gone into this matter probably for the reason that the question was not argued before him on behalf of the defendants-second-party. It was contended on behalf of the plaintiffs by Sir Sultan Ahmad that we should not enter upon this question as the defendants-second-party must be deemed to have accepted the decision of the first Court on this point. The argument of Sir Sultan Ahmad is perfectly right; but it occurred to us that the Advocate arguing on behalf of the defendants-second-party

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in the Court below may have declined to argue this point inasmuch as the lower Appellate Court was completely in his favour on the other question which has already been discussed. We thought, therefore, that it was necessary for us to remand the case to the lower Appellate Court for a decision on this point. But on a further consideration we took the view that we should read the evidence for ourselves in order to avoid a remand and to come to a conclusion on this point. We have read the evidence and we are emphatically of opinion that the decision of the Court of first instance on this point is perfectly correct, and that it would be impossible to contend that the defendants-second-party did not have notice of the prior agreement between the plaintiffs and the defendants-first-party. To start with, it is improbable that the defendants-second-party entering into a transaction with the certificated guardian should enter into that transaction without satisfying themselves that sanction had been accorded to the certificated guardian to deal with the minor's property, and if they did so, they would find on the face of the order of the learned District Judge that there was a prior agreement between the plaintiffs and the defendants-first-party; and we have it clearly in the evidence of one of the guardians, who has been examined in this case, that full notice of the prior agreement was given to the defendants-second-party. In my opinion, therefore, the plaintiffs have completely established their case not only as against the defendants first-party but also as against the defendants-second-party.

I would, therefore, allow this appeal, set aside the judgment and the decree of the lower Appellate Court and restore the judgment and the decree of the Court of first instance. The plaintiffs are entitled to their costs throughout.

FAZL ALI, J.—I agree.

S. A. K.

Appeal allowed.