

APPELLATE CIVIL.

Before Mr. Justice Le Rossignol and Mr. Justice Harris n.

MUHAMMAD HAFIZULLAH KHAN
(DEFENDANT)—Appellant,

versus

BULAQI MAL AND RAM LAL (PLAINTIFFS)—
MRS. MARUF (DEFENDANT)—Respondents.

Civil Appeal No. 2574 of 1919,

Minor—Right of, to avoid a transaction effected by his guardian—whether personal only or exercisable by a transferee.

In 1915 the defendant, Mrs. M., a Christian widow, acting as guardian of her minor son, executed a registered lease in favour of the plaintiff-respondents for 15 years of the land in suit in consideration of Rs. 1,000, and in 1916 she sold the same land to the defendant-appellant describing it as free of all encumbrance. Plaintiffs sued for possession under their lease and were met by a plea on behalf of the defendant that the lease was not for the benefit of the minor and therefore not valid.

Held, that the right to avoid is a personal privilege and though a minor may sue through a next friend to set aside a transfer even during his minority, he and he alone can exercise this personal privilege.

A transferee is not entitled to assume the privileges which are personal to the minor whether the transfer was effected after or before the minor attained majority.

Muthukumara Chetty v. Anthony Udayar (1), followed.

Mohantal V. Kisan (2), disapproved.

Second appeal from the decree of A. E. Martineau, Esquire, District Judge, Lahore, dated the 25th August 1919, reversing that of Fakir Sayad Said-ud-din, Munsif, 1st Class, Lahore, dated the 4th April 1919, and decreeing plaintiffs' suit.

GOKAL CHAND NARANG, for Appellant

TIRATH RAM, for Respondents.

The judgment of the Court was delivered by—

HARRISON J.—The facts in this case are quite simple, but a somewhat difficult point of law is involved.

(1) (1912) I.L.R. 38 Mad. 867, 877.

(2) (1920) 62 Indian Cases 218.

Mrs. Maruf, a Christian widow, acting as guardian of her son, Muhammad Aslam Maruf, first executed a lease on the 22nd of June 1915 in favour of Bulaqi Mal and Ram Lal for a period of fifteen years in consideration of a sum of Rs. 1,000.

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Subsequently on the 6th of October 1916 she sold the same land to *Sardar* Muhammad Hafiz Ullah Khan describing it as free of all encumbrance. Both the instruments were registered. Plaintiff now sues for possession of the land leased to him and is met by a plea on behalf of defendant that the transaction was not for the benefit of the minor and therefore the lease is not valid. The finding of the learned District Judge is that this plea could only be taken by the minor who has not been impleaded in the case; that the contract is only voidable and not void; and that therefore the transferee from the minor cannot question plaintiff's title. We have been referred to various authorities and more especially to *Mohan Lal v. Kisan* (1), a decision of the Judicial Commissioner of Nagpur, which is to the effect that a transferee from a minor after he has attained majority can challenge the alienations made by that minor during his minority. As against this we have *Muthukamara Chetty v. Anthony Udayar* (2) where it is explained that a right to avoid is a personal privilege and though a minor may sue through a next friend to set aside a transfer, even during his minority, he and he alone can exercise this personal privilege. With this view we agree and we find that a transferee is not entitled to question a previous transaction or to assume the privileges which are personal to the minor and to nobody else whether the transfer was effected after or before the minor attained majority.

We therefore find that the plaintiff is entitled to the decree he seeks and we dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

(1) (1920) 62 Indian Cases 313.

(2) (1912) 21 L. R. 33 Mad. 867, 877.