

APPELLATE CIVIL.

*Before Mr. Justice Mya Bu.*KO MAUNG U *v.* MA HLA ON.*1939

Jan. 13.

Minor transferor—Cancellation of transfer on ground of minority—Transferee's claim to compensation—False representation by minor of his age—Transaction induced by false representation—Statement as to age no influence on transaction—Court's discretion to order refund of purchase money—Specific Relief Act, s. 41.

The Court in the exercise of its discretion under s. 41 of the Specific Relief Act would order the refund of the purchase money by way of compensation to the transferee from a minor upon the cancellation of the instrument of transfer on the ground of the transferor's minority at the time of the transaction, if the transaction was brought about by the false representation of the minor as to his age. But if the statement as to age had no influence on the transaction, and it would have been entered into whether the statement was made or not, the transferee cannot claim compensation from a minor transferor on the cancellation of the instrument.

Khan Gul v. Lakhia Singh, I.L.R. 9 Lah. 701 ; *Mohori Bibee v. Dhurmodas*, 30 I.A. 114 ; *Muhammad Said v. B. Nath*, I.L.R. 45 All. 644, referred to.

Ba Han for the appellant.

Zeya for the respondent.

MYA BU, J.—This appeal has arisen out of a suit instituted by the respondent under section 39 of the Specific Relief Act for cancellation of a deed of sale on the ground that it was void on account of her minority at the time of the transaction. The appellant who contested the suit on various grounds, such as that the respondent was not a minor at the time of the transaction, also claimed that on the cancellation of the deed the respondent should be ordered to make a refund of the purchase money which he (the appellant) had paid for the land that was transferred under the deed. This claim was made under section 41 of the Specific Relief Act.

Both the trial Court and the lower appellate Court decided all the points in dispute in favour of the

* Special Civil 2nd Appeal No. 80 of 1938 from the judgment of the District Court of Maubin in Civil Appeal No. 3 of 1937.

1939
KO MAUNG U
v.
MA HLA ON.
MYA BU, J.

respondent, and held that as the respondent was a minor at the time of the transaction, the transaction was void, and consequently directed the cancellation of the deed of sale. With reference to the appellant's claim under section 41 of the Specific Relief Act the trial Court upon the evidence came to the conclusion that there was active misrepresentation on the part of the respondent as to her age, which was alleged to be 19 years, and that therefore the appellant was entitled to have the amount which he paid as purchase money refunded to him by the respondent upon the cancellation of the deed of sale. The lower appellate Court, however, came to the conclusion upon the evidence in the case that no active misrepresentation on the part of the respondent as to her age was proved and that the appellant entered into the transaction with his eyes open to the fact that the respondent was a minor, and therefore held that the appellant was not entitled to have the amount paid by him as purchase money refunded to him.

Before the filing of this suit the respondent had filed a suit to enforce an unregistered written agreement entered into at the time of the execution of the deed of sale under which the appellant promised to reconvey the property mentioned in the deed on the respondent paying him the purchase money with an additional sum. The appellant contested that suit which failed on the ground that the agreement relied upon by the respondent not being a registered one was invalid. Both parties to that suit led evidence upon various issues of fact which were framed in that proceeding. Therefore in the present litigation the parties agreed in the trial Court that the evidence taken in the previous suit should be treated as evidence in the present case. In addition to such evidence the parties were given the liberty to adduce such further evidence that they

desired to adduce in this case. Therefore the evidence relied on by the parties in this case has been mainly evidence which was not recorded by the learned Judge who tried this case.

1939
 KO MAUNG U
 v.
 MA HLA ON.
 MYA BU, J.

[Examining the evidence his Lordship held that the appellant never had in his mind the question of minority or majority of the person who was going to execute the deed of sale in his favour. His Lordship said : " Upon the facts of the case in my opinion it is safe to hold that it was not the alleged declaration of her age to be 19 that had any influence on the transaction at all, and that this transaction would have been entered into whether that statement was made or not." His Lordship continued :]

The question is whether in these circumstances the Court should exercise the discretionary power under section 41 ; that is whether the Court will require the respondent to make any compensation to the appellant, and it resolves itself into whether justice requires the making of such an order.

In *Mohori Bibee v. Dhurmodas Ghose* (1) it was held that the false representation made to a person who knows it to be false is not such fraud as to take away the privilege of infancy. In that case the Courts found that the agent of the mortgagee had not acted upon, nor was misled by, the statement by the mortgagor as to his age but had been fully aware at the time the mortgage was executed of the minority of the mortgagor. In those circumstances their Lordships upheld the view of the Courts in India that under the circumstances of the case justice did not require them to order the return by the respondent of money advanced to him with full knowledge of his infancy.

(1) (1903) I.A. 114 ; I.L.R. 30 Cal. 539.

1939
 KO MAUNG U
 MA HLA ON.
 MYA BU, J.

In *Khan Gul and another v. Lakha Singh and another* (1) a Full Bench of the Lahore High Court held, Harrison J. dissenting, that a minor who had entered into a contract by means of a false representation as to his age, though not liable under the contract, may, in equity, be required to return the benefit he had received by making a false representation as to his age. There the facts of the case showed that the minor had falsely represented himself to be a major and induced a person to enter into a contract with him. I do not think that the alleged statement made by the respondent to Maung Po So can be regarded as an inducement by the respondent to the appellant to enter into the transaction, because, as I have pointed out, upon the facts and circumstances of the case the appellant would have taken the sale from the respondent even if she never made that statement to Po So.

In *Muhammad Said v. Bishambhar Nath* (2) Sir Grimwood Mears C.J. and Piggott J. of the Allahabad High Court pointed out that in each case the test must be the conduct of the parties, and observed in the course of the judgment :

“ Purchasers or money-lenders who deal with persons who are hovering upon majority, and the ascertainment of whose age is impossible, must not complain if their cupidity leads them at times into litigation and loss.”

My view as to the principle laid down by this case is that where a minor by false representation as to his or her age induces another to enter into a transaction it is just that the latter should be refunded the money that was paid to the minor as consideration. In my opinion it is not proper to exercise the discretion under section 41 of the Specific Relief Act in favour of a transferee from a minor upon the cancellation of the

(1) (1928) I.L.R. 9 Lah. 701.

(2) (1923) I.L.R. 45 All. 644.

instrument of transfer on the ground of the transferor's minority at the time of the transaction, unless the transaction has been the consequence of the false representation by the minor as to age.

Before I conclude I must mention that in 1932 when Maung Ba Maung was required by the revenue officer to furnish security for the fishery license fees the respondent, who was then only 13 years of age, offered herself as his surety by a petition in which she stated her age to be 16. It is surprising to find that the revenue officer concerned accepted her suretyship and the lease was issued to Maung Ba Maung. Judging by that conduct it seems that the respondent was a person who would be willing to make a mis-statement of her age at the beck and call of Maung Ba Maung ; but it cannot be said that she put herself forward as a major, and that circumstance does not by itself support the theory of her having actively misrepresented her age on the occasion of the transfer in question.

In all the circumstances of the case I see no sufficient reason for interfering with the judgment of the lower appellate Court on this point. The appeal fails and it is dismissed with costs.

1939

KO MAUNG U

v.

MA HLA ON.

MYA BU, J.