

APPELLATE CIVIL.

Before Mr. Justice Crowe and Mr. Justice Chandavarkar.

1903.

March 4.

NATHU PIRAJI MARWADI (ORIGINAL PLAINTIFF), APPELLANT, v.
BALWANTRAO BIN YESHWANTRAO AND ANOTHER (ORIGINAL
DEFENDANTS), RESPONDENTS.*

*Minor--Guardian--Adopted son--Sale by adoptive mother--Suit by son to set
aside sale--Purchase money paid by vendee to mother not recoverable from
the son.*

A Hindu mother, while her adopted son was a minor and had a guardian of property appointed to him by the Court, alienated some of the minor's property, treating it as her own. The adopted son, on attaining his majority, sued to set aside the sale.

Held, that the mother had no power to alienate the property and that the sale should be set aside.

Held, also, that although the purchase money had been applied by the mother in payment of debts for which the plaintiff was liable and the plaintiff had thereby benefited, yet the defendant was not entitled to recover the purchase money from the plaintiff. The debts had been paid not as the plaintiff's debts, but as the debts of the mother who claimed adversely to her son.

SECOND appeal from the decision of T. D. Fry, District Judge of Násik, reversing the decree passed by Khán Sáheb P. J. Talyarkhan, Joint Subordinate Judge of Násik.

Suit by an adopted son to recover land sold during his minority by his adoptive mother.

The land in question originally belonged to one Piraji Marwadi, who died in 1883. After his death his widow Gangabai adopted the plaintiff (Nathu), who was then a minor. She continued in possession and management of the property and she filed suits in the name of the plaintiff, but in 1885, in consequence of certain disputes, the plaintiff's natural brother Suklal Khemchand obtained from the District Court a certificate of guardianship and administration to the person and property of the plaintiff. Suklal, however, did not obtain possession of the property, which remained with Gangabai. She subsequently began to deal with it as her own. On the 29th January, 1887, she sold the land in suit to the defendant for Rs. 400, conveying it as her own and not as that of the minor plaintiff. Of the Rs. 400 she applied

* Second Appeal No. 220 of 1902.

Rs. 200 in satisfying a decree against the estate of her deceased husband Piraji, Rs. 150 in defraying the funeral expenses of one Jethi, her husband's sister-in-law, and the remaining Rs. 50 were spent on her own maintenance.

Gangabai died in 1888. Plaintiff attained his majority in March, 1894, and on the 17th March, 1897, he filed this suit to recover the land from the defendant, contending that Gangabai had no right to sell it.

The defendant pleaded, *inter alia*, that the sale to him was *bond fide* and for valuable consideration and that the plaintiff was bound by it. He alleged that he had spent Rs. 1,000 or Rs. 1,500 in improving the land.

The Court of first instance held that the sale by Gangabai was not binding on the plaintiff and it passed a decree that the plaintiff should recover possession of the land on paying the defendant Rs. 400. This sum was arrived at by allowing Rs. 200 which were spent in satisfying the decree against Piraji's estate and by estimating the value of the improvements made by the defendant at Rs. 200.

On appeal the District Judge held that Gangabai was entitled to sell the property in order to meet the expenses she had incurred. He accordingly reversed the decree of the lower Court and dismissed the suit with costs.

The plaintiff appealed to the High Court.

Scott (Advocate General) (with him *R. R. Desai*) for appellant (plaintiff) :—At the date of the sale by Gangabai, the minor had a certificated guardian appointed by the Court. Gangabai was therefore a mere stranger. There is no case in which a sale by a stranger in possession of a minor's property has been upheld as one by a *de facto* guardian when a certificated guardian was in existence. Gangabai had no title whatever and could give none to the defendant: *Abhassi Begum v. Moharane Rajroop*⁽¹⁾; *Court of Wards v. Kupulmun*⁽²⁾; *Debi Dutt v. Subodra*.⁽³⁾

An alienation even by a guardian appointed under the old Guardians and Wards Act (XX of 1864) is void, and under the

(1) (1878) 4 Cal. 33.

(2) (1873) 19 Cal. W. R. 164.

(3) (1876) 2 Cal. 283.

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present Act (VIII of 1890) an alienation by a guardian without the sanction of the Court is also null and void: see *Lala Hurro Prosad v. Basaruth Ali*⁽¹⁾; *Dattaram v. Gangaram*⁽²⁾; *Choksi Motilal v. Mansang*⁽³⁾; *Chandrabhat v. Sangapa*.⁽⁴⁾

There is no equity regarding repayment of the consideration money, as the sale was absolutely void.

Branson (with him *D. A. Khare*) for the respondents (defendants):—It is not the case that where there is a certificated guardian a *de facto* guardian cannot act at all: see *Honapa v. Mhalpai*.⁽⁵⁾ The restrictions imposed by the Guardians and Wards Act (VIII of 1890) do not apply to an uncertificated guardian. It may be that an uncertificated guardian cannot give a perfect title; but where the minor has benefited by an alienation he cannot set it aside without paying back the purchase money. Counsel referred to *Vishnu v. Ramchandra*⁽⁶⁾; *Nathuram v. Shoma*⁽⁷⁾; *Lala Hurro Prosad v. Basaruth Ali*⁽¹⁾; *Abhassi Begum v. Moharane Rajroop*⁽⁸⁾; *Manishankar v. Bai Muli*⁽⁹⁾; *Girraj v. Kazi Hamid*⁽¹⁰⁾; *Sreemutty Ahfutoonnissa v. Gobuck Chunder*⁽¹¹⁾; *Gungya Pershad v. Phool Singh*⁽¹²⁾; *Anpuranabai v. Lurgapa*⁽¹³⁾; *Nottingham Permanent Benefit Building Society v. Thurstan*⁽¹⁴⁾; *Til Koer v. Roy Anand Kishore*⁽¹⁵⁾; *Guthrie v. Abool Mozuffer*.⁽¹⁶⁾

CHANDAVARKAR, J.:—We think that the lower Appellate Court has taken an erroneous view of the law in rejecting the plaintiff's claim on the ground that the defendant derived his title during the plaintiff's minority from the mother of the latter acting as the *de facto* guardian of the minor. The sale-deed purports to deal with the property as the mother's and there is no mention whatever in it of the minor. The minor must, therefore, be taken to have been completely ignored and that at

(1) (1898) 25 Cal. 909.

(2) (1898) 23 Bom. 287 at p. 290.

(3) (1898) P. J. 5.

(4) (1875) P. J. 312.

(5) (1890) 15 Bom. 259.

(6) (1886) 11 Bom. 130.

(7) (1890) 14 Bom. 562.

(8) (1878) 4 Cal. 33.

(9) (1888) 12 Bom. 686.

(10) (1876) 9 All. 340.

(11) (1874) 22 Cal. W. R. 77.

(12) (1868) 10 Cal. W. R. 106.

(13) (1894) 20 Bom. 150.

(14) (1903) A. C. 6.

(15) (1882) 10 Cal. L. R. 517.

(16) (1871) 14 M. I. A. 52.

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a time when the mother was not the guardian of the minor's property, which was then vested in the Court under Bombay Act XX of 1864, and the Court had appointed one Suklal as guardian and administrator of it. In selling the property to the defendant the plaintiff's mother acted adversely to the minor and her act could not bind him. The sale, therefore, in favour of the defendant must be set aside and the plaintiff is entitled to recover the property.

But it is urged that the plaintiff cannot recover it without paying to the defendant the purchase money which went to satisfy debts binding on the minor. Assuming that it did, and that the minor benefited from it, we see no equity in favour of the defendant which entitles him to payment by the plaintiff of moneys which he had paid to the plaintiff's mother, not as his guardian, but as acting and purporting to act on her own behalf adversely to the minor. As held by the Privy Council in *Ram Tuhul Sing v. Biseswar Lall Sahoo*,⁽¹⁾ "it is not in every case in which a man has benefited by the money of another that an obligation to repay that money arises. The question is not to be determined by nice considerations of what may be fair or proper according to the highest morality. To support such a suit, there must be an obligation, express or implied, to repay. It is well settled that there is no such obligation in the case of a voluntary payment by A of B's debt. Still less will the action lie when the money has been paid, as here, against the will of the party for whose use it is supposed to have been paid."

In the present case the defendant paid the debts of the plaintiff, not as the plaintiff's debts or for the plaintiff, but as debts binding on his mother. The payment cannot, therefore, come under section 70 of the Indian Contract Act (IX of 1872), because it was not made for the plaintiff. It must under these circumstances be held to have been a purely voluntary payment and the remarks of the Calcutta High Court in *Abhassi Begum v. Moharanees Rajroop Koonwar*⁽²⁾ apply to the facts of this case.

We must, therefore, reverse the decree of the Court below and award the claim against respondent No. 1 with costs on him.

Decree reversed.

(1) (1875) 2 I. A. 131 p. 143; 23 Cal. W. R. 305 at p. 308.

(2) (1878) Cal. 33.