ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

1935
March 12

THE GREAT AMERICAN INSURANCE CO. LTD. (ORIGINAL DEFENDANTS), APPELLANTS, *v.* MADANLAL SONULAL (ORIGINAL PLAINTIFF), RESPONDENT.*

Indian Contract Act (IX of 1872), section 11—Minor—Contract on behalf of minor by his guardian—Minor can sue on such contract.

The plaintiff, who was a minor, was the sole surviving coparcener of a joint Hindu family. The family carried on business of moneylending and cotton. The business was carried on under the superintendence of the plaintiff's sister's husband. Some cotton belonging to the plaintiff was insured with the defendant Company under instructions from the plaintiff's guardian. The said cotton was destroyed by fire during the period of the insurance. On a suit being filed by the minor to recover the amount of loss caused by fire, an issue was raised whether there was any valid contract of insurance between the minor plaintiff and the defendants:

Held, (1) that the contract sued upon was not a contract which was made by a minor, but it was one validly entered into on his behalf by his *de facto* guardian;

(2) that the minor, for whose benefit the contract was entered into by his guardian, was entitled to sue on the contract.

SUIT to recover money under a policy of fire insurance.

The plaintiff was the sole surviving co-parcener of a joint Hindu family which carried on business *inter alia* as money-lenders and cotton merchants at Devalgaum Raja, in Central Provinces in the name of Surajmal Sonulal. The plaintiff was a minor and his family business was carried on under the superintendence of his sister's husband, Gordhandas Mohanlal, with whom he was residing.

The plaintiff's firm owned cotton which was stored in a ginning factory at Devalgaum Raja. That cotton was insured with the defendant Company in the name of the plaintiff's firm, through the defendant Company's local agents for a sum of Rs. 1,500 for one month from April 18 to May 18, 1929. On May 13, 1929, an insurance for Rs. 5,000 was effected with the defendant Company in the

*O. C. J. Appeal No. 43 of 1934: Suit No. 1060 of 1930.

name of the plaintiff's firm on their cotton for a period of ten days from May 13 to May 22, 1929. The local agents of the defendant Company issued an interim receipt in respect of the said insurance on the same day. The Bombay agents of the defendant Company issued a temporary cover note on May 17, 1929, in respect of the said insurance for Rs. 5,000.

On the evening of May 13, 1929, a fire broke out in the compound of the factory where the plaintiff's cotton was stored, and 92 bales out of 126 bales belonging to the plaintiff were destroyed. The damages sustained by the plaintiff were estimated at Rs. 4,720. The damaged cotton was sold for Rs. 405. On August 30, 1929, the plaintiff demanded payment of Rs. 4,720 from the defendants. The defendants admitted their liability only in respect of the insurance for Rs. 1,500 effected on April 18, 1929, and offered to pay Rs. 1,063-7-0 and Rs. 405 being the amount realised for the damaged cotton. They denied their liability in respect of the insurance for Rs. 5,000 effected on May 13, 1929, and contended that the said insurance was effected after the fire took place. The plaintiff accepted the said amounts of Rs. 1,063-7-0 and Rs. 405 and filed a suit to recover a sum of Rs. 3,251-9-0 from the defendants in respect of the damages suffered by them as a result of the said fire.

In the plaint in the suit the plaintiff described himself as a minor suing "by his next friend Gordhandas Mohanlal".

By their written statement the defendants raised various contentions as to the merits of the claim, *inter alia*, alleging that the insurance for Rs. 5,000 was effected in collusion with their local agent after the fire actually took place on May 13, 1929. At the hearing of the suit before Kania J. counsel for the defendant contended that the issue as to minority

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arose on the face of the plaint and requested the Court to raise the following issue as issue No. 6 :—

"Whether, the plaintiff who is the sole proprietor of the firm of Surajmal Sonulal being a minor, there is any valid contract of insurance between Surajmal Sonulal and the defendants."

After the suit was heard, Kania J. delivered his judgment decreeing the plaintiff's suit, but declined to answer the issue as to plaintiff's minority observing as follows :—

"As by their written statement the defendants have not contested the validity of the contract on the ground that the person who entered into the contract of insurance on behalf of the minor was not authorised to do so in law, I do not think the defendants should be permitted in the course of their final address to raise that contention to defeat the plaintiff's claim. If the defendants had put forward this contention in their written statement the plaintiff would have been ready to meet the same and under the circumstances I do not think the defendants should be allowed to take the plaintiff by surprise by urging this contention at the last moment. In the plaint, the plaintiff has expressly stated that the business was carried on under the superintendence of the plaintiff's sister's husband, Gordhandas Mohanlal, with whom the plaintiff resided. If the defendants intended to contest the right of Gordhandas Mohanlal or the agent or munim appointed by him to conduct the business and as a part of that business to insure the goods, it was their obvious duty to raise that contention by their written statement.

On the other hand the written statement specifically mentions that the validity of the alleged insurance was sought to be contested by the defendants only on the grounds mentioned in paragraphs 3 and 5 of the written statement . . . . Even if the contract of insurance, if entered into by the minor, be held void, under section 11 of the Contract Act, the authorities clearly show that when a contract is entered into not by the minor but on his behalf by some other person the question would necessarily arise whether such other person had authority to bind the minor by the contract. In the present case as the defendants in spite of the allegations contained in the plaint that Gordhandas carried on the business on behalf of the minor have refrained from contesting the authority of Gordhandas I do not think it is necessary to discuss this point contained in this issue any further. The decision would depend on a question of fact which in my opinion the defendants are not entitled to raise at the last moment. Under the circumstances it is not necessary to decide, as a point of law, the question raised in issue No. 6, in this litigation."

The defendants appealed.

M. C. Setalvad, with *Lalji Gokaldas*, for the appellants.

V. F. Taraporewala, with *M. P. Amin*, for the respondent.

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BEAUMONT C. J. This is an appeal from a decision of Mr. Justice Kania, which raises a point of law. The plaintiff is described as Madanlal Sonulal, a minor by his next friend Goverdhandas Mohanlal, and the defendants are The Great American Insurance Co. Ltd., a company incorporated in New York, United States of America, carrying on business in Bombay at Apollo Street, within the Fort of Bombay. The plaint alleges that the plaintiff is the sole surviving coparcener of a joint Hindu family carrying on joint family business at Devalgaum in the name of Surajmal Sonulal, and that the business of the firm is carried on under the superintendence of Goverdhandas Mohanlal, the plaintiff's sister's husband, with whom the plaintiff resides. Then it alleges that the firm in the course of its business effected an insurance against fire with the defendant company on certain cotton bales, and then it is alleged that on the actual date on which the final insurance was effected, which was by means of a cover note issued to the plaintiff's firm, the bales were burnt, and the plaintiff therefore sues to recover loss under the insurance. The defence raised in the written statement is in effect that there was collusion between the agent of the defendant company and the persons who effected the insurance, and that in fact the insurance was effected after the fire, and on that ground the defendants resisted their liability under the insurance. But the defendants did not plead that the plaintiff was a minor, and that on that ground the insurance policy was void. It appears, however, from what is stated in the learned Judge's judgment that when the issues were being discussed, the defendant's counsel, though stating that he did not plead infancy, nevertheless drew the attention of the learned Judge to the fact that on the plaint the plaintiff was a minor, and invited the Court to raise an issue as to

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whether the contract was void on the ground of the minority of the plaintiff, and the learned Judge accordingly raised such an issue. But at the trial the learned Judge came to the conclusion that it was not necessary to answer the issue, having regard to the fact that minority had not been pleaded. So far as the facts in dispute in the suit were concerned, the learned Judge came to the conclusion that the insurance was valid. He negatived the case of fraud and collusion set up by the defendant company, and gave judgment for the plaintiff. The insurance company has appealed from that judgment. They have not in this Court challenged the findings of fact. I gather that they are not satisfied that the true facts have been established, but they appreciate that in this Court, having regard to the evidence, they cannot successfully challenge the findings of fact. So that we have the case of a policy of insurance entered into by this company, premium paid and accepted, fire occurring, claim made, and the only answer raised is that the insurance is void because the plaintiff is a minor. It is somewhat startling to have such a point raised. If the contention of the defendants is right, it means that property of minors cannot be insured. A great many joint family businesses descend upon minors, and such businesses are in practice managed by some adult member of the family in the name of the minor, and if that member of the family cannot effect an insurance on behalf of the minor, the position is an extremely serious one, particularly if insurance companies are going to do what, according to my experience, at any rate of English offices, they generally do not do, but what is done by the defendant company in this case, namely, set up a purely technical defence to the policy. However, we have to consider the legal position. The defendants' case is founded on the

well-known decision of the Privy Council, *Mohori Bibee* v. *Dhurmodas Ghose*[1] in which their Lordships held that under the Indian Contract Act any contract by a minor is wholly void, the *ratio decidendi* being that the Indian Contract Act requires that parties to a contract should be persons competent to contract, and if one of the parties is a minor, he is not competent to contract, and therefore, no contract results. The provisions of the law which make a contract by a minor not binding were no doubt intended to be for the benefit of the minor, and Courts in this country, when faced with a contract which has been carried out by or on behalf of the minor, the performance of which by the other party is then resisted on the ground of minority, have struggled hard to avoid holding the contract wholly void to the detriment of the minor. We were referred to *Raghava Chariar* v. *Srinivasa Raghava Chariar*,[2] *Sathurazu* v. *Basappa*,[3] *Madhab Koeri* v. *Baikuntha Karmaker*[4] and *Rose Fernandes* v. *Joseph Gonsalves*[5] as instances in point. It is not necessary, I think, to consider the principles on which those cases were decided, because in my view the answer to the defendants' contention in this case is a simple one. It is, in my opinion, quite clear on the evidence that the contract was in fact made by Goverdhandas acting through his agent Trimbaksha, that is to say, it was the person acting as guardian for the minor who entered into the contract through the agent Trimbaksha. It is also, I think, quite clear from the evidence of Puranmal, who was, at the time of the contract, the agent of the insurance company and who gave evidence on behalf of the plaintiff, that he knew quite well that the business was owned by a minor, and that it was carried on by Goverdhandas, and of course the knowledge of that agent would be the

(1) (1903) L. R. 30 I. A. 114 : 30 Cal. 539, P. C.
(2) (1916) 40 Mad. 308, F. B.
(3) (1913) 24 Mad. L. J. 363.
(4) (1919) 4 Pat. L. J. 682.
(5) (1924) 48 Bom. 673.

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knowledge of the defendant company. So that the defendant company knew that the business was carried on by a minor, and it hardly lies in their mouth to contend that with that knowledge they deliberately entered into a contract with the minor. I do not think they did that. I think they entered into a contract with Goverdhandas, the intermediaries who actually effected the insurance being Trimbaksha on behalf of Goverdhandas, and Puranmal on behalf of the insurance company. That being so, the contract sued upon is not a contract which was made by a minor, although it was made on behalf of a minor. Under section 4 (2) of the Guardians and Wards Act, I think that Goverdhandas was a guardian within the meaning of that Act, because "guardian" is defined as a person having the care of the person of a minor or of his property, or of both his person and property, and I think the evidence here is that the plaintiff was living with Goverdhandas, who is his sister's husband, and that Goverdhandas had the care of the minor and his property. Under section 27 of the Act, the guardian of the property of the ward is bound to deal with it as carefully as a man of ordinary prudence would deal with it if it were his own, and subject to the provisions of that Chapter (Chapter III), he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property. It is, in my opinion, clear that Goverdhandas had authority to insure the minor's property against fire, and having insured that property, it is, I think, also clear that the minor, being a person for whose benefit the contract was made, and out of whose estate presumably the premium was paid, though I do not know that there is any direct evidence of that, the minor would be entitled to sue on the contract. That being so, I think the appeal fails, and must be dismissed with costs. Costs of two counsel allowed in the appeal. It is agreed between the parties that on the insurance company paying

Rs. 7,000 towards the decree, the appellants are to be allowed to withdraw the security they have deposited with Messrs. Daphtary, Ferreira and Divan.

RANGNEKAR J. I agree.

Attorneys for appellants: Messrs. *Daphtary, Ferreira & Divan.*

Attorneys for respondent: Messrs. *Dharamsi, Dadachanji & Co.*

Appeal dismissed.

B. K. D.

APPELLATE CRIMINAL.

Before Mr. Justice Broomfield and Mr. Justice Macklin.

L. M. MARINO (ORIGINAL ACCUSED No. 2), APPLICANT *v.* EMPEROR.*

1935
June 28

Aden Civil and Criminal Justice Regulation (VI of 1933), sections 26, 35, 36, 38 and 49—Sessions Judge—Revisional jurisdiction—If he can convert acquittal into conviction—Limits of revisional jurisdiction—Distinction between ordinary powers of Courts and extraordinary and discretionary powers.

There is nothing in the Aden Civil and Criminal Justice Regulation, 1933, which amounts to a statutory definition of the Sessions Judge's powers in revision. Section 35, sub-section (*3*),† is the only provision dealing directly with revision and it empowers the Sessions Judge to call for any proceedings of any Magistrate at any stage and to pass such orders thereon as he thinks fit. The section does not suggest that the Sessions Judge's powers of revision are those of a Sessions Judge under the Criminal Procedure Code, 1898. Rather it suggests the contrary. The language used in that section clearly indicates that he has more extensive powers.

There is a well-recognised distinction between the ordinary powers of Courts and the extraordinary and discretionary powers of superintendence or revision. These latter powers have never been considered part of the every-day machinery

* Criminal Application for Revision No. 106 of 1935.

† Section 35, sub-section (*3*), of the Aden Civil and Criminal Justice Regulation (VI of 1933), runs as follows:—

"The Sessions Judge may call for any proceedings of any Magistrate at any stage or within thirty days of their termination and may pass such orders thereon as he thinks fit."