APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Holmwood.

1907
Dec. 11.

BHAWAL SAHU
v.
BAIJNATH PERTAB NARAIN SINGH.*

Guardian and ward—Bond by guardian—Liability of minor—Bond keeping alive debt incurred for necessaries, when binds minor's estate—Personal liability of minor—Limitation.

The general proposition that a guardian of a minor cannot bind his ward personally by a simple contract debt, by a covenant or by any promise to pay money or damages, is subject to the modification that the promise will not bind the minor unless it has been made merely to keep alive a debt for which the ward's property was liable.

Indur Chunder Singh v. *Radhakishore Ghose*(1), *Subramania Ayyar* v. *Arumuga Chetty*(2) referred to.

Where the promise is to pay money which has been expended for necessaries, the estate of the minor may be liable not on the promise but because the money has been supplied.

Sundararaja Ayyangar v. *Pattanathusami Tevar*(3) referred to.

It is established law that a guardian cannot bind his ward's estate except by a document purporting to bind it.

Maharana Shri Ranmalsingji v. *Vadilal Vakhatchand*(4) followed.

When a third person enters into dealings with the guardian of a minor, and advances money for necessaries for the minor or for the benefit of the estate, and takes a bond for the debt from the guardian, the responsibility rests on him to take care that the bond is so drawn as to render the estate of the minor liable in law for the debt.

SECOND APPEAL by the plaintiffs, Bhawal Sahu and others.

The plaintiffs, Bhawal Sahu and his two sons, brought a suit to recover money due on a bond, said to have been executed in his favour by defendant No. 2, Musammat Raghubansi Koer,

* Appeal from Appellate Decree, No. 369 of 1906, against the decree of E. P. Chapman, District Judge of Mozuffarpur, dated Jan. 12, 1906, reversing the decree of Nolini Nath Mitra, Subordinate Judge of that district, dated July 31, 1905.

(1) (1892) I. L. R. 19 Cal. 507; L. R. 19 I. A. 90.
(2) (1902) I. L. R. 26 Mad. 330.
(3) (1894) I. L. R. 17 Mad. 306.
(4) (1894) I. L. R. 20 Bom. 61.

on behalf of her minor son Baijnath Pertab Narain Singh, the defendant No. 1. The bond was a registered one and was executed on the 24th March 1901. The plaintiffs alleged that this bond only renewed a previous bond of the 24th August 1894.

Defendant No. 1 came of age on the 29th May 1901, and was the only defendant who contested the suit. The main contentions of the defendant was that the claim was false, that there was no necessity for the loan and he was not liable for the debt, and, lastly, that the claim was barred by limitation.

The Subordinate Judge decreed the suit. The District Judge, reversed the decision of the Subordinate Judge.

The Hon'ble Dr. Rashbehari Ghose and *Babu Shyamaprasanna Mazumdar*, for the appellants.

The Hon'ble Mr. O'Kinealy (*Advocate-General*) and *Babu Lakshmi Narain Singh*, for the respondent.

Cur. adv. vult.

BRETT AND HOLMWOOD JJ. The plaintiff appellant brought an action to recover a sum of money due on a bond executed in his favour by the defendant No. 2 as mother and guardian of defendant No. 1. The bond was executed on the 24th March 1901 and renewed a previous bond executed on the 24th August 1894. Defendant No. 1 came of age on the 29th May 1901 and the suit was instituted on the 1st October 1904 to recover the money due on the bond out of the estate of the defendant No. 1, or for a joint decree against both defendants.

The Court of first instance held that the money due on the bond had been borrowed by defendant No. 2 as his guardian for the benefit of the estate of defendant No. 1, and gave the plaintiff a decree for the amount claimed, to be realised out of the estate of the defendant No. 1, at the same time declaring that defendant No. 1 was not personally liable for the debt due under the decree.

On appeal the District Judge has reversed the judgment and decree of the Court of first instance and has dismissed

1907

BHAWAL SAHU v. BAIJNATH PERTAB NARAIN SINGH.

the plaintiff's suit in its entirety. The Judge agreed with the Subordinate Judge in holding that the bond in suit was duly executed by the defendant No. 2 for consideration and that it was valid and genuine. He also held that it was executed by defendant No. 2 in her capacity as guardian and on behalf of defendant No. 1, who was at the time of its execution a minor. He dismissed the suit, however, disagreeing with the Subordinate Judge on the following grounds:—He held that as it is settled law that a guardian cannot bind a minor by a personal covenant therefore the suit on the contract must fail, and in support of this view relied on several rulings which he mentions in his judgment. He further held that though the plaintiffs might have succeeded in a suit upon the ground of necessaries supplied, or benefits rendered there was no evidence, except as to the sum of Rs. 1,000, that any portion of the moneys was borrowed by defendant No. 2 for either of these purposes, and that as regards the sum of Rs. 1,000 which was borrowed on the registered bond of the 24th August 1894 the claim was barred by limitation as the guardian defendant No. 2 had not done any act within three or six years from the date of that bond to extend the period of limitation so as to bind the defendant No. 1.

The plaintiffs have appealed.

In support of the appeal it has been argued that the authorities on which the District Judge has relied do not go so far as to support the general proposition which he appears to lay down that under no circumstances whatever can a guardian bind a minor's estate by a contract entered into on his behalf. The learned pleader for the appellant points out that in the plaint no relief was sought against the defendant No. 1 personally but only against his estate, and that the decree given by the Subordinate Judge was against the estate of the minor and expressly relieved him from personal liability. He further argues that in this country where the pleadings are not artistically drawn a liberal construction should be given to them and that they should be construed as a whole and not piecemeal. He contends that from the plaint, thus construed, the preceding paragraphs being read in connection with paragraph 8, and from the written statement filed by the defendant No. 1, who alone

contested the suit, it is clear that the plaintiff based his claim on the bond against the estate of defendant No. 1 on the ground that the money due under the bond had been borrowed by the defendant No. 2 as guardian of defendant No. 1 for necessaries and for the benefit of the estate of the latter: and, that being so, the rulings relied on by the District Judge do not support his general conclusion that under no circumstances could the guardian by a contract entered into on behalf of the minor bind the estate of the latter. Dealing *seriatim* with the rulings referred to by the District Judge he points out that the case of *Waghela Rajsanji* v. *Shekh Masludin*(1) does not support the conclusion. In the case of *Indur Chunder* v. *Radhakishore*(2) their Lordships of the Privy Council did not go further than to say that the contract, which in that case was a lease with onerous covenants, could not bind the minor personally, and that there was no claim against the minor's estate. In the case of *Maharana Shri Rannal Singji* v. *Vadilal Vakatchand*(3), the Judges of the Bombay High Court express, at page 70, opinions which go far from supporting the general proposition laid down by the District Judge. They say, "while holding however that a minor cannot be bound personally by contracts entered into by a guardian which do not purport to charge his estate we do not think that he is necessarily free from liability: *Marlow* v. *Pitfield*(4). If the debts were incurred for necessaries he would, we believe, be bound to pay them on the general principle embodied in section 68 of the Contract Act (IV of 1872) as his liability would not probably be affected by the fact that the loans were advanced at the instance of the guardian: see *Juggessur* v. *Nilambur*(5). Her contract on his behalf might be ineffectual like one entered into by himself, but the liability to discharge debts incurred for necessaries would remain: see *Walter* v. *Everard*(6). The necessity for them would determine whether he was bound to repay them, and not, we think, the reasonable belief of the borrower that they were for necessary

(1) (1887) I. L. R. 11 Bom. 551; L. R. 14 I. A. 89.
(2) (1892) I. L. R. 19 Calc. 507, 511; L. R. 19 I. A. 90.
(3) (1894) I. L. R. 20 Bom. 61.
(4) (1719) 1 P. Wms. 558.
(5) (1865) 3 W. R. 217.
(6) [1881] 2 Q. B. 369.

1907

BHAWAL SAHU v. BAIJNATH PERTAB NARAIN SINGH.

purposes." In the case of *Subramania Ayyar* v. *Arumuga Chetty*(1) the Judges of the Madras High Court held that, in a case where a mother of a minor had executed as his guardian a promissory note in respect of a debt for which the son's share in an ancestral estate was liable at the time, the minor was liable on the note to the extent of his ancestral estate, and that the guardian had authority to acknowledge the liability provided it was not barred by limitation. In the case of *Annapagauda* v. *Sangadigyapa*(2), it was held by a Full Bench of the Bombay High Court that a guardian appointed under the Guardian and Wards Act (VIII of 1890) can sign an acknowledgment of liability in respect of, or pay part of the principal of, a debt so as to extend the period of limitation against the ward in accordance with sections 19 and 20 of the Limitation Act (XV of 1877), provided it be shown in each case that the guardian's act was for the protection or benefit of the minor's property, and the learned Chief Justice in delivering judgment remarked (see page 232). "It is no objection I think, to the view, that a guardian cannot impose a personal liability on a ward by contract, for an acknowledgment under a statute is fundamentally distinct from a fresh contract, though it may in some respects have similar results." In *Sundararaja Ayyangar* v. *Pattanathusami*(3), it was simply held that there was no necessity proved for the promissory note executed on behalf of a minor by his guardian in favour of a vakil for past professional services.

The learned pleader, therefore, contends that the first ground on which the District Judge dismissed the plaintiff's claim is not good in law.

Dealing with the second ground on which the District Judge has dismissed the claim of the plaintiff, the learned pleader contends that the whole basis of the suit on which the plaintiff sought to recover the money due on the bond from the estate of the plaintiff, was that the money was borrowed by the guardian for the minor for necessaries and for the benefit of the minor's estate: that this was recognized in the defence set up by the defendant No. 1, who alone contested the suit, in his written

(1) (1902) I. L. R. 26 Mad. 330. (2) (1901) I. L. R 26 Bom. 221.
(3) (1894) I. L. R. 17 Mad. 306.

statement, and was the matter in contest in the court of first instance, and the Subordinate Judge arrived at distinct findings on the points, and that those findings have not been displaced by the District Judge. The learned pleader, therefore, contends that the case should be remanded to the District Judge for distinct findings on the evidence on the issue whether any and how much of the money claimed under the bond was borrowed by the guardian for the minor for necessaries or for the benefit of his estate, so as to make the estate liable for the debt.

Further, he contends that the District Judge erred in law in holding that the claim of Rs. 1,000 was barred by limitation. The due date for the bond of the 24th May 1894 was the 9th May 1895, and the bond of the 24th March 1901 was executed within 6 years from that date, and he argues that there is nothing under the law to prevent a guardian from borrowing money on credit for a minor. Next, he contends that a guardian is an agent of the minor within the meaning of sections 19 and 20 of the Limitation Act. He points out that the decision of the Bombay and Madras High Courts in the cases of *Annappagauda* v. *Sangadigyapa*(1) and of *Subhanadri* v. *Sriramulu*(2) and the decision of this Court in the case of *Narendra Nath Sarkar* v. *Rai Charan Haldar*(3) are authority for the contention that a guardian can make an acknowledgment of a debt on behalf of a ward so as to give a creditor a fresh start for the period of limitation if the act of the guardian be for the protection and benefit of the minor's property, the case of *Wajibun* v. *Kadir Buksh*(4) which lays down the contrary view being dissented from in those decisions and not having been followed. He argues that it is clear from the recitals in the second bond that it was executed in acknowledgment of the previous debt to save the minor's estate from loss by litigation or sale, and therefore that it bound the minor's estate.

The learned pleader has also argued that under the doctrine of subrogation the plaintiffs have a right to claim against the estate of the minor any indemnity which the guardian could

(1) (1901) I. L. R. 26 Bom. 221.
(2) (1893) I. L. R. 17 Mad. 221.
(3) (1902) I. L. R. 29 Calc. 642.
(4) (1886) I. L. R. 13 Calc. 292.

1907

BHAWAL SAHU v. BAIJNATH PERTAB NARAIN SINGH.

claim against it, and in support of this contention he relies on the case of *Bridge* v. *Madden*(1) and *Raybould* v. *Turner*(2).

For the respondent, the learned counsel has argued that the view taken by the District Judge is correct so far as the personal liability of the minor is concerned. He does not dispute that the guardian could bind the estate of the minor for a debt incurred for necessaries or for its benefit, or that the guardian could create a statutory liability binding on the ward by acknowledgment of a debt contracted for necessaries supplied for the benefit of the ward's estate: see *Mohori Bibee* v. *Dharmodas Ghose*(3). But he contends that, in the present suit, before the estate, of the minor can be held to be liable for any portion of the debt claimed, it must be found, (*i*) that the money was borrowed for the supply of necessaries for the infant or for the benefit of his estate, and (*ii*) that it was borrowed within the period of limitation. He argues that the District Judge has found that the plaintiffs have failed to prove that any part of the Rs. 1,000, borrowed on the bond of the 24th August 1894, was taken for necessaries supplied to the minor, that under the provisions of Arts. 61 and 120 of the Limitation Act, the liability was barred before the execution of the second bond and at the time when the suit was instituted. He points out that the second bond was executed on the 24th March 1901, two months only before the minor attained majority on the 29th May 1901. He contends that the statement made in the recitals of the bonds cannot bind the minor in the absence of evidence *aliunde*, and that a bond which extended the period of limitation by which it was agreed to pay interest at 13¾ per cent. on unpaid interest could not be regarded as one executed for the interest of the minor. Further, he argues that under the bond itself it was not intended to bind any one but the defendant No. 2, that the frame of the plaint supports that view, there being no allegation in it that the debt was incurred for necessaries, and that the bond does not purport to create any charge on the estate of the ward or to provide that the debt was payable out of the estate. The guardian cannot bind his ward's estate except by a document purporting to bind it, and he argues

(1) (1904) I. L. R. 31 Calc. 1084.
(2) [1900] 1 Ch. 199.
(3) (1903) I. L. R. 30 Calc. 539, 548 L. R. 30 I. A. 114.

that the law as to powers of guardians is correctly laid down by Trevelyan in his edition of the Law Relating to Minors (page 199, 3rd Edition).

He contends that in this case the plaintiff cannot claim the right of subrogation as the whole foundation on which the right could be based is wanting. He refers to the case of *Strickland* v. *Symons*(1) as laying down the circumstances under which such a right could be claimed, and points out that the doctrine as thus laid down was explained by this Court in the case of *In the matter of Shard*(2), and was followed in the case of *Bridge* v. *Madden*(3) on which the pleader for the appellants relies. In the present case it would have to be proved that the guardian was entitled to indemnity against the estate of the infant for the whole of the transactions of her guardianship.

In determining the present appeal, we have to decide not merely what was the intention of the plaintiff in bringing the suit, but also whether on the suit as framed, and on the bond which forms the basis of the suit, the plaintiffs are in law entitled to relief against the estate of defendant No. 1. In dealing with the pleadings we have no doubt to follow the rule laid down by their Lordships of the Privy Council in the case of *Indur Chunder Singh* v. *Radhakishore Ghose*(4) that while a liberal construction should be given to pleadings so as to give effect to the meaning to be collected from the whole tenour they ought to be expressed with sufficient definiteness to enable the opposite party to understand the case he is called on to meet. Applying that rule we think that the argument advanced by the learned pleader for the appellant is sound, that in fact the suit was intended to be a suit to recover the sum due under the bond from the estate of defendant No. 1, on the ground that the debt recoverable under the bond had been incurred by the defendant No. 2, as mother and guardian of defendant No. 1, for necessaries and for the benefit of the estate. This seems to us to be clear from paragraph 8 of the plaint read with the preceding paragraph, and from the nature of the relief claimed. Moreover, it seems to us also clear

(1) (1884) 26 Ch. D. 245.
(2) (1901) I. L. R. 28 Calc. 574.
(3) (1904) I. L. R. 31 Calc. 1084.
(4) (1892) I. L. R. 19 Calc. 507, 512; L. R. 19 I. A. 90.

1907

BHAWAL SAHU v. BAIJNATH PERTAB NARAIN SINGH.

from the written statement filed by defendant No. 1 that he fully understood that such was the nature of the case which he had to meet. The judgment of the Judge of the Court of first instance leaves no doubt that the main contest before him was whether the debt covered by the bond was incurred by the guardian for necessaries supplied to the minor or for the benefit of his estate. The learned District Judge has agreed with the Judge of the Court of first instance in holding that the bonds were actually signed by the mother in her capacity as guardian and on behalf of the minor, but he is of opinion that the suit on the bond must fail because the guardian could not bind her ward by a personal covenant.

The learned pleader for the appellant is no doubt correct in his argument that if the amount claimed by the plaintiff be found to be a debt incurred for necessaries for which the estate of the minor would be liable, the District Judge erred in the broad conclusion at which he arrived that the suit must be dismissed simply because a guardian cannot bind his ward by a personal covenant. The rulings relied by the District Judge lay down that a guardian cannot bind his ward personally by a simple contract debt, by a covenant, or by any promise to pay money or damages, but this broad proposition is subject to the modification that the promise will not bind the minor unless it has been made merely to keep alive a debt for which the ward's property was liable: *Subramania Ayyar* v. *Arumuga Chetty*(1). Where the promise is to pay money which has been expended for necessaries the estate of the minor may be liable not on the promise but because the money has been supplied: *Sundararaja Ayyangar* v. *Pattanathusami Tevar*(2); and Act IX of 1872 section 68.

In the present case, therefore, the learned pleader is right in contending that if the District Judge had held that the debt claimed was one incurred for necessaries, and if we should hold that as it was a debt which was recoverable out of the estate of the minor, it would be necessary for the Judge to come to distinct findings how much of the debt was incurred for necessaries or for the benefit of the estate of the minor.

(1) (1902) I. L. R. 26 Mad. 330. (2) (1894) I. L. R. 17 Mad. 306.

The most important point in the case then remains for our determination and that is whether under the first bond of the 24th August 1894 and under the later bond of the 24th March 1901, which in fact renewed the former bond, the guardian bound the estate of the ward. It is established law that a guardian cannot bind his ward's estate except by a document purporting to bind it, *Maharana Shri Ranmalsingji* v. *Vadilal Vakhatchand*(1), and we have to decide whether these two bonds purport to bind the estate of the minor. The bonds have been translated and placed before us. It is true that at the head of each bond the mother defendant No. 2 is described as the mother, guardian, and next friend of defendant No. 1, but in neither of the two bonds is it distinctly stated, or are words used from which it could be possible to draw only the one inference, that the debts were incurred for the benefit of the estate of the minor. So far as the sum of Rs. 1,000 is concerned, which no doubt is said to have been borrowed under urgent necessity for looking after the case brought by Tej Narain Singh, there is no distinct recital that the estate of the minor was in such a state as to be in need of the money. It is merely stated that the executrix was personally under the necessity of borrowing the money. The promise to repay the money in each bond is a personal promise, and there is nothing in either of the bonds to indicate that in the event of her failure the estate of the minor would be liable, or that by the bond she purported to bind the minor's estate. It is not open to us in this case to go beyond the terms of the bonds themselves for the purpose of construing them. In these circumstances, we are unable to hold that the bond on which the present suit is brought purported to bind the estate of the minor so as to entitle the plaintiff to relief against that estate. In our opinion, when a third person enters into dealings with the guardian of a minor, and advances money for necessaries for the minor or for the benefit of the estate and takes a bond for the debt from the guardian, the responsibility rests on him to take care that the bond is so drawn as to render the estate of the minor in law liable for the debt. In the present case the plaintiffs have failed to take this necessary precaution and their suit to recover the

(1) (1894) I. L. R. 20 Bom. 61.

1907

BHAWAL SAHU v. BAIJNATH PERTAB NARAIN SINGH.

money due on the bond must fail on the ground that the terms of the bond failed to disclose that it purported to bind the estate of the minor.

The claim on the bond failing, the District Judge is right in holding that the plaintiffs are barred by limitation from recovering otherwise the sums, if any, which they may have paid to the guardian for necessaries or for the benefit of the minor's estate.

On these grounds, we are of opinion that the appeal fails and must be dismissed with costs.

Appeal dismissed.

S M.