

Shri Manik Chand and Another

Vs

Shri Ramchandra, Son of Chawiraj

Civil Appeal No. 1548 of 1970

(Syed M. Fazal Ali, P. S. Kailasam JJ)

08.05.1980

JUDGMENT

KAILASAM, J. –

1. This appeal is by the plaintiff by special leave granted by this Court against the Judgment and Decree dated February 9, 1968 passed by the Division Bench of the Madhya Pradesh High Court in First Appeal 21 of 1966 dismissing the suit for specific performance. The plaintiffs 1 and 2 who were minors entered into an agreement on September 30, 1961 through their mother and guardian Smt. Phoolibai with the respondent to purchase a house situated in Thandi Sarak for a sum of Rs. 11,000. A sum of Rs. 1,000 was paid as earnest money and the balance was to be paid at the time of the registration of the sale-deed. According to the plaintiffs/appellants, the respondents did not carry out their part of the agreement and the appellant filed the present suit for specific performance of the contract on March 28, 1962 in the court of Additional District Judge, Gwalior. The suit was decreed on April 15, 1966. The plaintiffs deposited Rs. 10,500 (sic Rs. 10,000) the balance of the price on July 13, 1966. The respondent appealed to the High Court against the judgment and decree of the trial Court which allowed the appeal and dismissed the suit.

2. The High Court agreed with the findings of the trial Court on the merits and found that it was the respondents who committed breach of contract but dismissed the suit on the ground that as the contract was entered into on behalf of the minors, a decree for specific performance could not be granted to the appellants for want of mutuality.

3. Mr. Shiv Dayal Srivastava, learned counsel appearing for the appellants, submitted that the lower court erred in holding that the contract for purchase of property by the guardian on behalf of the minors is unenforceable due to lack of mutuality and submitted that so long as the transaction is for the benefit of the minor, the defendants cannot resist the decree for specific performance.

4. A minor has no legal competence to enter into a contract or authorise someone else on his behalf to enter into a contract. But under the Hindu law the natural guardian is empowered to enter into a contract on behalf of the minors and the contract would be binding and enforceable if the contract is for the benefit of the minor. One of the earliest cases which dealt with the right of the guardian to enter into a contract on behalf of the minor is *Krishnasami v. Sundarappayyar* (ILR 18 Mad 415 : 5 MLJ 164), where a Bench of the Madras High Court held that Section 11 of the Contract Act does not exclude the power of the guardian of a minor to represent him and enter into contracts on his behalf either beneficial or necessary to the minor under Hindu law and that the English law that a minor cannot claim specific performance which proceeds on the ground of want of mutuality, has no application to this country. The position under the Hindu law is that a guardian has legal

competence to enter into a contract on behalf of the minor for necessity or for the benefit of the estate. Dr. Chitale, learned counsel for the respondent submitted that he does not dispute the competence of a guardian to enter into a contract on behalf of the minor if it is for necessity or for the benefit of the estate, but contended that the right can only be confined to sale of property and would not extend to the purchase of the property. His submission is that regarding the purchase of the property, it involves a minor into an obligation of making a payment and that it would amount to personal covenant by the guardian binding the minor. In support of his contention, he strongly relied on a decision of the Privy Council in *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri* (ILR 39 Cal 232 (PC) : 39 IA 1 : 16 CWN 74), which reversed the view of a Bench of the Calcutta High Court which held that there was no want of mutuality in the case and that the agreement is enforceable against the minor and that the acts of the guardian in this country bind the minor though there is no difference between his position and powers and those of a manager. The Privy Council held that they were unable to accept the view of the Division Bench that there was no difference between the position and powers of the manager and those of a guardian. Holding that it is not within the competence of a manager of a minor's estate or of a guardian of a minor to bind the minor or the minor's estate by a contract for the purchase of immovable property and that the minor was not bound by the contract for want of mutuality, the Privy Council held that a decree for specific performance cannot be granted. The Privy Council in a later decision in *Kakulam Subrahmanyam v. Kurra Subba Rao* (ILR 1949 Mad 141 : AIR 1948 PC 95 : (1948) 75 IA 115), held that a guardian of a minor is competent to enter into a contract on behalf of the minor so as to bind him if it is for the benefit of the minor. Though the decision of the Privy Council in *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri* (ILR 39 Cal 232 (PC) : 39 IA 1 : 16 CWN 74) was brought to its notice, the Privy Council did not refer to it but referred to its earlier decision in *Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree* ((1856) 6 Moo IA 393 : 18 WR 81 : 2 Suther 29) where it was stated that "the act of the mother and guardian in entering into a contract of sale was an act done on behalf of the minor appellant". A passage from Pollock and Mulla's *INDIAN CONTRACT AND SPECIFIC RELIEF ACTS* wherein the observation of the Privy Council in *Mohori Bibee v. Dhurmodas Ghose* (30 IA 114 : 30 Cal 539), that "it is, however, different with regard to contract entered into on behalf of a minor by his guardian or by a manager of his estate," was referred to. In such a case it has been held by the High Courts of India, in cases which arose subsequent to the decision of the Judicial Committee, that the contract can be specifically enforced as being within the competence of the guardian to enter into on his behalf so as to bind him by it, if it is for the benefit of the minor. But if either of these two conditions is wanting, the contract cannot be specifically enforced at all. Though the earlier decision of the Privy Council in *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri* (ILR 39 Cal 232 (PC) : 39 IA 1 : 16 CWN 74) was not referred to, the observations make it clear that it was not followed. In *Suryaprakasam v. Gangaraju* (AIR 1956 Andh 33, 40 (FB) : 1955 An WR 818), the Andhra High Court expressed its view that it has no hesitation to hold that the considered judgment of the judicial committee in *Kakulam Subrahmanyam v. Kurra Subba Rao* (ILR 1949 Mad 141 : AIR 1948 PC 95 : (1948) 75 IA 115) must be taken as overruling all the previous decisions based on *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri* (ILR 39 Cal 232 (PC) : 39 IA 1 : 16 CWN 74). [The reference 32 Cal 232 (PC) appears to be an error for 39 Cal 232 (PC).] It also held that there could not be any essential distinction between the contract of sale and contract of purchase. The High Court cited with approval the view taken by Viswanatha Sastry, J. of the Madras High Court in *Ramalingam Reddi v. Vanajakshi Ammal* (AIR 1951 Mad 431 : (1950) 2 MLJ 597 : 1950 MWN 668). It is unnecessary to go into this question any further as after the passing of Hindu Minority Act 1956, the guardian of a Hindu minor has power to do all acts which are necessary or reasonable and proper for the benefit of the minor or for realisation, protection or benefit of the minor's estate. This provision makes it

clear that the guardian is entitled to act so as to bind the minor if it is necessary or reasonable and proper for the benefit of the minor. The power thus conferred by the section is in no way more restricted than that was recognised under the Hindu law. It is not disputed in this case that the contract entered into by the guardian is for the benefit of the minor. It appears quite strange that the respondent should plead that the transaction is not for the benefit of the minor when the minor is convinced it is in his benefit and that it is worth pursuing the litigation up to this Court. It is common knowledge that the prices of immovable property have been on the rise and there can be no doubt that the transaction is for the benefit of the minor.

5. Finding himself faced with these insurmountable difficulties, Dr. Chitale, sought to plead that in any event Section 8 of the Hindu Minority Act specifically prohibits the guardian from binding the minor by his personal covenant. The submission was that the contract by the guardian which binds the minor to make a payment, would be in the nature of a personal covenant and as such is excluded by Section 8. In support of his plea, the learned counsel relied on Section 55(5)(b) of the Transfer of Property Act and submitted that so far as the payment of the purchase price is concerned, there is personal covenant. We are unable to accept this contention for it cannot be said that the guardian by the contract was binding the minor by his personal covenant. As it is within the competence of the guardian, the contract is entered into effectively on behalf of the minor and the liability to pay the money is the liability of the minor under the Transfer of Property Act. We are unable to accept the plea that in a contract for purchase of property, the guardian would be binding the minor by his personal covenant. In the result we find that the contract entered into by the guardian on behalf of the minors is enforceable. The appeal is, therefore, allowed with costs and the decree passed by the trial Court is restored.

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