CALCUTTA HIGH COURT

Prohlad Chandra Chowdhury

Vs

Ramsaran Chowdhury

(Mookerjee , J.)

11.04.1923

JUDGMENT

Mookerjee, J.

1. This is an appeal by the plaintiff in a suit for recovery of possession of immovable property, upon cancellation of a lease, granted by his mother on the 5th January, 1913, during his minority. The father of the plaintiff, one Goswami Das Chaudhuri, who died on the 15th September, 1901, had married twice. By his first wife, who died during his lifetime, he left two sons, Bamsaran and Brajanath, the first two defendants in this litigation. By his second wife, Ramani Dasi, who survived him, he left two sons, Prahlad Chandra and Dhruvapada; the former is the plaintiff and the latter is the third defendant in this suit. On the 8th July 1905, Ramani Dasi made an application to the District Judge in order that she might be appointed guardian of the person and property of her minor sons. It was stated in this application that the father of the minors had left debts and that it was necessary to dispose of portions of his estate for the purpose of repayment. On the 16th June, 1905, the lady was appointed guardian of the person and property of the two infants. On the 26th July, 1910, an application was made by the lady to the District Judge for permission to grant a permanent lease of the share of the infants in certain properties described in the schedule, to their step-brothers who held the other half share. It was stated in this application that the debts left by the deceased owner amounted to Rs. 12,800 and that one-half of this amount, that is, Rs. 6,400 was payable out of the share inherited by the two infants. Their stepbrothers would, under the proposed lease, undertake the responsibility for satisfaction of the entire sum, in other words, Rs. 6,400 would in substance be the premium payable on the lease. In addition to this, rent would be payable in cash as well as in kind. The names of the creditors and the amount payable to each was set out in the application. On the 2nd August 1910, the substance of the application was publicly notified. No one appeared to object, and on the 10th August, 1910, the District Judge granted the permission asked for. On the 5th January, 1913, Ramani Dasi, in exercise of the authority granted by the District Judge, executed a permanent lease on behalf of her minor sons in favour of her step-sons. The premium was fixed at Rs. 6,400, to be applied in satisfaction of a half share of the debts left by their deceased father. The gross cash rent was fixed at Rs. 201-11-8; after deduction of Rs. 152-11-8, the head rent payable to the superior landlord, the Maharaja of Burdwan, the net rent was fixed at Rs. 49. In addition, 69 bundles of fuel were to be delivered as rent in kind, and the minors would also enjoy the fruits of their share of the mangoe trees in the orchard prepared by their father. The step-brothers of the

minors have been in occupation of the properties for many years under this lease.

2. On the 20th August, 1920, Prahlad Chandra, the elder of the two minors who had meanwhile attained majority, instituted the present suit for cancellation of the lease in respect of his share and for recovery of possession thereof. His younger brother, who was still a minor at the date of the suit, was made a defendant. The case for the plaintiff is that the transaction was throughout fraudulent, that his mother never made the application for appointment as guardian and that the document she was induced to execute was represented to her to be a settlement for six years only. The defendants denied these allegations and pleaded the bar of limitation. The Subordinate Judge has held the suit barred under Article 44 of the schedule to the Indian Limitation Act, inasmuch as the plaintiff had attained majority more than three years before its institution. On the merits, the Subordinate Judge has found that the application for guardianship had been made by the mother of the plaintiff who later on executed the lease with full knowledge of its contents. The Subordinate Judge has further found that the transaction was beneficial to the infants, and in this view he has dismissed the suit. The judgment of the Subordinate Judge has been assailed in this Court as erroneous in law and in fact on every material point.

3. As regards the question of limitation, the Subordinate Judge has held that the plaintiff was born in Baisakh 1303 (April-May 1896). In this view the plaintiff attained majority in April-May 1917, and the present suit, instituted on the 20th August, 1920, would be barred by limitation, as article 44 of the schedule to the Indian Limitation Act requires that a suit by a ward who has attained majority, to set aside a transfer of property by his guardian, must be instituted within three years from the date when the ward attains majority : Brojendra v. Prasanna (1920), *Krishna v. Bhagaban*[1] *Arumugam v. Panayadian*[2] The plaintiff has consequently been driven to contend that he was born in Baisakh 1305 (April-May 1899). This is contrary to the statement made in the guardianship application to the effect that the elder son was born in Baisakh 1303 and the younger son in Pous 1308. There has been considerable discussion at the bar as to the admissibility of this recital in evidence, and our attention has been invited to the decisions in *Krishna v. Akbar*[3] *Dhanmull v. Ram Chunder*[4] *Monindra v. Ram Krishna*[5] *Mahomed v. Yeoh*[6] *and Harakumar v. Jogendrakrishna*[7]. These decisions support the view that the recital of the date of birth in a guardianship application is not by itself admissible in evidence upon mere production of the document, but may be rendered admissible in contingencies which need not be exhaustively specified for our present purpose. The recital is in substance a statement by the person who makes the application. If the conditions mentioned in Section 32(5) of the Indian Evidence Act are fulfilled, for instance, if the person who made the statement is dead or cannot be found and had special means of knowledge of relationship, the statement may be made admissible. Or, again, if the person is examined as a witness, his credit may be impeached under Section 155 by the production of the recital in the application, in the case before us, no foundation has been laid for the reception of the recital in evidence. The lady was examined as a witness, but the recital was not put to her. On the other hand, our attention has been invited to the fact that the statement in the guardianship application relating to the date of birth of the youngest son is inaccurate. He is said to have been born in Pous 1308 (December 1901, January 1902); this would make him posthumous -as his father died on the 15th September, 1901. But the evidence shows that he was about one year old when his father died, From this it may well be urged that the statement as to the date of birth of the other son was equally unreliable and that even if it could have been made admissible in evidence, the Court would not have derived much assistance. We have consequently to depend upon the oral evidence on the point. The

Subordinate Judge has disbelieved the evidence of Ramani Dasi as self-contradictory, and there can be little doubt that her statements upon other matters are not quite trustworthy. In such circumstances, we are not prepared to differ from the conclusion of the Subordinate Judge, specially as the burden lies generally on the plaintiff to prove that he is in time; see the Code of Civil Procedure, 1908, Order 7, Rule 1(e) and Order 7, Rule 6. We do not desire, however, in view of the arguments which have been addressed to us, on the merits of the controversy, to rest our decision of the appeal solely on the question of limitation.

4. As regards the merits it has been urged on behalf of the plaintiff that the application for guardianship was made and the order thereon obtained without the knowledge of the mother of the infants. The Subordinate Judge has disbelieved this theory, and we agree in his conclusion that no fraud of the kind alleged has been established. It has next been contended that permission was granted by the District Judge to execute the lease in contravention of the provisions of Section 1 of the Guardians and Wards Act of 1899. Section 31 of the Guardians and Wards Act requires that permission to the guardian to do any of the acts mentioned in Section 29 (that is, alienation of the estate of the minor shall not be granted by the Court except in case of necessity or for an evident advantage to the ward). The section further requires that the order granting the permission shall recite the necessity or advantage as the case may be. In the present case, the order does not recite the necessity or advantage. It may be conceded that the object of the legislature was to guarantee an enquiry by the Judge and a determination by him to his own satisfaction that the alienation (sanctioned was necessary or advantageous. In the case before us, there was no enquiry other than what was involved in consideration of the verified petition and on this ground it has been urged that the order was a nullity. We are of opinion that this argument is not sustainable. It may be conceded that the legislature contemplated an enquiry by the District Judge into the nature of the proposed transaction before he sanctioned an alienation by a guardian of the estate of his ward. But it does not follow that if sanction has been granted by the District Judge without enquiry, his act is without jurisdiction and that the transaction is invalid. The effect of such omission cannot be more far-reaching in its destructive operation than an alienation by the guardian without the requisite sanction. In that event, Section 30 provides that the alienation is not void but voidable. *Rameswar v. Dhunpat* [8]*Gopal v. Mahtaba*[9] *Bankey Lal v. Swami Dayal*[10] *Dyam Khan v. Sarat*[11] *Nallaka v. Rajam*[12].

5. The plaintiff has thus to face the fundamental question, whether the lease granted by his mother was for his benefit. The Subordinate Judge has answered the question in the affirmative. The evidence shows that the disputed jungle was acquired by Goswami Das Chowdhuri on the 23rd November, 1898, for a consideration of Rs. 12,000. There is satisfactory proof that practically the whole of this sum was raised by him, by loan under five transactions; three of these of Rs. 2,000 each took place on the 11th November, 1898, one of Rs. 4,500 on the 23rd November, 1898, and another of Rs. 1,000 on the 9th December, 1898, Some of these loans carried compound interest. There is further evidence that Rs. 3,893 borrowed on compound interest was raised shortly afterwards on the 17th January, 1898, by a mortgage of this very jungle. There can, in our opinion, be little doubt that Goswami Das Chaudhuri left considerable debts, as nearly the whole of the money required for the purpose of acquisiton of the jungle now in dispute had been borrowed by him. The defendants have produced oral evidence to establish that difficulties arose on account of these debts after the death of Goswami Das Chaudhuri and a separation took place in April, 1903, between the two sets of his sons. This evidence has been analysed by the Subordinate Judge; and we see no ground to question the correctness of his

conclusion that the separation did take place at the time alleged by the defendants. At that time, all the properties, other than the jungle, were partitioned. Upon the advice of relatives and arbitrators, the mother of the plaintiff elected not to take a share in the jungle but to lease it out to her stepsons, on their undertaking to satisfy the entire debt left by their father. This was the arrangement subsequently carried out and was obviously in the nature of a family settlement. The defendants have brought forward evidence to show that the transaction has not been particularly advantageous to themselves, and even so late as the 14th April, 1918, they had to raise Rs. 12,000 to satisfy the dues on prior bonds. We need not investigate the true nature of this last transaction. The crucial points is, was the lease, when it was granted on the 5th January, 1913, beneficial to the infants concerned. We are of opinion that the answer should be in the affirmative. It is not the case for the plaintiff that he has paid or has been called upon to pay his share of the debts left by his father. He has unquestionably benefited by the family arrangement made in 1903, though the necessary documents were not executed till many years later. The parties appear to have proceeded in a, leisurely fashion, but there is little doubt that the defendants went into possession and accepted the liability for the entire debt; this distinguishes the case from the decision in *Shami Nath v. Lalji*[13] There is no foundation for the suggestion that the lady was induced to execute the document as if it were a settlement for six years. There is satisfactory evidence that the lease was read over to her before its execution. We agree with the Subordinate Judge that the mother did not exceed her authority and that on the principle enunciated by the Judicial Committee in *Hunoomanpersaud v. Babooee*[14] her act bound the interest of her infant sons.

6. We have finally been pressed to set aside the transaction on terms of complete re-imbursement by the plaintiff to the defendants and the authority of the decisions in *Eastern Mortgage and Agency Co. v. Rebati Kumar Ray*[15], *Hem Chandra Saikar v. Lalit Mohan*[16], *Dijendra Mohan v. Manorama*[17] has been invoked. In the view we take, the doctrine that a voidable deed can be set aside on terms, has no application here. But even if it were otherwise, it would be difficult to afford relief to the plaintiff in the suit as framed. He has come into Court on the allegation that the transaction was throughout based on fraud. That case has completely broken down. He cannot now be permitted to have the case re-investigated on another basis and on entirely fresh evidence; before the defendants could be reimbursed, all the transactions of the family during the last twenty years from the time of the death of the original proprietor would have to be explored. We are by no means convinced that the justice of the case demands that the Court should embark upon such an enquiry at this stage.

7. The result is that the decree of the Subordinate Judge is affirmed and this appeal is dismissed with costs.

Cases Referred.

1(1916) 34 Ind. Cas. 188
2A.I.R. 1921 Mad. 425
3(1881) 9 C.L.R. 213
4(1890) 24 Cal. 265
5(1915) 21 C.L.J. 621
6A.I.R. 1916 P.C. 242
7A.I.R. 1924 Cal. 256
8(1909) 11 C.L.J. 197

9(1908) 12 O.C. 78
10(1920) 23 O.C. 72
11(1916) 26 C.W.N. 218
12 A.I.R. 1922 Mad. 135
13(1913) 35 All. 15
14(1856) 6 M.I.A. 393
15(1906) 3 C.L.J. 260
16(1912) 16 C.L.J. 537
17A.I.R. 1922 Cal. 150