

Sri Kakulam Subrahmanyam and another - - Appellants

v.

Kurra Subba Rao - - - - - Respondent

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 26TH FEBRUARY, 1948

Present at the Hearing :

LORD SIMONDS

LORD MORTON OF HENRYTON

SIR MADHAVAN NAIR

[*Delivered by* LORD MORTON OF HENRYTON]

This is an appeal from a judgment of the High Court of Judicature at Madras dated the 22nd November, 1943, affirming the judgment of the District Judge of Guntur dated 20th April, 1942, who had allowed the respondent's appeal from the judgment of the Subordinate Judge of Bapatla dated the 31st July 1939.

Leave to appeal to His Majesty in Council was given by the High Court of Judicature at Madras on the ground that the case involved a substantial question of law as to the true construction of section 53A of the Transfer of Property Act.

That section is in the following terms:—

“ 53A. Part Performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

The facts giving rise to this appeal are not now in dispute, having regard to the findings of the courts in India. The respondent and his father constituted a Hindu joint family. The respondent's father died on the 4th October, 1935, leaving him surviving his widow and the respondent, who was then and is still a minor.

Prior to his death the respondent's father had incurred certain debts, including a debt of Rs.16,000 owing to the appellants and secured by two promissory notes and a debt of Rs.1,200 owing to one Ramayya and secured by a mortgage. By an agreement in writing dated the 29th November, 1935, the respondent "being minor by guardian and mother Manikyamma", to quote the words of the agreement, agreed to sell the lands in suit to the appellants for Rs.17,200. The purchase price was to be applied as to Rs.16,000 in discharging the promissory notes and as to Rs.1,200 in discharging the mortgage debt owing to Ramayya. The contract provided that a sale deed was to be executed, registered and delivered to the appellants, at their expense and upon their request.

The appellants duly paid off the mortgage debt of Rs.1,200 and in December, 1935, they were let into possession of the lands contracted to be sold, but no sale deed was ever executed or registered. On the 10th September, 1938, the respondent commenced the present suit by his mother and next friend Manikyamma, claiming possession of the lands contracted to be sold and mesne profits. The propriety of the contract of sale was challenged before the Subordinate Judge, but, to quote the judgment of the High Court,

"The Courts below have found, and the finding has not been challenged before us, that the plaintiff's father had left a large amount of debts which could not have been discharged from the income of the family properties and that it was necessary and beneficial to sell some of them for the purpose."

The Subordinate Judge held, *inter alia*, that section 53A of the Transfer of Property Act protected the appellants and dismissed the suit. His decision was reversed by the District Judge of Guntur, who made an order for possession in favour of the respondent, subject to his paying to the appellants Rs.17,200, with interest from the date of suit. An appeal by the present appellants to the High Court of Judicature at Madras was dismissed.

Their Lordships entertain no doubt that it was within the powers of the mother as guardian to enter into the contract of sale of the 29th November, 1935, on behalf of the respondent for the purpose of discharging his father's debts, and that, if the sale had been completed by the execution and registration of a deed of sale, the respondent would have been bound under Hindu law. As the sale was not so completed, it is conceded by counsel for the appellants that the present appeal must fail unless the appellants are entitled to the protection afforded by section 53A of the Transfer of Property Act. They are entitled to that protection if, but only if, the respondent comes within the words "the transferor or any person claiming under him." If he does, the section bars him from obtaining the relief claimed by him in the present suit and the appeal must succeed. If he does not, the order for possession made in his favour was right and the appeal must be dismissed.

Their Lordships think it is clear that the words "the transferor" refer back to the person who "contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf". Counsel for the respondent rely upon section 11 of the Indian Contract Act which is as follows:—

"Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject."

They submit that, having regard to that section and to the decision of their Lordships' Board in *Mohori Bibee v. Dhurmodas Ghose* (L.R. 30 I.A. 114) a minor cannot be a person who contracts. It is clear that, if the mother and guardian had taken no part at all in the transaction, the respondent could not have entered into a valid contract to sell the land in suit to the appellants, but it is equally clear that such a contract could and did come into existence in the present case, and the question for decision is—was the person who contracted, within the meaning of section 53A, the respondent or his mother?

The position of a guardian under the Hindu law was considered by their Lordships' Board in the case of *Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree* (6 Moore's Indian Appeals p. 393) and the following passage is to be found at page 412:—

“ They consider that the acts of the *Ranee* cannot be reasonably viewed otherwise than as acts done on behalf of another, whatever description she gave to herself, or others gave to her.”

Thus the act of the mother and guardian in entering into the contract of sale in the present case was an act done on behalf of the minor appellant. The position of the minor under such a contract is discussed in the following passage, with which their Lordships agree, in Pollock and Mulla's Indian Contract and Specific Relief Acts, 7th Edition, p. 70:—

“ A minor's agreement being now decided to be void, it is clear that there is no agreement to be specifically enforced; and it is unnecessary to refer to former decisions and distinctions, following English authorities which were applicable only on the view now overruled by the Privy Council.”

The learned authors are here referring to the decision in the case of *Mohori Bibee v. Dhurmodas Ghose* already cited. They continue:—

“ It is, however, different with regard to contracts entered into on behalf of a minor by his guardian or by a manager of his estate. In such a case it has been held by the High Courts of India, in cases which arose subsequent to the governing decision of the Privy Council, that the contract can be specifically enforced by or against the minor, if the contract is one which it is within the competence of the guardian to enter into on his behalf so as to bind him by it, and, further, 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.”

In the present case neither of the two conditions mentioned is wanting, having regard to the findings in the courts in India. It would appear, therefore, that the contract in the present case was binding upon the respondent from the time when it was executed. If the sale had been completed by a transfer, the transfer would have been a transfer of property of which the respondent, and not his mother, was the owner. If an action had been brought for specific performance of the contract, it would have been brought by or against the respondent and not by or against his mother.

Having regard to all the circumstances, their Lordships are of opinion that the respondent is the person who most aptly answers the description of “ the transferor ” in the sense in which these words are used in section 53A. It follows that he is debarred by the section from obtaining the relief claimed by him in the present action, which was rightly dismissed by the Subordinate Judge.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be allowed and the Order of the Subordinate Judge restored. The respondent must pay the appellants' costs of this appeal and of the proceedings in India.

In the Privy Council

SRI KAKULAM SUBRAHMANYAM
AND ANOTHER

v.

KURRA SUBBA RAO

DELIVERED BY
LORD MORTON OF HENRYTON

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