

Linga Reddy Vs. Ramachandrappa

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Court : Karnataka

Decided On : Nov-06-1970

Reported in : AIR1971Kant194; AIR1971Mys194; (1971)1MysLJ159

Judge : V.S. Malimath, J.

Acts : [Hindu Minority and Guardianship Act, 1956](#) - Sections 8(1) and 8(3); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 20, Rule 5 - Order 39, Rule 6

Appeal No. : Second Appeal No. 172 of 1968

Appellant : Linga Reddy

Respondent : Ramachandrappa

Advocate for Def. : V. Krishna Murthy and ;V. Tarakaram, Adv.

Advocate for Pet/Ap. : M.M. Jagirdar, Adv.

Disposition : Appeal dismissed

Judgement :

V.S. Malimath, J.

1. This is a defendant's second appeal against the decree passed by the Civil Judge, Gulbarga in R. C. A. No. 83/4 of 1967 reversing the decree passed by the Principal Munsif, Gulbarga, in Suit No. 129/1 of 1963. The plaintiff is a Hindu minor

represented by his father and natural guardian Mallanna. The suit is one for specific performance of the contract to sell executed by the defendant in favour of the plaintiff on the 12th of October, 1962, and for a permanent injunction restraining the defendant from interfering with the possession of the suit lands bearing Suit Nos. 90 and 91. The case of the plaintiff is that the suit lands belonged to the defendant. The father and natural guardian of the plaintiff entered into a contract with the defendant to purchase the two suit lands for a consideration of Rs. 8,000/-. The said agreement is produced in this case as Ex. P. 1. The entire consideration according to the plaintiff, was paid on the date of the agreement and the defendant put the plaintiff in possession of the suit lands. As per the agreement, the defendant also secured the permission of the Assistant Commissioner to sell the lands to the plaintiff as required by Section 47 of the Hyderabad Tenancy and Agricultural Lands Act. As the defendant refused to execute the sale deed and began to interfere with the plaintiffs possession of the suit lands, the plaintiff brought the present suit on the 17th of December, 1963, for specific performance of the contract to sell and for permanent infraction.

2. The defendant admitted the execution of the contract to sell, Ex. P. 1. He contended that in view of the oral agreement between the parties, the contract to sell was not intended to be acted upon for a period of two years. The defendant's case is that his brother-in-law one Tamma Reddy was due to the Government in respect of certain excise arrears. On behalf of his brother-in-law, the defendant approached the plaintiff's father and natural guardian Mallanna for a loan. Mallanna, according to the defendant, agreed to give the loan provided he had adequate security. According to the defendant, the contract to sell was executed as security for the loan given by Mallanna as the natural guardian of the minor plaintiff to Tamma Ready. It is the defendant's case that Tamma Reddy was to repay the loan with interest within a period of two years. If Tamma Reddy committed any default, it was agreed between the parties that the defendant should execute the sale deed in favour of the plaintiff. Further, the case of the defendant is that as per this oral agreement, Tamma Reddy who had taken the loan repaid the same with interest. It was therefore contended that the plaintiff is not entitled to enforce the contract to sell which was agreed to be enforced only in the event of Tamma Reddy not repaying the loan to the plaintiff as orally agreed

between the parties.

3. The learned Munsiff came to the conclusion that the oral agreement pleaded by the defendant was proved. He also held that there is no bar of Section 92 of the Evidence Act for proving such an oral agreement. The learned Munsiff also came to the conclusion that the plaintiff was not in possession of the suit lands on the date of suit. The learned Munsiff further recorded a finding that Tamma Reddy, the brother-in-law of the defendant had repaid the loan taken by him. In view of these findings, the learned Munsiff dismissed the plaintiffs suit.

4. The plaintiff challenged the decree passed by the Munsiff in the court of the Civil Judge at Gulbarga. The learned Civil Judge after re-appreciating the evidence on record came to the conclusion that the defendant has failed to prove the oral agreement pleaded by him. He also came to the conclusion that in view of Section 92 of the Evidence Act, the defendant is not entitled to prove such an oral agreement. The learned Civil Judge recorded a finding to the effect that Tamma Reddy has not repaid the alleged loan as pleaded by him. He also recorded a finding to the effect that the plaintiff was not in possession on the date of the suit. In view of these findings, the learned Civil Judge allowed the plaintiff's appeal and decreed the suit as prayed for.

5. It is the legality of the decree passed by the learned Civil Judge in appeal that is challenged by the defendant in this second appeal under Section 100, Civil Procedure Code.

6. The appellant has filed an application, I. A. No. VI for permission to raise some additional grounds in support of his appeal. It is explained that through inadvertence, the grounds now sought to be raised were not raised in the Memorandum of Appeal filed by the appellant. I have allowed the application and given permission to the appellant to urge the additional grounds raised in I. A. No. VI.

7. The first contention of Sri Manohar Rao Jagirdar, learned counsel for the appellant is that the plaintiff is not entitled to sue for specific performance of the contract to sell in question. Sri Jagirdar urged that it was not within the

competence of Mallanna, the natural guardian of the minor plaintiff, to bind the minor by the contract for the purchase of immovable property. As it was not within the competence of Mallanna, the natural guardian of the minor plaintiff, to enter into such a contract, the minor, according to the learned counsel for the appellant, was not bound by the contract. It was, therefore, contended that there was no mutuality. As there is no mutuality, it was submitted that the contract to purchase the immovable property entered into by the natural guardian of the minor plaintiff with the defendant cannot be specifically enforced. In support of this submission of his, Sri Jagirdar relied upon a decision of the Privy Council reported in *Mir Sarwarjan v. Fakuaddin Mahomed Chowdhuri* (1912) ILR 39 Gal 232 (PC). Sri Jagirdar relied upon, in particular, the following passage from the judgment of the Privy Council:

'Without some authority their Lordships are unable to accept the view of the learned Judges of the Division Bench that there is no difference between the position and powers of a manager and those of a guardian. They are, however, of opinion that it is not within the competence 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 they are further of opinion that as the minor in the present case was not bound by the contract, there was no mutuality, and that the minor who has now reached his majority cannot obtain specific performance of the contract.'

This decision, no doubt, *prima facie* supports the appellant's contention. But, it is necessary to note that their Lordships of the Privy Council were dealing with a contract to purchase, the parties to which were Mohamadans. We are in this case concerned with a contract, the parties to which are all Hindus. As early as in *Hunoomanpersaud Panday v. Mussumat Babooee Munraj Kounweree*. (1854-57) 6 Moo. Ind. App. 393 (PC), the Privy Council has recognised the power of a guardian of a minor under Hindu law to enter into a contract on behalf of his Ward for purposes, binding on the estate. The classical passage of the Privy Council in (1854-57) 6 Moo Tnd App 893 (PC) occurring at p. 423 may be recalled with advantage:

'The power of the manager for an infant heir to charge an estate not his own, is, under the Hindu Law, a limited and qualified power. It can only be exercised rightly in a case of need or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the bona fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded. But of course, if that danger arises or has arisen from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong, to support a charge in his own favour against the heir, grounded on a necessity which his wrong has helped to cause. Therefore, the lender in this case, unless he is shown to have acted mala fide will not be affected, though it be shown that, with better management, the estate might have been kept free from debt. Their Lordships think that the lender is bound to inquire into the necessities for the loan, and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the Manager is acting in the particular instance for the benefit of the estate. But they think that if he does so inquire, and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and they do not think that, under such circumstances, he is bound to see to the application of the money. It is obvious that money to be secured on any estate is likely to be obtained on easier terms than a loan which rests on mere personal security, and that, therefore, the mere creation of a charge securing a proper debt cannot be viewed as improvident management; the purposes for which a loan is wanted are often future, as respects the actual application, and a lender can rarely have, unless he enters on the management, the means of controlling and rightly directing the actual application. Their Lordships do not think that a bona fide creditor should suffer when he has acted honestly and with due caution, but is himself deceived.'

This is an authoritative pronouncement so far as the powers of the Manager or a Guardian of a Hindu minor are concerned. There is no reference to this judgment of the Privy Council in the later judgment of the Privy Council reported in (1912) ILR 39 Cal 232 (PC) relied upon by Sri Jagirdar. In ILR 39 Cal 232 (PC), their Lordships of the Privy Council were dealing with a contract to purchase entered

into by a Guardian of Mahomadan minor. The law relating to the powers of the Manager and Guardian of a Hindu minor is governed by the principles laid down by the Privy Council in (1854-57) 6 Moo Ind App 393 (PC). That is the reason why there is no reference to the earlier decision of the Privy Council in (1854-57) 6 Moo Ind App 393 (PC) in the later judgment of the Privy Council in ILR 39 Cal 232 (PC). In my opinion, the judgment of the Privy Council in (1912) ILR 39 Cal 232 (PC), must be confined only to contracts entered into by guardians of minors governed by Mahomadan law and not to the contracts entered into by the Managers or Guardians of minors who are Hindus. Subsequent to the judgment of the Privy Council in (1912) ILR 39 Cal 232 (PC), the Privy Council had another occasion to deal with this question arising in a case, the parties to which were governed by Hindu Law, in , Sri Kakulam Subrahmanyam v. Kurra Subba Rao. This is what the Privy Council has laid down in the said decision:

'(8) The position of a guardian under the Hindu Law was considered by their Lordships' Board in 6 Moo Ind App 393 (PC) and the following passage is to be found at page 412:

'They consider that the acts of the Ranees cannot be reasonably viewed otherwise than as acts done on behalf of mother, whatever description she gave to herself, or others gave to her.' (9) 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, Edn. 7, page 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 (1903) 30 Ind App 114 (PC) 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, 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.'

In view of the subsequent authoritative pronouncement of the Privy Council, I am of the opinion that the principle laid down by the Privy Council in (1912) TT,R 39 Cal 232 (PC) cannot at all be applied to contracts to purchase entered into by the Managers or Guardians of Hindu minors. It is necessary to note that the decision of the Privy Council in (1912) ILR 39 Cal 232 (PC) was not at all referred to in the Judgment of the Privy Council in , though the same was cited. It is reasonable to infer that their Lordships of the Privy Council did not consider the judgment in (1912) ILR 39 Cal 232 (PC) on the ground that the said decision governs only the powers of the guardians of minors who are governed by Mohamadan Law and not the powers of the guardians or managers of minors who are governed by Hindu Law. In my view, the rule laid down by the Privy Council in (1912) ILR 39 Cal 232 (PC) does not govern the contracts entered into by the Managers or Guardians of Minors who are Hindus. Such cases are governed by the rule laid down by the Privy Council in (1854-57) 6 Moo Ind App 893 (PC) and .

8. Sri Manohar Rao Jagirdar relied upon the decisions reported in : AIR1964 All527 and : AIR 1968 MP150 in support of his contention that even after the Judgment of the Privy Council in , the High Courts in India have taken the view that the contracts to purchase entered into by the Guardians of Hindu minors cannot be specifically enforced. In the aforesaid decisions, the High Courts of

Assam, Madras, Allahabad and Madhya Pradesh have after considering the subsequent judgment of the Privy Council in , come to the conclusion that the principle laid down by the Privy Council in its earlier decision in (1912) ILR 39 Cal 232 (PC) governs also the contracts to purchase entered into by the guardians and managers of minors governed by Hindu Law. The contrary view has been expressed by the High Courts of Andhra Pradesh, Patna, Calcutta and Bombay in the cases reported in : AIR1962 Pat319 , and : AIR1969 Bom140 , relied upon by the learned counsel for the respondent. I have already given my reasons for coming to the conclusion that the principle laid down by the Privy Council in (1912) ILR 39 Cal 232 (PC) does not govern the contracts entered into by the guardians and managers of minors governed by Hindu Law and that the powers of guardians and managers of Hindu minors are governed by the principles laid down by the Privy Council in (1854-57) 6 Moo Ind App 393 (PC) and . I find it unnecessary to discuss the judgments of various High Courts taking different views in the matter as the question now is only of an academic interest subsequent to the coming into force of the [Hindu Minority and Guardianship Act, 1956](#).

9. The [Hindu Minority and Guardianship Act, 1956](#), came into force on the 25th of August, 1956. As the preamble of the said Act indicates, it is an Act to amend and modify certain parts of the law relating to minority and guardianship among Hindus. Section 5 of the said Act provides that save as otherwise expressly provided in the Act, any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in the Act. It also provides that any other law in force immediately before the commencement of the Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in the Act. It is therefore clear that in respect of matters specifically dealt with in the Act, the provisions of the Act prevail over all existing law whether in the shape of enactments or otherwise. Section 6 of the Act provides as to who can be the natural guardians of Hindu minors in respect of minor's person and property excluding the minor's undivided interest in the joint family property. If the minor is a boy, the natural guardians are first the father and then the mother. Section 8 of the Act speaks of the powers of natural guardians. It is enough for the present purpose to extract only Sub-sections (1) to (4) of Section

8, which read as follows:

'8. Powers of natural guardian.--

(1) The natural guardian of a Hindu minor has powers, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the Court,--

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of Sub-section (1) or Sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardians to do any of the acts mentioned in Sub-section (2) except in case of necessity or for an evident advantage to the minor.'

The powers of the natural guardian of a Hindu minor have been specified in Section 8 except in regard to undivided interest of the minor in the Joint family property. The powers of the natural guardian of a Hindu minor, except in regard to his undivided interest in the joint family property, have therefore to be ascertained from Section 8 of the Act and not with reference to the law that prevailed before the Act came into force. The natural guardian of a Hindu minor has, subject to the provisions of Section 8, power to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate. It is, however, made clear in Sub-section

(1) of Section 8 that the said power of the guardian cannot be exercised in such a manner as to bind the minor by a personal covenant. The other limitation on the power of the natural guardian is contained in subsection

(2) of Section

8. Sub-section

(2) provides that a natural guardian shall not, without the previous permission of the court, mortgage, charge, transfer by sale, gift, exchange, or otherwise, any part of the immovable property of the minor or lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority. Sub-section

(3) of Section 8 provides that any disposal of immovable property by a natural guardian in contravention of subsections

(1) and

(2) is voidable at the instance of the minor or any person claiming under him. Sub-section

(4) of Section 8 provides that no court shall grant permission to the natural guardian to do any of the acts mentioned in Sub-section

(2) except in case of necessity or for an evident advantage to the minor. It is therefore clear that prior permission of the court is necessary only if the natural guardian desires to enter into transactions specified in Sub-section

(2) of Section

8. No such prior permission of the Court is necessary for entering into transactions other than those to which subsection

(2) of Section 8 relates. Entering into a contract to purchase an immovable property by the guardian of a Hindu minor is not one which comes within the ambit of Sub-section

(2) of Section

8. It is therefore clear that the natural guardian of a Hindu minor need not obtain previous permission of the Court to enter into a contract to purchase an immovable property. The language of Sub-section

(1) of Section 8 is wide enough to confer a power on the natural guardian of entering into a contract to purchase immovable property. But the said power should be exercised by the natural guardian only when the conditions specified in Sub-section

(1) of Section 8 exist and in such a way as not to bind the minor by a personal covenant. Section 8(1) states that the natural 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 the realisation, protection or for the benefit of the minor's estate. Whatever might have been the position in Hindu Law prior to the coming into force of the Hindu Minority and Guardianship Act, 1956, it is clear that after the said Act came into force, the natural guardian of a Hindu minor is competent to enter into a contract to purchase, provided the conditions specified in Section 8(1) are satisfied.

10. Now the question for consideration is as to whether a contract to purchase entered into by a natural guardian in contravention of Section 8(1) is void and unenforceable. Sub-section (3) of Section 8 provides that any disposal of immovable property by a natural guardian in contravention of Sub-section (1) or (2) is voidable at the option of the minor or any persons claiming under him. It is, therefore, clear that a contract to purchase immovable property by a natural guardian of a Hindu minor in contravention of Sub-section (1) of Section 8 cannot be considered as a void transaction. It is only a voidable transaction which can be avoided at the instance of the minor or any person claiming under him. The power of avoiding the contract can be exercised only by the minor or any person claiming under him. Until it is avoided as provided in Section 8(3), the contract to purchase immovable property by a natural guardian of a Hindu minor is a valid contract and as such enforceable by the institution of a suit for specific performance. In a suit brought by the natural guardian for specific performance of the said contract, the

defendant who has agreed to sell the property under the contract is not entitled to contend that the transaction has been entered into in contravention of subsection (1) of Section 8 of the Act and that therefore the same is void or unenforceable; inasmuch as the right to avoid such a contract vests only with the minor or any person claiming under him. Sub-sections (1) and (2) of Section 8 of the Act have been incorporated only to protect the interest of the minor and for his benefit. These provisions cannot be invoked for adversely affecting the interests of the minor.

11. In the present case, the contract to purchase was entered into by the natural guardian of the plaintiff who is a Hindu minor on the 12th of October, 1932, long after the Hindu Minority and Guardianship Act came into force. In view of Section 8(1) of the Act, the natural guardian of the plaintiff, who is a Hindu minor, had competence to enter into the contract to purchase the immovable property from the defendant. The suit has been filed by the natural guardian of the Hindu minor for specific performance of the said contract to purchase. The defendant is not entitled to contend that the contract cannot be enforced on the ground that the transaction has been entered into in contravention of Sub-section (1) of Section 8. Neither the minor nor any person claiming under him has chosen to impeach the said transaction. Besides, in this case, the defendant has not even pleaded that the contract to purchase has been entered into by the natural guardian of the minor in contravention of Section 8(1) of the Act. Merely because the contract to purchase has been entered into by the natural guardian of the Hindu minor, the defendant is not entitled to resist the suit for specific performance of the contract to purchase. The natural guardian of a Hindu minor has competence under Section 8(1) to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or for the benefit of the minor's estate. It is also necessary to mention that the natural guardian has not bound the minor by any personal covenant in this case. The entire consideration was paid on the date of the contract to purchase. Possession was also delivered by the defendant on the date of contract to purchase itself. There is, therefore, no personal covenant binding on the minor plaintiff in this case. There is, therefore, no substance in the contention of the learned counsel for the appellant that as the contract to purchase has been entered into by the natural guardian on behalf of the minor, the plaintiff is

not entitled to a decree for specific performance of the said contract to purchase.

12. The next submission of Sri Manohar Rao Jagirdar, learned counsel for the appellant is that the finding of the learned Civil Judge that the oral agreement pleaded by the defendant has not been proved, is not in accordance with law. The learned Judge has observed that the defendant did not set up the oral agreement at the earliest point of time when the question relating to grant of temporary injunction in the suit was considered by the Court. The learned counsel for the appellant complains that the learned Civil Judge ought not to have taken this aspect of the matter into consideration. It is clear from the discussion in the judgment of the learned Civil Judge that he has come to the conclusion that the defendant has come forward with a belated plea about the oral agreement. In passing he has made a reference to the fact that the defendant did not set up the oral agreement when he filed his counter affidavit opposing the application of the plaintiff for grant of temporary Injunction. The conclusion that the agreement set up by the defendant has not been established is not based solely on the ground that that plea was not put forward at an earlier stage, i. e., at the time of consideration of the application for temporary injunction, but was put forward at a belated stage in the suit. The learned Civil Judge has considered the evidence placed by the defendant and has come to the conclusion that that evidence is not satisfactory to establish the oral agreement pleaded by the defendant. There is therefore no substance in this contention of the learned counsel for the appellant.

13. Sri Manohar Rao Jngirdar next contended that the learned Civil Judge has wrongly relied upon the order passed by the court granting an order of temporary injunction while dealing with the question of possession. Sri Jagirdar is no doubt right when he contends that the learned Civil Judge was not justified in making use of the order passed by the Court in an interlocutory application for temporary injunction, while determining the issues arising in the main suit itself. But, even excluding the order passed by the court on the application for temporary injunction, I find that there is satisfactory evidence in the case to prove the plaintiffs possession, which has been accepted by the lower court. There is a recital in the contract to purchase about delivery of possession in favour of the plaintiff on the 12th of October, 1962. The entire consideration was paid on that

day itself. In pursuance of the said contract to purchase, the defendant made an application to the Assistant Commissioner and obtained permission to alienate the suit lands in favour of the plaintiff. There is also oral evidence to prove the plaintiff's possession which has been accepted by the learned Civil Judge. The finding of the learned Civil judge that the plaintiff was put in possession in pursuance of the contract to purchase and was in possession on the date of suit cannot, therefore, be said to be an erroneous finding.

14. For the reasons stated above, this appeal fails and the same is dismissed with costs.

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