

**Ram Chandra and ors. Vs. Mt. Dhapo and ors.**

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**Court :** Allahabad

**Decided On :** Jul-22-1932

**Reported in :** AIR1934All68

**Appellant :** Ram Chandra and ors.

**Respondent :** Mt. Dhapo and ors.

**Judgement :**

**Iqbal Ahmad, J.**

1. This is a plaintiffs appeal and arises out of a suit for partition of a house. Half of the house belonged to Reoti and his minor brother Khawani, respondents, and the remaining half of the house was owned by Mt. Dhapo, one of the respondents. Reoti for himself and as guardian of his minor brother Khawani entered into a contract to sell their half share in the house to the plaintiffs for a sum of Rs. 950. Reoti, however, did not execute a sale-deed in the plaintiffs' favour. On the contrary he sold the half-share in the house to one Bulaki Das on the 29th of November 1926 for a sum of Rs. 850. The plaintiffs then filed a suit for specific performance of the contract entered into by Reoti. Bulaki Das was impleaded as a defendant in that suit. The suit was numbered as Suit No. 560 of 1926 A decree was passed in the plaintiffs' favour. The decree directed Reoti and Khawani to first obtain a partition of their half-share in the house and then execute a sale-deed in the plaintiffs' favour. In the event of their failing to do so the plaintiffs were given

the option to file a suit for partition Reoti and Khawani, however, did not take steps to obtain a partition of their share in the house and then the plaintiffs filed the suit giving rise to the present appeal. Mt. Dhapo, Reoti and Khawani were amongst others arrayed as defendants to the suit. Mt. Dhapo contested the suit inter alia on the ground that she was the owner of the whole house and that Reoti and Khawani had no share in the same. Her contention was overruled and the argument in the present appeal before me has proceeded on the assumption that Reoti and Khawani were the owners of a half-share in the house which the plaintiffs wanted to have partitioned.

2. Khawani resisted the suit on the grounds that the decree relied on by the plaintiffs was fraudulent and collusive; that 'Reoti Saran had no legal family necessity of taking a loan or selling the said house;' that the decree obtained by the plaintiffs in the suit for specific performance was void and ineffectual as against Khawani as he was arrayed in that suit under the guardianship of Reoti whose interests were adverse to his interests, and therefore, he was not properly represented in the suit. The other pleas raised by Khawani are immaterial for the decision of this appeal. The trial Court held that the contract of sale entered into by Reoti for himself and as guardian of Khawani was for legal necessity and was a valid transaction. It, however, held that it was not within the competence of Reoti to bind Khawani by a contract of sale, though that contract was for legal necessity. It further held that the decree in the specific performance suit was not binding on Khawani as Khawani was prejudiced by the omission of Reoti to defend the suit on the ground that the contract entered into by him with the plaintiffs was not binding on Khawani. It, therefore, came to the conclusion that the decree in the specific performance suit could not affect one-fourth share of Khawani in the house. As a result of these findings it passed a decree in the plaintiffs' favour for partition of one-fourth share of the house that belonged to Reoti.

3. Neither Reoti nor Khawani appealed in the lower appellate Court. Plaintiffs filed an appeal in the lower appellate Court and Mt. Dhapo filed cross-objections. The lower appellate Court dismissed the plaintiffs' appeal and allowed Dhapo's cross-objections with the result that it passed a decree dismissing the plaintiffs' suit in its entirety. The lower appellate Court held that Reoti was not competent to enter into

a contract to sell the share of Khawani in the house and that the contract for sale entered into by Reoti was not binding on Khawani. It also held that the decree in the specific performance suit was not 'binding on Khawani as he was precluded from raising the defence of the invalidity of the contract in that suit by reason of the fact that he was represented by Reoti who, having himself entered into the contract, could not repudiate the sale. In this view of the case the lower appellate Court refrained from recording any finding on the question as to whether or not the agreement for the sale entered into by Reoti was for legal necessity. It did not agree with the view of the trial. Court that though the decree in the specific performance suit was not binding on Khawani, the plaintiffs were entitled to get a decree for partition as regards the one-fourth share of Reoti. In support of the proposition that the contract of sale in the present case was not binding on Khawani, the learned Judge of the lower appellate Court relied on the decisions in *Sri Nath Bhattacharjee v. Jotindra Mohan Chatterji* A.I.R. 1926 Calcutta 445 and *Ram Krishna Reddier v. Chidambara Swamigal* A.I.R. 1928 Mad. 407. It has been held in these cases that a guardian of a minor is not competent to bind the minor by a contract for sale of immoveable property, even though the contract may be justified by legal necessity. These decisions are based on the decision of their Lordships of the Privy Council in *Mir Sarvarjan v. Fakhruddin Mohammed* (1912) 39 Cal. 232. In that case the manager of the estate of a Mohammedan minor had entered into an agreement with a third person to purchase some immovable property. The minor brought a suit for specific performance of the contract. Their Lordships held that neither the manager of a minor's estate nor the guardian of a minor is competent to bind the minor or the minor's estate by a contract for the purchase of immoveable property and that such a contract is not binding on the minor. There is no mutuality in such a contract and accordingly the other party to the contract is also not bound by the same. The question whether the manager of a joint Hindu family is or is not competent to bind the minor members of the family by a contract to sell immoveable property for purposes of family necessity did not form the subject of discussion or decision in either of the three cases noted above. In those cases the powers of the guardian or of a manager of a minor's estate to bind the minor by a contract for the purchase or sale of immoveable property were considered, and in my judgment in those cases it was never laid down that a

manager of a joint Hindu family labours under the same disqualification as the manager or guardian of a minor's estate. The position of the manager of a joint family is radically different from that of a mere manager or guardian. The manager or guardian does not possess any interest in the property of the minor and he does not in any way stand to gain or lose by a contract either for sale or for purchase of immoveable property entered into by him on behalf of a minor. The case of a manager of a joint Hindu family is wholly different. He has a joint interest in the family property with the minor members of the family. A contract either for sale or for purchase entered into by him affects his interests equally with other members of the family.

4. A manager of a joint Hindu family is authorised to alienate the family property for purposes for which a mere guardian or a manager of a minor cannot. I therefore cannot agree with the contention that the decision of their Lordships of the Privy Council in Fakhruddin's case is an authority for the proposition that the minor members of a joint Hindu family are not bound by a contract for the sale of immoveable property entered into by the manager of that family, even though the contract was necessitated by pressing family necessity and if either in the Calcutta or in the Madras case noted above it was intended to lend countenance to such a proposition. I respectfully dissent from those decisions. I am not unmindful of the well recognised distinction between a mere contract and a conveyance nor of the fact that the rights of the members of a joint Hindu family to regain the family property, when it has passed out of the joint family, are circumscribed by greater limitations than those which affect their rights to protect the family property so long as it has not passed out of the family. But these doctrines, in my judgment, have no application to the case under consideration.

5. The question of the competence of the manager of a joint Hindu family to bind the minor members of that family by contract of sale entered into by him was considered by a Full Bench of the Patna High Court in Hari Charan Kuer v. Kaula Bai A.I.R. 1917 Pat. 478 and it was held in that case that such a contract can be specifically enforced. To the same effect is the decision of the Nagpur Judicial Commissioner's Court in Har Oovind v. Mehtab Singh A.I.R. 1932 Nag. 193. In view of these decisions and for the reasons that I have given above, I hold that a

manager of a joint family is fully competent to bind the minor members of the family by a contract for sale of immoveable property belonging to the family, provided the contract is for legal necessity. If the contract entered into by Reoti with the plaintiffs was for legal necessity, Khawani could have no valid defence to the suit for specific performance, and, therefore, he could not be prejudiced by the omission of Reoti to contest that suit, and the decree in the specific performance suit will be binding on him. But the lower appellate Court has not recorded any finding on the question of legal necessity. In the view that I take I cannot decide this appeal without having a finding from the lower appellate Court on the following issue, which I remit to that Court : Was the contract for the sale of half of the house entered into by Reoti with the plaintiffs for valid family necessity. The lower appellate Court shall decide the issue on the evidence on the record. On receipt of the finding the usual ten days shall be allowed for filing objections.

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