

**Subba Reddy Vs. Guruva Reddy**

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**Court :** Chennai

**Decided On :** Aug-13-1929

**Reported in :** AIR1930Mad425

**Appellant :** Subba Reddy

**Respondent :** Guruva Reddy

**Judgement :**

**Sundaram Chetty, J.**

1. This second appeal arises out of a suit brought by the plaintiff-respondent to recover possession of a small plot of land on payment of a sum of Rs. 100 to the defendant (appellant) by way of redemption of an othi (usufructuary mortgage) held by him. The plaintiff's claim to the suit land is based upon the registered sale deed Ex. A. His claim was resisted by defendant 1 on several grounds which necessitated an elaborate trial and a good deal of arguments before the lower Courts. In this second appeal, they have filtered down to two main contentions which alone have been strenuously argued before me by the learned advocate for the appellant.. They are: (1) that the sale under Ex. A is invalid as it was executed in favour of a minor, and (2) that this sale deed is invalid, as it was not validly presented for registration before the Sub-Registrar.

2. Before proceeding to discuss the question of law a brief reference to the contents of Ex. A and some relevant facts would be sufficient. The plaintiff was a

minor of about 16 years of age at the time of the execution of Ex. A. This sale deed was executed in his favour without being described as a minor represented by any guardian. As regards the particulars of the amount received by the vendors in respect of the sale, the document recites thus:

The amount settled with you in respect of your discharging the debt duo on the mortgage executed already on 23rd April 1912, to Meyyappatti Sara Subba Reddi by No. (1) out of us in respect of the undermentioned property is Rs. 100; the amount received by us as advance after settling the sale in the month of Ani last is Rs 55; the amount received by us in cash this day in the presence of the Sub-Registrar of Kalliudi is Rs. 345-total Rs. 500 for the three items. We have this day sold to you the undermentioned property for the aforesaid sum. You shall henceforth enjoy the said property from generation to generation with absolute rights.

3. It is in evidence that the plaintiff was an orphan having no agnatic male relations and his affairs were managed by his maternal uncle and father-in-law Nagu Raddi (P.W. 1). It was P.W. 1. who first entered into an oral agreement for sale in respect of the suit land with defendants 2 and 3-settled the terms of the sale and also paid an advance of Rs. 55. As found by the learned Judge, there is no doubt that the prior oral agreement for sale was entered into not by the plaintiff but by his maternal uncle and guardian P.W. 1 on his behalf. A portion of the sale amount, namely Rs. 55 was also paid even before the execution of the sale deed. Out of the balance, a sum of Rs. 345 was understood to be paid in the presence of the Sub-Registrar at the time of the registration of the deed as admitted by P.W. 1. This sum, however, treated as having been paid at the time of the execution of the sale deed, as would appear from the recitals therein, adverted to above. The remaining sum of Rs. 100 which was to be paid in discharge of defendant 1's mortgage was also treated as another item of consideration that passed to the vendors. Thus, according to the recital in Ex. A, there was no contractual obligation outstanding in favour of the vendors, on the performance of which alone the title to the property should pass to the plaintiff. There is also the further fact borne out by the evidence that the sum of Rs. 345 was even tendered before the Sub-Registrar for payment, but the vendors declined to receive it: (vide Exs. B and

C). This tender and the improper refusal tantamount to the performance of the obligation to pay the consideration by the plaintiff, even before the registration of the sale deed. Otherwise, it would be allowing one to take advantage of one's wrong to prejudice the rights of another.

4. That a sale in favour of a minor is ipso facto void is a dictum which is no longer good law. The decision in Navakoti Narayana Chetty v. Logalinga Chetty [1910] 33 Mad. 312 has now been overruled by the Full Bench in Raghava Chariar v. Srinivasa Raghava Chariar [1916] 40 Mad. 303. In that case, the question was discussed by the learned Judges at some length and the principles applicable to a sale or mortgage in favour of a minor have been succinctly stated by Srinivasa Ayyangar, J., at p. 336 as follows:

A transfer cannot be void unless (a) the transferrer is incompetent to transfer or the transferee is incompetent to hold the property, (b) the transfer is conditional on the passing of consideration and the consideration did not pass, (c) the transfer is part of a transaction in which the transfer is made in consideration of covenants or contracts to be performed by the transferee and the transferee cannot be compelled to perform them.

5. In the present case, there is no good ground for holding that the transfer under Ex. A is void, as it does not come under any of the three categories mentioned above. This is clear from the facts and circumstances of this case referred to in the previous paragraph. Mr. K.V. Krishnaswamy Ayyar for the appellant urged that every act to be done by the plaintiff must have been performed before the execution of the sale deed and that otherwise the sale is invalid. If it is established that the title to the property should not pass in spite of the registration of the sale deed unless certain acts are done by the vendee prior to the execution of the sale deed, there will be some force in this extreme contention, but no such case has been made out. On the other hand, applying the principles enunciated in the aforesaid Full Bench decision I am satisfied that there is nothing to vitiate the sale under Ex. A by reason of its standing in favour of a minor. It is unnecessary to labour this point farther, by referring to some other decisions quoted during the arguments. I agree with the lower appellate Court that the sale deed Ex. A is not

void by reason of its having been executed in favour of the plaintiff while he was a minor.

6. Coming now to the second point, we have to see whether Ex. A was presented for registration according to Section 32, Registration Act. Under Clause (b) of that section the representative of a claimant under the document may present it for registration. Section 2, Sub-clause (x), states that 'representative' includes the guardian of a minor. In the present case, the evidence shows that P.W. 1, the maternal uncle of the plaintiff who was an orphan and who had no agnatic male relations, presented the sale deed for registration on behalf of the plaintiff as his guardian. That he was the de facto guardian of the plaintiff looking after his properties is established beyond doubt. The lower appellate Court has carefully considered this question in paras. 25 and 26 of its judgment and I fully endorse the view therein expressed. It is contended on the appellant's side that the word 'guardian' used in Section 2, Clause (x) should be deemed to be either a de jure guardian or a natural guardian recognized by the Hindu Law. The powers of a de facto and a natural guardian seem to be the same for all intents and purposes and there is no good basis for holding that the legislature intended to exclude a de facto guardian while using the term 'guardian' in a comprehensive sense, as coming under the definition of 'representative.' In the chapter on Guardianship in Trevelyan's Hindu Law, 2nd Edn., it is observed on p. 215 that the Hindu Law prescribed a succession to the right of guardianship, failing the father, and the mother. In the absence of the elder brother and some other paternal relations, the maternal kinsmen were preferred in order of priority. That being so, P.W. 1 being the maternal uncle, would be a natural guardian or at least one who is competent to act as his natural guardian: vide the decision of the Privy Council in Venkatappayya v. Rajah Nayani Venhata Ranga Row A.I.R. 1929 P.C. 24. In my opinion the presentation of Ex. A for registration by P.W. 1 is not vitiated by any legal flaw. In this connexion I may also observe that any supposed defect in the original presentation has been cured by the re-registration of the sale deed according to the provisions of Section 23(a), Registration Act. It is clear from the affidavit filed by the plaintiff (respondent) at the time of the hearing of this second appeal, that the sale deed Ex. A has been re-registered under Section 23(a). This has retrospective effect and the defect, if any, in the original presentation has been

cured.

7. The two main objections to the validity of Ex. A having failed, the decree of the lower appellate Court is confirmed and this second appeal is dismissed with costs.

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