

K. Munayya Vs. M. Krishnayya and ors.

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Court : Chennai

Decided On : Jul-18-1924

Reported in : AIR1925Mad215

Appellant : K. Munayya

Respondent : M. Krishnayya and ors.

Judgement :

Spencer, O.C.J.

1. The plaintiff whose suit was dismissed in the lower Court appeals. The suit was brought to set aside a transaction of sale, entered into by the plaintiff's guardian during his minority. The plaintiff's guardian was his mother and it appears that his maternal uncle, Narayya, assisted his mother in business transactions.

2. The sale deed, Exhibit VII, which is attacked, is a sale of a house in Proddatur for Rs. 4,300, in which the minor has an one-third share. Owing to the death of his father, after division had taken place between the plaintiff's step mother on one side and the plaintiff and his father on the other side, during the lifetime of the father, the plaintiff's share of the house, at the time of the sale, was two-thirds. The price being Rs. 4,300, two-thirds of this amounts to Rs. 2.886.

2. The Judge has found that there was justifiable necessity, for about half the sum, Rs. 770 being due upon a mortgage incurred by the plaintiff's father, Rs. 93 being due on a simple debt, Rs. 40 for the plaintiff's father's funeral expenses and about

Rs. 450 for the marriage expenses of the plaintiff's sister.

3. It is not now suggested that any fraud on the part of the plaintiff's guardian has been proved. But it is argued by Mr. Krishnaswamy Aiyar that there was no justification for selling this property, when the debts due by The family might have been defrayed by a mortgage or by other means; and secondly, it is argued that the deposit of Rs. 1,433 of the sale price with the vendee indicates that there was no immediate necessity, for selling the minor's share and that it was an imprudent transaction, as the minor's guardian ran the risk of the vendee becoming insolvent, before the minor came of age.

3. The Subordinate Judge has carefully considered the circumstances of the sale and he has found on The first issue, that the sale was not an imprudent alienation, that the price was reasonable, and that the vendee acted bona fide. An important consideration in this case is that the minor not having become divided by metes and bounds from his stepbrother had only an undivided share in this house. Some property had to be sold, in order to raise money to pay off the debts, instead of allowing them to increase by accumulation of interest. Owing to the house being undivided, it had to be sold as a whole, as nobody would give a proper price for an undivided share. The plaintiff's half brother joined in the sale and it is not suggested that he was unmindful of his own interest, or was ready to accept a smaller price than what the house was worth, for his share of the purchase money.

5. More than one attempt was made to sell the property. On the first occasion, the plaintiff's maternal uncle himself offered bids, in order to raise the price and, when it was sold for the price that was considered insufficient, he bought it back again, and again put it up for sale. All these are circumstances, which indicate that the sale was a bona fide transaction, arranged by the plaintiff's guardian, to meet the necessities of paying her husband's debts. Simultaneously with the sale, the purchaser executed a bond, Exhibit. B, to pay Rs. 1,433 in all, on the plaintiff's demand immediately after he attained majority; the interest meanwhile was fixed at 6 per cent, which was the rate of interest secured by the discharged mortgage document.

6. It is now argued that it was an improper act on the part of the minor's guardian, to leave any part of the purchaser money, in the hands of the purchaser. One consequence of so doing was that the minor's guardian was prevented from embezzling or wasting the cash, which ought to come to the minor. The question has been considered in several cases whether in such a case, where a purchaser separately covenants to pay the purchase money, or part of it, at a future date, the vendor loses his lien for the unpaid purchase money.

7. In the case reported in *Krishnaswami Aiyangar y. Subramania Ganpatigal* (1918) 7 M.L.W. 210 two promissory notes were executed, as part of the consideration for the sale and it was held by the learned Judges, who decided that ease, that the vendor lost his lien, for the unpaid purchase money. Phillips, J. who delivered the judgment of the Court, observed that, when there is a separate agreement for payment of part of the purchase money, in lieu of actual cash, it is a question of the intention of the parties, whether the agreement is accepted as a collateral security, or whether it is a substitution for the statutory right, which every vendor has, by reason of Section 55(4) of the Transfer of Property Act, to have a lien for the unpaid purchase money.

8. On the facts of the ease, it is not for us now to say that it was wrongly decided, because that must have been upon the view, which the Court took of the intention of the parties. In *Webb v. Macpherson* (1904) 31 Cal. 57 the Privy Council pointed out that under Section 55 of the Transfer of Property Act, it is only in the absence of the contract to the contrary that the seller does not retain his lien upon the property for recovery of the purchase money.

9. Therefore, the question in every case is whether the contract excludes the operation of the charge. This will be so, whether the charge is one created by a statute as in India, or arises out of equity as in England. Halsbury's Laws of England, Vol. 19, Page 30 makes it clear that everything depends upon the intention of the parties. I can find nothing in the transaction under Exhibit B to indicate that there was any understanding between plaintiff's guardian and the purchaser, Venkatasubbiah that the latter should get property unencumbered, by any lien for the unpaid purchase money.

10. The parties seem to have considered it necessary, that there should be some collateral agreement, like Exhibit B, in order to make it clear that the unpaid portion of the purchase money should be payable to the minor, after he attained majority. There is nothing in the terms of this document, or in the sale-deed, to indicate an intention to put an end to the vendor's statutory lien. The guardian's conduct in entering into the transaction was not such, as to justify any reflection being cast upon it, on account of this arrangement.

11. I am of opinion that the Subordinate Judge was right in upholding the transaction and dismissing the suit. The appeal must be dismissed with costs.

Srinivasa Aiyangar, J.

12. I agree with my Lord the Chief Justice. I only wish to add that the strongest ground, on which Mr. Krishnaswamy Aiyar relied, for asking us to set aside the sale was that as a part of the transaction between the guardians of the minor and the purchaser it was agreed that the purchaser should with hold one-third of the entire purchase money and keep it in his hands till the minor should attain majority. This he argues is clear and cogent evidence that there was no necessity for the alienation at any rate to the extent of the amount that was agreed to be detained in his hands. If it stood alone, undoubtedly a Court of law would have hesitated, before it refused to set aside such a transaction. It is not merely evidence that there was no necessity for the amount which was agreed to be detained by the purchaser, but it was argued that it also showed that the amount that was necessary might have been raised otherwise.

13. However, in this case there are various circumstances, which weigh on the other side. To begin with, the mortgage of Rs. 770 was not only upon the suit house, but also upon all other immovable properties of the minor. The release of the other properties from this encumbrance was undoubtedly a benefit to the estate of the minor. This house itself, barely fifteen feet in breadth, though not actually divided by metes and bounds, was divided into three parts, The elder son's share being in the middle and the two-thirds that accrued to the minor being on either side of this share.

14. Therefore, there was a house which has necessarily to be sold, at some time or other. The elder brother was willing, there and then, to join in the sale. It is also clear that some moneys were required to pay off the unsecured debts and a sum of Rs. 400 for meeting the expenses of the marriage of the minor's sister.

15. I do not think it would have been a prudent transaction, to seek to sell only one share of the minor's property. Nobody would have purchased it. No doubt a Court has to decide not only with regard to the kind of alienation, but also with regard to the quantum of alienation. But considering all the circumstances, it seems to me to be perfectly clear, that this transaction was not such as should be set aside.

16. We should also bear in mind that the purchaser was a stranger and not a relation of the parties. No fraud or collusion has been alleged or proved. The circumstances clearly show that guardians of the minor were not anxious to handle any monies of the minor. No doubt, it may be argued, as it was, that the mere fact that for his own protection the purchaser stipulated to retain in his hands a sum of Rs. 1,400 and odd showed that he was conscious that the transaction was questionable, or was capable of being questioned.

17. But having regard to the large number of claims in Courts every day to set aside alienations, we cannot accuse any purchaser, if he was over-careful. It has often been said that the test for a Court in considering whether a transaction by a [guardian on behalf of the minor should be set aside or not, would be to see whether the transaction was such as a man of ordinary prudence would have had in respect of his own property. That undoubtedly is not an accurate statement of the law. It is too broadly stated. But at any rate, that clearly indicates one limit, namely, that no Court will uphold a transaction which it considers that a man of ordinary prudence would not have had, in respect of his own property.

18. The other limit I should like to lay down somewhat in this way. Suppose at the time of the transaction the guardians who acted actually, were guardians appointed by the Court and they made an application to the Court for sanctioning a particular transaction were the circumstances such as the Court would consider justifiable, for the purpose of sanctioning the transaction? It is perfectly clear that if in these circumstances a Court would have sanctioned a transaction, it must be

deemed to be a transaction, which no Court of law would or should set aside.

19. Even applying this principle, I am satisfied that in this case, the circumstances, were such that, if an application had been made to the Court for sanctioning the sale of the two-thirds share of the minor in this property, a Court of law would have sanctioned it. It is in evidence that for three days public auctions were held and this property was attempted to be sold. There was no purchaser and all the circumstances indicate that by the sale of this property, the necessary amount was sought to be raised, as it was the best thing to do. The elder brother of the minor, the mother and the maternal uncle, all of them admittedly acting bona fide in the interests of the minor concerned in the sale.

20. I therefore, agree that the sale ought not to be set aside. The appeal, therefore fails, and I agree to the order proposed by my Lord the Chief Justice.

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