

Srinath Bhattacharjee and ors. Vs. Jotindra Mohon Chatterjee

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Court : Kolkata

Decided On : Feb-26-1925

Reported in : AIR1926Cal445

Appellant : Srinath Bhattacharjee and ors.

Respondent : Jotindra Mohon Chatterjee

Judgement :

Greaves, J.

1. This is an appeal by the defendants against a decision of the Second Additional District Judge of 24 Parganas reversing a decision of the Subordinate Judge. The suit out of which this appeal arises was a suit by the plaintiff to enforce specific performance of an agreement for sale of certain premises, dated the 10th December 1919, whereby certain persons agreed to sell premises No. 18, Haldar Ba Gan Lane, as therein mentioned to the plaintiff for a sum of Rs. 5,000. The contract was entered into by Srinath Bhattacharjee, Krishna Lal Bhattacharjee, Makhan Lal Bhattacharjee, Ananta Lal Bhattacharjee, Narain Chandra Bhattacharjee and Balai Chandra Bhattacharjee, a minor, by his guardian Sreemuty Bhajahari Devi who was Balai's mother. The contract was executed by all the parties other than Narain, and it was duly registered. Subsequently an unregistered document was entered into by Makhan Lal dated the 26th of December 1919, whereby he purported to convey his interest in the property to the

plaintiff. The document in form is a conveyance and in the document there is an undertaking to execute a conveyance on proper stamp paper and to get the title-deed registered within certain time. Then there is a further unregistered document, dated the 28th of December. 1919, executed by Narain, Ananta and Balai by his guardian, whereby they purported to convey their interest to the plaintiff. Here again the document in form is a conveyance on sale and contains a covenant to execute the sale-deed on proper stamp paper and to get it registered. The first Court dismissed the suit for specific performance finding that the plaintiff was guilty of fraud, misconduct and dishonesty as he wanted to take undue advantage over the defendants who were all illiterate or half literate. The lower appellate Courts has reversed the finding of the First Court and has decreed specific performance in favour of the plaintiff of the whole property.

2. Three points have been urged before us on behalf of the appellants against the decree of the Additional District Judge. First, it is stated that one of the defendants, namely. Balai, was a minor and that the guardian could not bind Balai, and that there could be no decree for specific performance against him. Secondly, it is stated that Defendant No. 4, Narain, was not bound as he did not sign Ex. 1 and that Ex. 3 being a conveyance of a property worth more than Rs. 100 is not admissible in evidence as it is not registered. Thirdly, it is urged that the contract is one and indivisible, and that inasmuch as the share of Balai is not bound and that of Defendant No. 4 also, there could be no decree for specific performance.

3. So far as the first point is concerned, we think that the point is a good one. There is no doubt that the learned Judge has found in this case that the property was sold for the debts of the father of the minor and there is no doubt that there are decisions of this Court whereby a conveyance executed by the guardian of a minor in respect of the debts of his father has been held to be binding on the minor, but a conveyance stands in a different position from a contract for sale. In a conveyance the whole matter is complete and there is no doubt that a minor would be bound by a conveyance of property executed by his guardian to pay off his father's debt and that he could not get it set aside merely on the ground of his minority. But different considerations apply with regard to a contract for sale where the transaction is not complete. In cases of this nature there may be change in the

value of the property, and after all the remedy of specific performance is a discretionary remedy and the Court may well say that, having regard to possible fluctuations in value specific performance should never be decreed against a minor. There are decisions in this Court in which specific performance under similar circumstances has apparently been decreed. But these decisions were before the decision of the case of *Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri* [1912] 39 Cal. 232 where their Lordships of the Judicial Committee laid down that it was not within the competence of the guardian of a minor to bind the minor or a minor's estate by a contract for the purchase of immovable property. In the case reported as *Mir Sarwarjan v. Fakhruddin, Mahomed Chowdhury* [1912] 39 Cal. 232 the suit was one for specific performance by a minor of an agreement for the purchase and sale to him of certain immovable property entered into by the manager of the minor's estate and his guardian on his behalf, and, as I have already stated their Lordships held that there should be no decree for specific performance of the contract because they stated that there was no mutuality. We are asked to distinguish this case on the ground that it deals with an agreement for the purchase of an immovable property by a minor and it is stated that the same considerations which apply to a purchase do not apply to a case of this nature where it is sought to enforce an agreement for sale entered into by a minor of his property by his guardian for the purpose of, I assume, payment of his father's debts for which he is liable. We cannot see, however, that there is any such distinction to be found from the perusal of the judgment, to which I have referred. The ruling, it seems to us, lays down the law in unequivocal terms and is binding on us. We think, therefore, that having regard to this decision the first point must prevail and that there could be no specific performance of the contract so far as Defendant No. 6 is concerned.

4. So far as the second point is concerned, namely, that Defendant No. 4, Narain is not bound, we are not prepared to say that the contention is well founded. Exhibit 3 seems to us to be really in the nature of an agreement to sell though in form it is undoubtedly a conveyance. But having regard to the expression therein to which I have already referred, namely, the undertaking to execute a subsequent conveyance, we think that it was intended by the parties that it should be treated merely as a contract. The result is that we think that Narain was bound by the

agreement of the 10th December 1919.

5. So far as the third point is concerned, there does not seem to be anything in this. It is difficult to say that because Balai may not be bound the other parties to the contract should not be bound. The plaintiff states that he is willing to purchase the share of the parties in the property other than the share of Balai who is not bound by the contract. Accordingly, there will be this variation in the decree of the lower appellate Court, namely, that we declare that the share of Balai is not bound by the contract of the 10th December 1919 but subject to this the decree of the lower appellate Court will stand and there will be a decree for specific performance against the defendants other than Defendant No. 6 in respect of their shares and interests in the property in suit.

6. We make no order as to costs. The property of the minor will not be bound by any decree for costs that has been passed against him.

Mukherji, J.

7. I agree.

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