

MANIK CHAND AND ANR.

v.

RAMACHANDRA SON OF CHAWRIRAJ

May 8, 1980

[S. MURTAZA FAZAL ALI AND P. S. KAILASAM, JJ.]

*Specific performance—Enforceability of a contract for purchase of property by a guardian for the benefit of the minor—Contract Act, Section 11—Section 8 of the Hindu Minority Act read with Section 55(5)(b) of Transfer of Property Act.*

The appellants-plaintiffs who were minors entered into an agreement on 30-9-1961, through their mother and guardian with the respondent to purchase a house for a sum of Rs. 11000/-. A sum of Rs. 1000/- was paid as earnest money and the balance was to be paid at the time of the registration of the sale deed. Since the respondent did not carry out his part of the agreement, the appellants filed a suit for specific performance of the contract on 28-3-1962 in the Court of Additional District Judge, Gwalior. The suit was decreed on 15-4-1966. The appellants deposited Rs. 10,500/- the balance of the price on 13-7-1966. The respondent appealed to the High Court against the judgment and decree of the trial court which allowed the appeal and dismissed the suit holding that as the contract was entered into on behalf of the minors a decree for specific performance could not be granted for want of mutuality.

Allowing the appeal by special leave, the Court

HELD : 1. The contract entered into by the guardian on behalf of the minors is enforceable. [1108 E]

2. A minor has no legal competence to enter into a contract or authorise someone else on his behalf to enter into a contract. But under the Hindu Law, the natural guardian is empowered to enter into a contract on behalf of the minors and the contract would be binding and enforceable if the contract is for the benefit of the minor. [1106 B]

*Krishnaswami v. Sundarappayya*, ILR 18 Mad., 415; referred to.

*Mir Sarwarjan v. Fakhruddin Mohd. Chowdhary*, ILR 39 Cal. I (PO); *Srikakulam Subrahmanyam v. Kurra Subba Rao*, ILR 75 Mad. 115; *Hanuomanprasad Pandey v. Mussamat Nabooee Munraj Koonwaree* (1856) 6 Moor I.A. 393; *Mohori Bibee v. Dhuramodas Ghose*, L.R. 301 I.A. 114, *Srikakulam Subrahmanyam v. Kurra Subba Rao*, ILR 1949 Mad. 143; *Suryaprakasam v. Ganga Raju*, A.I.R. 1956 Andh. 33; explained.

3. After the passing of the Hindu Minority Act, 1956, the guardian of a Hindu minor has power to do all acts which are necessary or reasonable and proper for the benefit of the minor's estates. The guardian is entitled to act so as to bind the minor if it is necessary or reasonable and proper for the benefit of the minor. The power thus conferred by the Act is in no way restricted than that was recognised under the Hindu Law. Here, it is quite strange that the respondent should plead that the transaction is not for the benefit of the

minor when the minor is convinced it is in his benefit and that it is worth pursuing the litigation upto Supreme Court. [1107 G-H, 1108 A-B] **A**

4. The guardian by the contract for purchase of property does not bind the minor by his personal covenant. As it is within the competence of the guardian, the contract is entered into effectively on behalf of the minor and the liability to pay the money is the liability of the minor under the Transfer of Property Act. [1108 D-E] **B**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1548 of 1970.

Appeal by Special Leave from Judgment and Decree dated 9-2-1968 of the M.P. High Court in First Appeal No. 21 of 1976. **C**

*Shiv Dayal Srivastava* and *T. C. Sharma* for the Appellant.

*Y. S. Chitale*, and *Rameshwar Nath* for Respondent.

The Judgment of the Court was delivered by,

**KAILASAM, J.** This appeal is by the plaintiffs by special leave granted by this Court against the judgment and decree dated 9-2-1968 passed by the Division Bench of the Madhya Pradesh High Court in first appeal No. 21 of 1966 dismissing the suit for specific performance. The plaintiffs 1 and 2 who were minors entered into an agreement on 30-9-1961 through their mother and guardian Smt. Phoolibai with the respondent to purchase a house situated in Thandi Sarak for a sum of Rs. 11,000/-. A sum of Rs. 1000/- was paid as earnest money and the balance was to be paid at the time of the registration of the sale-deed. According to the plaintiffs/appellants, the respondent did not carry out his part of the agreement and the appellants filed the present suit for specific performance of the contract on 28-3-1962 in the Court of Additional District Judge, Gwalior. The suit was decreed on 15-4-1966. The plaintiffs deposited Rs. 10,500 the balance of the price on 13-7-1966. The respondent appealed to the High Court against the judgment and decree of the trial court which allowed the appeal and dismissed the suit. The High Court agreed with the findings of the Trial Court on the merits and found that it was the respondents who committed breach of contract but dismissed the suit on the ground that as the contract was entered into on behalf of the minors, a decree for specific performance could not be granted to the appellants for want of mutuality. **D**  
**E**  
**F**  
**G**

Mr. Shiv Dayal Srivastava, learned counsel appearing for the appellants, submitted that the lower Court erred in holding that the contract for purchase of property by the guardian on behalf of the minors is **H**

**A** unenforceable due to lack of mutuality and submitted that so long as the transaction is for the benefit of the minor, the defendants cannot resist the decree for specific performance.

**B** A minor has no legal competence to enter into a contract or authorise someone else on his behalf to enter into a contract. But under the Hindu Law the natural guardian is empowered to enter into a contract on behalf of the minors and the contract would be binding and enforceable if the contract is for the benefit of the minor. One of the earliest cases which dealt with the right of the guardian to enter into a contract on behalf of the minor, is *Krishnaswami v. Sundrappayyar*, where a Bench of the Madras High Court held that **C** S.11 of the Contract Act does not exclude the power of the guardian of a minor to represent him and enter into contracts on his behalf either beneficial or necessary to the minor under Hindu Law and that the English Law that a minor cannot claim specific performance which proceeds on the ground of want of mutuality, has no application to this country. The position under the Hindu Law is that a guardian **D** has legal competence to enter into a contract on behalf of the minor for necessity or for the benefit of the estate. Dr. Chitale, learned counsel for the respondent submitted that he does not dispute the competence of a guardian to enter into a contract on behalf of the minor if it is for necessity or for the benefit of the estate, but contended that the right can only be confined to sale of property and would not **E** extend to the purchase of property. His submission is that regarding the purchase of the property, it involves a minor into an obligation of making a payment and that it would amount to personal covenant by the guardian binding the minor. In support of his contention, he strongly relied on a decision of the Privy Council **F** in *Mir Sarwarjan v. Fakhruddin Mohomad Chowdhury*<sup>(1)</sup>, which reversed the view of a Bench of the Calcutta High Court which held that there was no want of mutuality in the case and that the agreement is enforceable against the minors and that the acts of the guardian in this country bind the minor though there is no difference between his position and powers and those of a manager. The Privy Council held that **G** they were unable to accept the view of the Division Bench that there was no difference between the position and powers of the manager and those of a guardian. Holding that it is not within the competence of a manager of a minor's estate or of a guardian of a minor to bind the minor or the minor's estate by a contract for the purchases of immovable property and that the minor was not bound by the contract for **H** want of mutuality, the Privy Council held that a decree for specific per-

(1) ILR 18 Mad 415

(2) ILR 39. Cal. 1.

formance cannot be granted. The Privy Council in a later decision in *Srikakulam Subrahmanyam and Anr. v. Kurra Subba Rao*<sup>(1)</sup>, held that a guardian of a minor is competent to enter into a contract on behalf of the minor so as to bind him if it is for the benefit of the minor. Though the decision of the Privy Council in *Mir Sarwarian v. Fakhrudin Mohamed Chowdhury* (supra) was brought to its notice, the Privy Council did not refer to it but referred to its earlier decision in *Hanoomanpersaud Pandey v. Mussamat Nabooee Munraj Koonwaree*<sup>(2)</sup> where it was stated that "the act of the mother and guardian in entering into a contract of sale was an act done on behalf of the minor appellant." A passage from Pollock and Mulla's Indian Contract and Specific Relief Acts wherein the observation of the Privy Council in *Mohori Bibee v. Dhuramodas Ghose*<sup>(3)</sup>, that "it is, however, different with regard to contract entered into on behalf of a minor by his guardian or by a manager of his estate," was referred to. In such a case it has been held by the High Courts of India, in cases which arose subsequent to the decision of the Judicial Committee, that the contract can be specifically enforced as being within the competence of the guardian to enter into on his behalf so as to bind him by it, if it is for the benefit to the minor. But if either of these two conditions is wanting, the contract cannot be specifically enforced at all. Though the earlier decision of the Privy Council in *Mir Sarwarian v. Fakhrudin Mohamed Chowdhury* (supra) was not referred to, the observations make it clear that it was not followed. In *Srikakulam Subrahmanyam v. Kurra Subba Rao*<sup>(4)</sup> the Madras High Court expressed its view that it had no hesitation to hold that the considered judgment of the Judicial Committee in ILR 75 Mad. 115 must be taken as overruling all the previous decisions based on 32 Cal. 232 (P.C.). The same view was expressed by Subba Rao C.J. of the Andhra Pradesh High Court (as he then was) in *Suryaprakasam v. Gangaraju*<sup>(5)</sup>, where he held that there could not be any essential distinction between the contract of sale and contract of purchase. It is unnecessary to go into this question any further as after the passing of Hindu Minority Act, 1956, the 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 realisation, protection or benefit of the minor's estate. This provision, makes it clear that the guardian is entitled to act so as to bind the minor if it is necessary or reasonable and proper for the benefit of the

(1) ILR 75 Mad. 115

(2) [1856] 6 Moo. F. A. 393.

(3) L. R. 301 I. A. 114.

(4) ILR 1949 Mad. 143.

(5) AIR 1956 Andh. 33.

**A** minor. The power thus conferred by the Section is in no way restricted than that was recognised under the Hindu Law. It is not disputed in this case that the contract entered into by the guardian is for the benefit of the minor. It appears quite strange that the respondent should plead that the transaction is not for the benefit of the minor when the minor is convinced it is in his benefit and that it is worth pursuing the litigation upto this Court. It is common knowledge that the prices of immovable property have been on the rise and there can be no doubt that the transaction is for the benefit of the minor.

Finding himself faced with these insurmountable difficulties, Dr. Chitale, sought to plead that in any event S.8 of the Hindu Minority Act specifically prohibits the guardian from binding the minor by his personal covenant. The submission was that the contract by the guardian which binds the minor to make a payment, would be in the nature of a personal covenant and as such is excluded by S. 8. In support of his plea, the learned counsel relied on S.55(5)(b) of the Transfer of Property Act and submitted that so far as the payment of the purchase price is concerned, there is personal covenant. We are unable to accept this contention for it cannot be said that the guardian by the contract was binding the minor by his personal covenant. As it is within the competence of the guardian, the contract is entered into effectively on behalf of the minor and the liability to pay the money is the liability of the minor under the Transfer of Property Act. We are unable to accept the plea that in a contract for purchase of property, the guardian would be binding the minor by his personal covenant. In the result we find that the contract entered into by the guardian on behalf of the minors is enforceable. The appeal is, therefore, allowed with cost and the decree passed by the Trial Court is restored.

S.R.

*Appeal allowed.*