
(1893) 03 CAL CK 0005
In the Calcutta High Court

Fatima Bibi

APPELLANT

Vs

Debnauth Shah

RESPONDENT

Date of Decision : 15-03-1893

Acts Referred:

Contract Act, 1872 — Section 11

Citation : (1893) ILR (Cal) 508

Hon'ble Judges : Norris, J

Bench : Single Bench

Judgement

Norris, J.—This is a suit brought by a minor, Fatima Bibi, through her father and natural guardian, Hafiz Abdool Kadir, as her next friend, for the specific performance of a certain agreement. I take the facts from the opening of learned Counsel, Mr. Chuckerbutty, that on the 16th September 1888, corresponding with the 1st Assin 1295, the defendant granted to the minor plaintiff a lease of a piece of land for the term of one year. On this piece of land there was a filed hut; that on the 24th January 1889, corresponding with the 12th Magh 1295, the defendant entered into a contract with the minor plaintiff in these words--

To

Sri Fatima Bibi and Azizunnissa.

Know by (this) letter that I have given orders to construct a pucca building on my land, situate at No. 6, Rajmohun Bose's Lane. Having erected the same, you and your sons, grandsons, etc., shall continue to reside therein. I shall execute an agreement hereafter. I have no time now. Finis. Year 1295. Date 12th Magh.

Sri Debnath Shaha.

2. It is alleged that a pucca building, costing a considerable sum of money, has been erected out of the minor's money on the piece of land. The plaint asks for specific performance of this agreement and to restrain a suit in the Small Cause Court, in which suit the defendant seeks to eject the plaintiff from this piece of

land. The plaint also asks for relief in the nature of payment to her for the outlay she has incurred in building the house, if she is not entitled to specific performance of the agreement. The plaint admits that the plaintiff is a minor. Upon these facts Mr. Apar objects that the suit cannot proceed. His contentions are--

1st.--That the contract of which specific performance is sought to be decreed is a contract entered into by the defendant, not with the plaintiff alone, but with another person of the name of Azizunnissa.

2nd.--That the contract, is of so vague a character that no Court could decree specific performance of it.

3rd.--That a minor cannot enforce specific performance of a contract.

3. Mr. Mitra for the plaintiff has referred me to two cases--one that of Mahamed Arif v. Saraswati Debya ILR Cal. 259, a decision of Tottenham and Trevelyan, JJ., where it was held that a contract entered into by a minor is only voidable at the option of the minor, and another case, Hanmant Lakshman v. Jayarao Narsinha ILR 13 Bom. 50, where it was decided without argument that a money bond taken by a minor was good in law and may be sued upon.

4. I am bound to say that in my view of the Contract Act a minor in this country cannot contract at all. I cannot understand what other meaning can be put upon Section 11 of the Contract Act, except that a person who is not of age cannot contract. But whether I am right or wrong does not seem to signify as far as this case is concerned, because this is a case of specific performance of a contract, and the case of Flight v. Bolland 4 Russ. 298 is applicable. On the authority of that case I am bound to say that this suit will not lie, and I must dismiss the suit with costs on scale 2 to be paid by the next friend.