

(1915) 08 CAL CK 0034
In the Calcutta High Court

Krista Chandra Chowdhury and Another	APPELLANT
Vs	
Ratan Ram Pal and Others and Prasanna Chandra Pal	RESPONDENT

Date of Decision : 06-08-1915

Acts Referred:

Citation : 35 Ind. Cas. 673

Hon'ble Judges : Newbould, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for recovery of Possession of a share of an estate on declaration of title by purchase. The share in dispute admittedly belonged originally to one Harendra Chandra Chakravarty, who attained his majority on the 21st September 1908. During his minority, there was a scramble for the acquisition of this share by two sets of persons, who may be called the Pals and the Chowdhurys. On the 19th March 1907, the Chowdhurys took a conveyance from the infant. On the 15th April 1907, the Pals took another conveyance of the same share from Sarat Chandra Chakravarty, the father of the infant, who was the de facto guardian and manager of his properties. On the 18th December 1909, the Chowdhurys took a second conveyance from Harendra with a view to fortify their title, which was obviously open to attack as based on a conveyance executed by an infant. On the 1st August 1912, the Chowdhurys commenced this action for declaration of title and recovery of possession, as the Pals had, on the 15th April 1912, instituted a suit for rent on the assumption that they had acquired a valid title by their purchase. The Court of first instance made a conditional decree in favour of the Chowdhurys for recovery of possession upon payment of Rs. 700 to the Pals, which represented the consideration paid by the latter to the vendor. On appeal, the District Judge has reversed this decision and has dismissed the suit. He has held that the conveyance by the guardian of the infant, executed on the 15th April 1907, is binding upon the latter and that there was consequently no subsisting title left in him capable of transfer to the Chowdhurys under the conveyance of the 18th December 1909. The District Judge has further found

that as the share in dispute was infinitesimal and constituted an inconvenient and expensive property, the sale by the guardian, was the act of a prudent person. On the present appeal the decree of the District Judge has been assailed, substantially on the ground that the sale by the guardian was not necessary and cannot be held operative against the infant merely because it was beneficial to him. In our opinion, this contention cannot be sustained.

2. The power of the manager of an infant heir was defined by the Judicial Committee in the well-known case of *Hunoomanpersaud Panday v. Musammat Babooee Munraj Koonweree* 6 M.I.A. 373 : 18 W.R. 81n : *Sovostre* 253n. : 2 S. P.C.J. 29 : 1 S. P.C.J. 552 : 19 E.R. 147. Knight Bruce, L. J. observed that the power of the manager for an infant heir to charge an estate not his own is under the Hindu Law a limited and qualified power. It can only be exercised rightly in case of need or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make in order to benefit the estate, the bona fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it in the particular instance, is the thing to be regarded. It is plain that in this passage a distinction is drawn between a case of need and a case of benefit of the estate. The actual pressure on the estate, the danger to be averted, refer to a case of need, and the benefit to be conferred upon the estate in the particular instance is thus differentiated from the other category mentioned. This view has been adopted and applied by the Indian Courts ever since the decision of the Judicial Committee was pronounced on the 26th July 1856. In the decision of a Full Bench of the Sudder Court in the case of *Goorooprasad Jena v. Mudden Mohan Soor* (1856) B. S.D.A. 980 where the judgment was pronounced on the 11th December 1856, apparently before the decision of the Judicial Committee reached this country, the same view was independently taken, and it was held that the benefit of the minor creating necessity was a test by which the legality of the transaction must be tried; the rule is that a party filling a fiduciary character, like that of a guardian, is authorised to perform any act which is manifestly for the infant's benefit. A similar view was adopted in *Mohanund Mondul v. Nafur Mondul* 26 C. 820 : 3 C.W.N. 770 where Maclean, C.J. and Banerji, J. held that a de facto manager of an infant's estate has, in case of necessity or for the benefit of the minor, power to sell his property. In that case the Court further declined to accept the contention that the rule laid down by the Judicial Committee was restricted to cases of mortgage or other forms of partial alienation and was not intended to apply to cases of sale.

3. Our attention has, however, been drawn to a passage from the standard treatise on the Law of Minors by Sir Ernest Trevelyan, 4th Edition, page 154, where that learned author states that there is no case where the sale of a minor's property has been upheld, except on the ground of its being justified by the necessities of the minor or his estate. The accuracy of this statement need not be deputed. But this does not show that the rule is restricted in its

application to cases of necessity alone; the absence of judicial authority may be due to the circumstance that the point has not been regarded as open to serious argument. But it must be remembered that mere increase in the immediate income of the minor or of his estate does not necessarily justify the inference that the particular transaction is "for the benefit of the estate" within the meaning of the rule, which could hardly have been intended to include cases of speculative development of estates of minors, *Radha Pershad Singh v. Musammat Talook Raj Kooer* 20 W.R. 38; *Kaihur Singh v. Roop Singh* 3 N.W.P.H.C.R. 4; *Ganap v. Subbi* 32 B. 577 : 10 B.L.R. 927. In the case before us there is no room for controversy, that the alienation was for the benefit of the estate and was such as a prudent owner of the estate might have made. In these circumstances it follows that the transaction was ^binding upon the estate of the infant and that it was not open to him, after he had attained his majority, to create a valid title by his conveyance in favour of the Chowdhurys on the 18th December 1909.

4. We have finally been invited to make some provision in the decree for recovery of the purchase-money paid by the Chowdhurys to Harendra on the 19th March 1907. But there are two insuperable difficulties in the way of the appellants. In the first place, there was no such claim made against Harendra in either of the Courts below, and, as he is not represented in this Court, it would not be right to make a decree against him on the ground suggested. In the second place, the money is alleged to have been paid to Harendra while he was still an infant. If a claim were now put forward against Harendra for recovery of such sum, defences might be available to him which have not been investigated in this case. Whatever remedy the Chowdhurys may have against Harendra, must, consequently, be enforced in a suit properly framed for the purpose.

5. The result is that the decree of the District Judge is affirmed and this appeal dismissed with costs.

6. In view of our decision in this appeal, the other appeal (Second Appeal No. 3306 of 1914) also will stand dismissed with costs.