

(1912) 04 CAL CK 0072
In the Calcutta High Court

Kumar Sarat Chandra Singh Bahadur	APPELLANT
Vs	
Sudhan Hari Mukerjea and Others	RESPONDENT

Date of Decision : 16-04-1912

Acts Referred:

Limitation Act, 1963 — Section 19, 6, 7, 9

Citation : 14 Ind. Cas. 694

Hon'ble Judges : Carnduff, J; Brett, J

Bench : Division Bench

Judgement

Brett, J.—The suit out of which this appeal arises was brought by the plaintiff No. 1 on the 3rd March 1909, on his own behalf and as next friend on behalf of his two minor brothers, plaintiffs Nos. 2 and 3. Plaintiff No. 1 attained majority in January 1909.

2. The suit was for recovery of the sum of Rs. 9,162 4-3 said to be due to the plaintiffs for contract work of baling jute, done in the press of Kumar Satish Chandra Singh Bahadur, the father of the defendant. Kumar Satish Chandra Singh Bahadur died in January 1908, leaving the defendant as his sole surviving heir.

3. The case for the plaintiffs was that their father, Bidhu Bhusan Mukerjee, used to do contract work of baling jute for Kumar Satish Chandra Singh at his Jute Press up to December 1896, when he died.

4. After his death, Mohendra Nath Mukerjee, his friend, took his sons, the plaintiffs in this case, all of whom were then minors, to Kumar Satish Chandra and asked him to allow them to carry on the work of their father so that they might not starve, and Kumar Satish Chandra consented. It was arranged then that the work should be carried on in the name of Khantamoni Debi, the widow of Bidhu Bhusan Mukerjee and the mother of the minors, and Mohenda Nath Mukerjee undertook to see that the work was done properly. Contract work was carried on in this way up to January 1900, when Khantamoni died; and after her

death work was carried on up to the 31st July 1900. During these periods, sub-contractor Latubal Sardar was employed to do the work undei the minors.

5. After the death of Khantamoni Debi, the two rider sisters of the minor plaintiffs, Sasi-bala Debi and Rajbala Debi, applied to be appointed guardians of their persons and pro-party on the 27th February 1901, but on their failing to furnish security, Upendra Nath Chatterjee, maternal uncle of the minors, was, at the request of the sisters, appointed guardian on the 10th July 1902. He, however, fell ill shortly after his appointment and died in November 1902 and after that no guardian for the minors was appointed.

6. The present suit was instituted two months after the eldest of the minors attained his majority and was to recover the price of contract work done between the 1st August 1899 and 31st July 1900, the amount claimed being Rs. 9,162-4-3., The lower Court gave the plaintiffs a decree for the full amount claimed, and the defendant has appealed.

7. The learned Pleader, who appears on behalf of the appellant, has not disputed that the amount claimed is in fact due to the plaintiff from the defendant for the contract work done, but with reference to the sum of Rs. 4,425, which is due for the period prior to the death of Khantamoni, he contends that the claim of the plaintiffs is barred by limitation. He argues that Kumar Satish Chandra, after the death of Bidhu Bhusan Mukerjee, made a new contract with Khantamoni, the widow, personally, and that as the cause of action for the money due before her death accrued to her, the present suit to recover those sums ought to have been brought within three years from the date when the work was done, as required by Article 56 of Schedule II of the Limitation Act, and that as the suit was not instituted till the 3rd March 1909, it is barred by limitation so far as those sums are concerned.

8. Further, he has argued that, even if the contract was not with Khantamoni Debi personally, it was with her in her capacity as administratrix to her husband's estate, and, therefore, that the right to sue accrued to her.

9. He relies on the provisions of Section 9 of the Limitation Act, to support the view that Section 7 of the Limitation Act cannot avoid the bar of limitation in the present case, as, when once the time for limitation had begun to run, no subsequent disability or inability to sue could stop it.

10. The learned Judge of the Court below before whom the same arguments were pressed has found that Khantamoni carried on the business, not on her own behalf or for her own benefit, but on behalf of her minor sons and for their benefit. This, he holds, is clear from the evidence of Mr. Gregory and Mohendra Nath Banerjee.

11. Further, after the death of Bidhu Bhusan Mukerjee, a suit was brought in the Civil Court by the sub-contractor Latubal Sardar against the minors for payment of the price of work done for them and a decree obtained. In execution of that

decree, the decree-holder sought to attach the monies due to the minors from Kumar Satish Chandra Singh and a notice was served on Kumar Satish Chandra in those proceedings. Kumar Satish Chandra filed a petition on the 30th April 1902 in those proceedings saying that the late Bidhu Bhusan Mukerjee had been a baler in his press, that there had not as yet been any adjustment of accounts about the debts and dues of Bidhu Bhusan Mukerjee, and he added that if on an adjustment of account in future, any money were found to be due to he said estate, he had no objection to deposit the same in Court. It is true that he then said that he did not know whether the defendants (the present plaintiffs) were the heirs of Bidhu Bhusan Mukerjee, but afterwards, when the executing Court had appointed a Receiver to collect the dues, he paid in on the 21st May 1902 the total claim of the decree-holder amounting to Rs 2,604,8 6. There was then no mention of any personal contract with Khantamoni Debi.

12. Previously, on the 21st February 1901, when the two sisters of the minors had applied to be appointed their guardians, they attached to their petition a schedule of the property of the minors, the last item of which was money due in the name of Khantamoni Debi from Kumar Satish Chandra Singh Bahadur of Paikparal on account of work done in the Hydraulic Press--Rs. 10,000". Clearly, in the family the work was regarded as being carried on for the benefit of the minors. After the death of Khantamoni Debi in January 1900, work under the contract was carried on for the benefit of the minors up to the 31st July 1900, and in the present suit and in this appeal the right of the minors to the sums claimed under the contract after the end of December 1899 has not been questioned.

13. There can, in my opinion, be no doubt whatever that the contract under which the work was done during the life-time of Khantamoni Debi was for the benefit of the minors.

14. The question then arises whether the contract under which the work was done was the old contract made with Bidhu Bhusan Mukerjee which, with the consent of Kumar Satish Chandra, was continued with Khantamoni Debi, the widow of Bidhu Bhusan Mukerjee after his death in her capacity as guardian of her minor sons and for their benefit, or whether a new contract was entered into after Bidhu Bhusan Mukerjee's death.

15. If the contract be taken to be a new one, the position appears to have been this; Khantamoni Debi was then the natural guardian of the minors and Mohendra Nath Banerjee, acting on her behalf as guardian, went with the minors to Kumar Satish Chandra Singh and entered for her into the agreement with him that the work was to be carried on for the benefit of the minors. The arrangement that the work was to be carried on in the name of Khantamoni Debi did not make the contract a personal one with her. She was not personally interested and the work was in fact supervised and carried on for the minors by Mohendra Nath Banerjee who looked after the business.

16. The learned Pleader has suggested that the contract was made with Khantamoni Debi as it was safer and it could be more easily enforced against her. It is, however, not denied that she was a respectable pura-anashin Hindu widow entitled only to maintenance out of her husband's estate: and this seems to me a very hollow argument.

17. It seems also difficult to understand how Khantamoni Debi could be said to have entered into the contract as administratrix of her husband's estate. The sums due for work done after his death can hardly be regarded as forming part of the estate.

18. If, however, the jute baling business be regarded as an ancestral trade, she, as guardian of the minors, would have been competent to carry it for the benefit of and on behalf of the minors after her husband's death see *Joy Kisto Cowar v. Nittya Nand Nundy* 3 C. 738 : 2 C.L.R. 440.

19. The other view that the old contract with Bidhu Bhusan Mukerjee was continued for the benefit of the minors after his death with the consent, of Kumar Satish Chandra finds considerable support from the application filed by Kumar Satish Chandra in the proceedings taken in execution of the decree obtained by the sub contractor against the minors. In that application Kumar Satish Chandra, when dealing with sums claimed by the minors for work done after Bidhu Bhusan's death, stated that there had been "no adjustment of the debts and dues of Bidhu Bhusan Mukerjee" and referred to the contract under which the work was done as the contract with Bidhu Bhusan Mukerjee, If that view of the contract be accepted, the work under it could have been carried on by Khantamoni Debi only as guardian of the minors and for their benefit.

20. Whichever view then be taken of the contract under which the work was done after the death of Bidhu Bhusan Mukerjee, the only position, in my opinion, which Khantamoni can be regarded as having held with regard to it, is that of guardian for the minors and the only right which she would have had to sue, would have been, not in her personal capacity but as guardian representing them and for their benefit. In these circumstances, I am unable to hold that the Subordinate Judge was wrong in the conclusion at which he arrived on the plea of limitation, that the right to sue accrued to the minors see the case of *Khoda Bux v. Budree Narain Singh* 7 C. 137 : 8 C.L.R. 308 and the cases reported in *Jagjivan v. Hasan* 7 B. 179 and *Yeknath v. Woman* 10 B. 241 and that the present suit was saved from limitation by Section 7 of the Limitation Act.

21. It, has, however, been argued on the basis of the decisions of their Lordships of the Privy Council in the case of *Mohori Bibee v. Dharmodas Ghose* 30 C. 539 : 5 Bom. L.R. 421 : 7 C.W.N. 441 : 30 I.A. 114 and in the later case of *Mir Sarwarjan v. Fakhr-ud-din Mahomed Chowdhuri* (1912) 1 M.W.N. 22 : 9 A.L.J. 33 : 16 C.W.N. 74 : 15 C.L.J. 69 : 13 Ind. Cas. 331 : 21 M.L.J. 1156 : 14 Bom. L.R. 5 : 39 C. 232 that a minor is not a person competent to contract under the Indian Contract Act, or to appoint an agent to contract on his behalf: and,

therefore, if there was any contract at all with regard to the jute baling business, it could not have been on behalf of minors but must have been entered into by Khantamoni Debi on her own behalf. In the first of the cases relied on, the suit was brought against, minors to recover money due on a mortgage and it was held that, a mortgage made by a minor was void as he was incompetent to contract, or to appoint an agent to contract, for him. What was then determined was the personal incapacity of the minor under the Indian Contract Act, and it was pointed out that a minor, who by law was incompetent to contract on his own behalf, was equally incompetent to appoint an agent to contract for him. This decision merely stated a well established principle of law. In the present case, Khantamoni Debi is not represented to have acted as the agent of the minor, but to have entered into or continued the contract as their guardian on their behalf. The guardian of a minor is not in the position of an agent appointed by the minor, but in law is treated as supplying the defects in the capacity of minor. The decision of the Privy Council in the case of *Mohori Bibee v. Dharmodas Ghosh* (5) cannot, therefore, in my opinion, be held to apply to the facts of the present case.

22. In the later case, the minor sued for specific performance of a contract to sell him certain Immovable property and it was held that it was not within the competence of the manager of a minor's estate or of the guardian of a minor to bind the minor or the minor's estate by a contract for the purchase of Immovable property, that as the minor was not bound by the contract there was no mutuality, and that consequently the minor could not obtain specific performance of the contract. This decision seems to me to follow the well established principle that a guardian acting on behalf of the minor can only enter into a contract which is for the benefit of a minor and not into a contract which may result in loss to the minor. As in that case the contract would not, have bound the minor personally or his estate, it was held that there was no mutuality between the minor and the other contracting party and, therefore, that the minor could not sue to enforce the contract. In my opinion, the decision does not go beyond this, and cannot be regarded as having reversed the old established principles of the law relating to guardians and wards.

23. Moreover, the facts of that case are entirely different from those of the case now before us, in which the minors sue for the price of work done under a contract entered into or continued on their behalf by their guardian.

24. For the above reasons, I would confirm the judgment and decree of the lower Court and dismiss the appeal.

25. Even if the (sic) of limitation were not saved by Section 7 of the Act, I am of opinion that the petitions put in by Kumar Satish Chandra Singh on the 30th April 1902 and on the 21st May 1902, in the execution proceedings taken against the minors of the decree obtained against them by the subcontractor Latubal Sardar, amounted to acknowledgments in writing on his part of his liability to the whole of the present, claim of the plaintiffs-respondents within the meaning of Section

19 of the Limitation Act sufficient to save the sums claimed for work done prior to January 1900 in the present suit from limitation. I see no reason to dissent from the view taken by the Judges of the Madras High Court in the case of Venkata Ramayyar v. Kothandaramayyar 13 M. 135 that a fresh period of limitation commenced to run from the date when the acknowledgments were made and that as the plaintiffs were then minors and the present suit was brought within two months after the eldest of them had attained majority, the present claim was saved from limitation so far as the items prior to January 1900 are concerned.

26. The judgment and decree of the lower Court are accordingly confirmed and the appeal is dismissed with costs.

Carnduff, J.

27. I concur in dismissing this appeal, and I do so without hesitation on the ground of acknowledgment dealt with in the latter part of my learned brother's judgment.

28. On the other aspect of the case also I agree, although I am less clear. The point there seems to turn on whether the plaintiffs were the persons primarily entitled to institute the suit. If they were, then they were minors at that time from which the period of limitation had to be reckoned, that is to say, at the time when the work was done, and their minority secured for them the benefit of Section 6 of the Indian Limitation Act, 1903, corresponding with Section 7 of the superseded Act XV of 1877. Now it appears that after their father's death, rope and labour continued to be supplied to the Kumar at their expense, not under any new contract made either with them or with their mother but under the old contract made with their father. For the services thus rendered, the right to be remunerated would seem to have been their right; and the right to sue consequently accrued to them as was held to be the case in Jagjivan v. Hasan 7 B. 179 and Yeknath v. Waman 10 B. 241. In other words, I am inclined to think that they could in 1899 have sued the Kumar through a properly appointed guardian ad litem, while their mother could not have sued him otherwise than on their behalf. In this view of the matter, no question of suing on a void contract arises. But, be that as it may, I am of opinion, as I have already intimated, that the plaintiffs could avoid the bar of limitation through the provision of Section 19 of the Act.