

(1911) 11 BOM CK 0016
In the Bombay High Court

Mir Sarwarjan

APPELLANT

Vs

Fakhruddin Mahomed Chowdhuri

RESPONDENT

Date of Decision : 09-11-1911

Acts Referred:

Citation : (1912) 14 BOMLR 5

Hon'ble Judges : Macnaghten, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Macnaghten, J.—This is an appeal from a decree of the High Court at Calcutta affirming a decree of the Subordinate Judge of Backerganj.

2. All the questions raised in the litigation but one were disposed of before the appeal was taken to the High Court, and when the case was before a Division Bench of that Court, that question was made the subject of a reference to the Full Bench.

3. The reference was in the following terms:-

Can specific performance of a contract validly entered into on behalf of a minor be enforced?

4. The reference came before the Chief Justice and four other Judges of the High Court. They agreed in returning an answer which seems to be carefully guarded and is perhaps rather enigmatical. The Chief Justice observed that the question submitted to the Court was " a wide and far reaching question." His opinion was that they could only " answer the question by saying that if a contract is validly entered into on behalf of a minor, and there is mutuality in such contract it might be specifically enforced." The other learned Judges concurred." The case was then sent back to the Division Bench to be tried out on the merits. The decree under appeal to the High Court was a decree for the specific performance of an agreement for the purchase and sale of Immovable estate. The agreement was

expressed to be made between a Mr. Garth and the appellant Mir Sarwarjan. Mr. Garth was at the time manager of the estate of the respondent No. 1 who was then a minor. After observing that they had already considered the evidence and had "come to the conclusions (i) that it was a contract validly entered into and (2) that there is mutuality with regard to it; for the "agreement made by Mr. Garth with Mir Sarwarjan would seem to be as enforceable against the minor as it is against Mir Sarwarjan", the learned Judges of the Division Bench stated that they saw no reason to dissent from their views already expressed and recorded " (1) that the contract was validly entered into particularly when, as pointed out, it was for the benefit of the minor, and was accepted and ratified by him, and (2) for the reason given "there is no want of mutuality" in respect of this agreement."

5. The agreement in question was entered into by an agent of Mr. Garth, without any express authority from him, but there was some evidence that Mr. Garth adopted or assumed to adopt the agreement on behalf of the minor. At any rate it was assumed in both Courts and it was the opinion of the Subordinate Judge that the contract was not intended to bind the manager personally, and therefore it was assumed that it was intended to bind the minor or the minor's estate. It was also assumed that the purchase was an advantageous purchase for the minor. In this judgment and for the purpose of this judgment their Lordships accept all the foregoing assumptions.

6. The learned Judges of the Division Bench disposed of the question of mutuality at the first hearing in the following terms: "There is no want of mutuality in this case for the agreement made by Mr. Garth with Mir Sarwarjan would seem to be as enforceable against the minors as it is against Mir Sarwarjan. The acts of a guardian in this country bind the minor, There is no difference between his position and powers and those of a manager. " No other or further reason in regard to this point was given by the learned Judges when the case was referred back to them.

7. Without some authority their Lordships are unable to accept the view of the learned Judges of the Division Bench that there is no difference between the position and powers of a manager and those of a guardian. They are, however, of opinion that it is not within the competence of a manager of a minor's estate or within the competence of a guardian of a minor to bind the minor or the minor's estate by a contract for the purchase of Immovable property, and they are further of opinion that as the minor in the present case was not bound by the contract there was no mutuality, and that the minor who has now reached his majority cannot obtain specific performance of the contract.

8. Their Lordships, therefore, will humbly advise His Majesty that the appeal should be allowed, the order of the High Court discharged, and the suit dismissed.

9. The respondent No. must pay the costs of the appeal. Any costs paid under the order of the High Court must be repaid, but there will be no other order as to

costs in the Courts below.