

(1906) 12 CAL CK 0029

In the Calcutta High Court

Case No : Appeal from Original Decree No. 279 of 1904

Mr. Sarwarjan

APPELLANT

Vs

Fakhraddin Mahomed Choddry and others

RESPONDENT

Date of Decision : 06-12-1906

Acts Referred:

Citation : (1906) 12 CAL CK 0029

Final Decision : Dismissed

Judgement

Rampini, J.—This case has been returned to us by the Full Bench to which we referred it to decide "on the evidence" "whether this is a case in which specific performance ought to be granted." The Full Bench has laid down for our guidance the principle that "if a contract is validly entered into on behalf of a minor and there is mutuality in such contract, it may be specifically enforced," but "each particular case must depend upon its own particular circumstances."

2. Now, applying this principle to the contract which it is now sought to enforce I would say that in my opinion it should be enforced. We have already considered the evidence and have come to the conclusions (1) that it is 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 minors as it is against Mir Sarwarjan."

3. Babu Dwarka Nath Chuckerbutty for the Appellant, Mir Sarwarjan, contends that we have under the direction of the Full Bench to consider the evidence again. He further urges that on that evidence we should find (1) that the contract was not validly entered into on behalf of the minor; (2) that there is no mutuality in respect of it; (3) that it imposes on the minor a personal liability and so cannot be enforced against him; and (4) that as the Full Bench has not decided whether the case of *Fatima Bibi v. Deb Nauth Saha* ILR 20 Cal. 508 (1893) was rightly decided or not, the Full Bench has not laid down any principle for our guidance which we can apply in this case.

4. I do not agree to any of these contentions. We have already, I think, given our opinion on the evidence. The reason why the Full Bench remanded the case to us to be decided on the evidence, was that, this being a first appeal, the Full Bench could not dispose of it on the facts, and it remanded it to us to pass a final order in it on our view of the facts.

5. It, therefore, seems to me that it was not necessary for us to consider the evidence again. However, we have allowed Babu Dwarka Nath Chuckerbutty to lay the evidence before us again, and I can only say that I see no reason to dissent from the views already recorded in the referring order (1) that the contract was validly entered into, particularly when, as I 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.

6. The third question raised by Babu Dwarka Nath Chuckerbutty is as to whether the contract can be enforced, seeing, as he contends, it renders the minor personally liable. It is in my opinion unnecessary to consider this contention, for, as far as I can see, the agreement which is printed at page 2 of the paper-book in no way binds the minor personally. The material clause in agreement is cl. 1. This appears to me to bind only the minor's estate, which in this country a guardian or manager of a minor's property can do within the limitations mentioned in the referring order.

7. Finally, although the Full Bench did not decide whether the ruling in *Fatima Bibi v. Deb Nauth Saha* ILR 20 Cal. 508 (1803) was right or wrong, it abstained from doing so, because it considered that the rule laid down by the learned Chief Justice in answer to our first question was sufficient for the purposes of this case, and because as the learned Chief Justice said "each case must depend upon its own particular "circumstances." The learned Chief Justice goes on to say that "if the facts were, as they are stated in the report, I should say the case was properly decided." I was and am of opinion that *Fatima Bibi's* case was decided on a misapprehension of the facts, for *Norris, J.*, would appear to me to have been under the impression that the contract had been entered into by the minor herself, and was consequently void, whereas this was not so. But this is immaterial. The rule laid down by the learned Chief Justice would seem to me to be sufficient for the purposes of this case, and applying it to the facts disclosed on the evidence both before and now, I would hold that the contract being validly entered into on behalf of the minor, and there being mutuality, it can be specifically enforced.

8. I would accordingly dismiss this appeal with costs both of the reference and of this appeal.

Woodroffe, J.

9. As a lengthy argument has been addressed to us upon the constructions which should be placed upon the judgment of the Full Bench I should like to state what I understand to be its meaning. It is now settled that a minor is incompetent to

contract and therefore a contract by him is not voidable but void, *Mohori Bibi v. Dharmadas Ghose* 7 C.W.N. 441: s.c. ILR 3 Cal. 539 (1003). The effect, therefore, of this would appear to be that relief on a contract entered into by a minor cannot be obtained either by or against him whether by specific performance or otherwise. But a manager or guardian of a minor may enter into a contract on his behalf. If as in the case cited to us, *Waghela Rajsanji v. Shekh Masludin* L.R. 14 IndAp 89 (1887), (where there was an onerous covenant not for the minor's interest and imposing a personal liability on him) a guardian goes beyond his powers, his action does not bind the minor. The result of this is the same as the former case, viz., that a suit based on such a transaction entirely fails as against the minor and no relief whether by specific performance or otherwise can be obtained as against him. There is left for consideration therefore the class of cases where a contract is entered into on behalf of a minor by a guardian or manager within the powers of the latter and which binds the ward. The question is, can specific performance be obtained in such cases 1 The Full Bench has said that a valid contract may be enforced if there is mutuality.

10. In saying this I understand it to refer to the case last put. It meant by the term mutuality, as I take it, that if the contract made by ft manager is one which binds the minor (a matter to be determined according to the circumstances of each case), then as the contract can both be enforced by as against him in such a case the Court may decree specific performance. To put it quite shortly specific performance may be granted if the contract be one which being within the guardian's powers binds the minor.

11. The question then is was the agreement in his case one which bound the minor. We have already found that it did.

12. It has, however, been further argued by the learned pleader for the Appellant that as the agreement in *Waghela Rajsanji v. Shekh Masludin* L.R. 14 IndAp 89 (1887) was held not to bind the minor so the one in suit does not bind him. He contends, it does not bind him, because the agreement for sale and purchase involves a personal liability to pay the price if the agreement is carried out as also damages in lieu of, or in addition to, specific performance if the agreement is broken. If this argument be sound then no contract can ever be specifically enforced by or against a minor, though the Full Bench have held that a contract may in certain circumstances be so enforced. The payment of a price is necessarily involved in the notion of a Bale and relief by damages is a natural consequence of all the broken contracts. What the Privy Council held in the case cited was that the guardian who had in that case sold land could not enter into a covenant collateral to the sale binding the minor personally to indemnify the purchaser in certain events; though the question whether the property of the minor could be charged as security for the performance of such covenant was left open. Every case must be considered with reference to its own facts and there is nothing in the agreement in this suit which in my opinion rendered it not binding on the minors. It is clearly for their benefit though of course the Appellant

objects to the agreement being enforced against him. The next contention is also one which, if given effect to, would stultify the decision of the Full Bench. It is first said that *Fatima Bibi v. Deb Nauth Saha* ILR 20 Cal. 508 (1893), decided what is stated in the head-note to the report of that case, viz., that a minor in this country cannot maintain a suit for specific performance of a contract entered into on his behalf by his guardian and, nextly it is argued that the majority of the Full Bench either approved of the decision or if their dicta on this point be regarded as obiter did not at any rate overrule it with the result that it is still in force. It is certain that the Full Bench could not have meant anything of the kind for having held that in certain circumstances a contract by a guardian or manager can be specifically enforced it could not without manifest contradiction have at the same time approved of a decision that such a contract can never be enforced. What I understand by the observations referred to is this. Norris, J., appears, though as my learned brother has pointed out erroneously, to have supposed that the contract before him was entered into by the minor himself, for at the conclusion of his judgment he states that in his view of the Contract Act a minor in this country cannot contract at all. What therefore the majority of the Full Bench have said is "assuming that the facts were as stated in the report" the case was properly decided. "That is, assuming the contract was entered into by the minor himself the case was properly decided. As a matter of fact, however, the contract was entered into by the minor's guardian a circumstance which appears to have been overlooked by Norris, J., though not by the reporter who drew up the head-note. It is now, however, in my opinion, settled by the Full Bench and order decisions [*Khairunissa Bibi v. Lokenath Pal* ILR 27 Cal. 276 (1899) *Krishna Sami v. Sundarappayyar* ILR 18 Mad. 415 (1894), *Jamsetji v. Kashinath* ILR 26 Bom. 326, 337 (1901)], that relief by specific performance may be given where the contract is by a guardian or manager and binds the minor and this is so notwithstanding the decision in *Fatima Bibi v. Deb Nauth Saha* ILR 20 Cal. 508 (1893), and the observations in *Jagal Kishore v. Anunda Lal* ILR 22 Cal. 545 (1895). As regards the latter case the observations were obiter for though the contract in question was entered into by the guardian the case was one in which it was held on the facts that the Court should not exercise the discretion it has to grant this form of relief. I am of opinion therefore that the appeal fails and should be dismissed with costs both of reference and of the appeal.