
(1957) 03 BOM CK 0047
In the Bombay High Court
Case No : Second Appeal No. 526 of 1950

Narayan Vyankatrao

APPELLANT

Vs

Ramchandra Narayanrao

RESPONDENT

Date of Decision : 14-03-1957

Acts Referred:

Contract Act, 1872 — Section 11, 8

Citation : AIR 1957 Bom 146 : (1957) 59 BOMLR 763 : (1957) ILR (Bom) 724

Hon'ble Judges : Chagla, C.J.;Mudholkar, J;Gokhale, J

Bench : Full Bench

Advocate : V.L. Prabhune, for the Appellant; N.B. Chandurkar, J.N. Chandurkar and M.N. Chandurkar, for the Respondent

Judgement

Chagla, C.J.—The question referred to this Full Bench by the Division Bench is whether a guardian of a Hindu adult under disability can alienate the property of the adult for legal necessity.

2. A Full Bench of this Court in *Tulsidas Jesingbhai Parikh and Others Vs. Raisingji Fulabhai Vaghela and Another*, , held that under Hindu Law a de facto guardian of 3 minor can validly sell the property of a minor to a third person for legal necessity. The decision of the Full Bench was a majority judgment of Mr. Justice Palkar and Mr. Justice Barlee, Sir John Beaumont, Chief Justice, dissenting. Since then the decision of the majority has come to be accepted as established law and the Federal Court in AIR 1949 218 (Federal Court) , in the judgment of Mr. Justice Fazi Ali at p, 84 (of FCR): (at p. 223 of AIR) states ;

"It may now be taken to be well settled by a long course of decisions that the de facto guardian has, in case of necessity or for the benefit of the minor, power to charge, mortgage or sell the minor's property."

3. This is almost the first case that has come before the Courts for consideration where the property is not that of a Hindu minor but of a Hindu adult who is under a disability, and the alienation is by his de facto guardian or manager, and Mr.

Chandurkar"s contention is that there is no distinction in principle between the case of a minor and an adult under a disability. What he points out is that both a minor and an adult who is insane or a lunatic in the eye of the law are incompetent to manage their affairs and look after their property, and it is precisely because of this reason that a de facto guardian is clothed with the authority of alienating the property of a disabled person if the alienation is for legal necessity or for the benefit of the property, and therefore Mr. Chandurkar says that it is the decision in *Tulsidas Jesingbhai Parikh and Others Vs. Raisingji Fulabhai Vaghela and Another*, is sound law as the Federal Court has taken the view that it is now fully established that that is the law governing Hindu minors, then, on principle there is no reason why the same decision should not apply to the case of an adult Hindu under disability. Now, as has been often pointed out, a precedent is a precedent for the case which it decides, and the jurisprudence which believes in law being made by precedents does not accept the proposition that there should necessarily be a logical extension of a particular decision given by the Courts, and therefore it would be fallacious to suggest that because in *Tulsidas Jesingbhai Parikh and Others Vs. Raisingji Fulabhai Vaghela and Another*, it was laid down that the de facto guardian of a minor can alienate for legal necessity, therefore logically we must extend that principle to the case of a Hindu adult under disability. It may be pointed out that the Bombay High Court came to the conclusion by a majority, and with respect to the judgment of Sir John Beaumont, C. J., even today makes very convincing reading- The learned Chief Justice points Out at p. 51 (of ILR Bom): (at p. 17 of AIR) :

"Dealing with the matter as one of principle I apprehend that if a person claims the right to sell the property of another, he must establish his title so to do. In many cases the right to deal with the property of another may arise from the legal relationship between the parties. But it is certainly strange to suggest, that such a power can be acquired by a relationship which has no legal sanction. A so-called guardian de facto is not a guardian at all. He is merely a person who has assumed without authority to act as guardian, and it is a strong thing to hold that by such assumption he has acquired the right to deal with the minor"s Immovable property."

Again at p. 52 (of ILR Bom): (at p. 18 of AIR), the learned Chief Justice says :

"It is indeed a strange conclusion that a power should be annexed to an office held without authority which would not be so annexed if the office were held under legal sanction. There is obvious risk of abuse in allowing unauthorised persons to deal with the property of minors."

Mr. Justice Patkar also agreed with the view put forward by the learned Chief Justice, but he felt overwhelmed by the line of authorities which had taken the contrary view. It is indeed strange that in India it should only be necessary to protect a Hindu minor in this fashion when he has no natural guardian or a guardian appointed by the Court, and Mr. Chandurkar says that this particular principle of Hindu Law is a very beneficial principle and has stood minors in good

stead in the past. It is difficult to understand how minors of other communities have managed to get along without this special provision. It is also difficult to understand why a de facto guardian who is interested in the property of the minor cannot get himself clothed with legal authority by getting appointed a guardian by the Court and getting the sanction of the Court before he alienates the property of the minor. We find it difficult to accept the contention of Mr. Chandurkar that what is a beneficial provision for a Hindu minor should be extended to a Hindu adult under disability. But fortunately this is not only our view. We find that the same view has been accepted and acted upon by our Parliament. The Parliament recently has been busy in enacting the Hindu Code and when we look at Act 32 of 1956 which deals with Hindu Minors and Guardians, there is now a specific provision in Section 8 that even a natural guardian cannot deal with, the property of his ward without the previous permission of the Court, and in Section 11 there is reference to a de facto guardian and the provision is that after the commencement of this Act no person shall be entitled to dispose of or deal with the property of a Hindu minor merely on the ground of his or her being t"lede facto guardian of the minor. Therefore, presumably, our Parliament does not subscribe to the same view about the benefits to Hindu minors as the view of Mr. Chandurkar.

4. If that is the view of Parliament and if Parliament thinks that in future it would be in the interest of a Hindu minor not to permit his de facto guardian to alienate his properly without the permission of the Court then we would be fully justified in taking the view that no case has been made out for the extension of the principle laid down in *Tulsidas Jesingbhai Parikh and Others Vs. Raisingji Fulabhai Vaghela and Another*, , to the case of adults. If there had been any authority of this Court or of the Federal Court or the Supreme Court which was binding on us, undoubtedly we would have been compelled to give effect to those decisions. But the position to-day is that there is neither any authority of this Court or the Federal Court or the Supreme Court or even of any other High Court in India, nor is there any Hindu text which supports the principle for which Mr. Chandurkar is contend-ing; and therefore we are at large, and the only point that we have to consider is whether accepting the decision in *Tulsidas Jesingbhai Parikh and Others Vs. Raisingji Fulabhai Vaghela and Another*, , as the correct decision, a case has been made out for extending that principle to the case of a Hindu adult under disability and as we have pointed out, we see no reason why we should extend that principle.

5. This Full Bench was necessitated because Mr. Justice Pollock in AIR 1944 232 (Nagpur) , refused to extend the principle applying to a Hindu minor to the case of a de facto manager of the estate of an adult Hindu, and he refused to do so on the same ground on which we are refusing to give effect to this principle contended for by Mr. Chandurkar. At p. 703 (of ILR Nag): (at p. 235 of AIR), the learned Judge Says :

"I am willing to assume that the sale of 27th July 1937 would have been not void

ab initio but merely voidable, if Mahipati had been a minor, but I do not consider that this principle ought to be extended to a sale by the de facto manager of the estate of an adult Hindu incapable of contracting."

Now, when a similar matter came up before Mr. Justice Dco, he was confronted with this authority and Mr. Justice Deo took the view that in view of the trend of authorities in India with regard to a Hindu minor, the opinion of Mr. Justice Pollock required to be reconsidered and he referred the matter to a Division Bench, and when the matter came before the Division Bench consisting of my brother Mr. Justice Mudholkar and Mr. Justice Naik, they thought the matter was sufficiently important to refer to a Full Bench, and the question that they have referred to the Full Bench is whether the view of Mr. Justice Pollock that the de facto manager of the estate of an adult Hindu who is incapable of contracting because of unsoundness of mind cannot alienate his property even in case of necessity, is correct or not. In our view, the view taken by Mr. Justice Pollock is correct.

6. The matter will now go back to the Judge dealing with second appeal and he will dispose of this appeal on merits.

7. Answer accordingly.