(1938) 03 MAD CK 0015

In the Madras High Court

Ragunathan by his mother and next friend Andalammal APPELLANT

Vs

P.N. Ravuthakanni (died) and Others RESPONDENT

Date of Decision : 16-03-1938

Acts Referred:

Citation : AIR 1938 Mad 765 : (1938) ILR (Mad) 928 : (1938) 48 LW 112 : (1938) 2 MLJ 277

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This appeal raises the question of the liability of a minor to return a sum of money paid to his guardian as

earnest money in respect of a contract of sale of immovable property entered into by the guardian on his behalf. On the 20th August, 1931,

Andalammal, the mother and guardian of the appellant, agreed to sell to the respondent the minor''s shares in a village. The price agreed upon was

Rs. 7,125 of which Rs. 500 was paid in advance. It is common ground that certain creditors of the estate were pressing for the payment of their

debts and the intention was to sell the minor''s interests in the village to discharge these liabilities. The sale was not completed, and the property

was sold by the mother to a third party, the second defendant in the suit out of which this appeal arises. The suit was for a decree for specific

performance of the contract, but before the case came on for hearing it was realised that the Court could not grant this relief. An infant cannot

contract in this country and a covenant by his guardian for the sale of immovable property cannot be enforced against him: (1911) L.R. 39 I.A. 1

(Privy Council) and Batchu Ramajogayya v. Vajjula Jagannadham (1918) 36 M.L.J. 29 : ILR 1918 Mad. 185 (F.B.). An application was then made for leave to amend the plaint by adding a prayer for the return of the earnest money. This application was granted, and at the trial the only

question which was raised was whether the respondent was entitled to the return of the Rs. 500. The learned trial Judge held that he was on the

ground that the minor was liable, unless it could be shown that he had not received the benefit of the Rs. 500. On this basis he granted a decree for

the return of the amount with interest. The appellant challenges the correctness of the decision. The second defendant is not concerned with this

question, and has, therefore, not been made a party to the appeal.

2. It may be taken that it was necessary to sell this property of the minor for the purpose of paying off pressing creditors. This was alleged in the

plaint and it was acknowledged in the appellant''s written statement that he had to sell the property to the second defendant ""owing to the pressing

necessities of the creditors"". It would appear that it was out of the money which the mother received from the second defendant that the debts

were in fact discharged. What has become of the Rs. 500 paid to the appellant''s mother by the respondent has not been disclosed. The learned

Advocate for the appellant contends that there can be no decree for the return of earnest money paid under a void contract. On the other hand the

learned Advocate for the respondent says that as the contract was entered into in order to raise money to pay off creditors the Rs. 500 must be

treated as having been paid to the guardian for necessaries or for his benefit.

3. In our opinion, the appellant is entitled to succeed. It is true, that the guardian was compelled to sell the property of the minor to pay off debts

for which the minor''s estate was liable, and if a conveyance had been executed no doubt the respondent would have obtained a valid title to the

property, but the Rs. 500 can only be treated as being security for the performance of a contract which in law was no contract at all. Earnest

money is paid as a guarantee that the contract will be performed. James, L.J., so held that in Ex parte Barrett : In re Parnell (1875) 10 Ch. App.

Cases 512 where there was a contract for the sale of immovable property with a stipulation that a portion of the purchase money should be paid

immediately, and his definition was accepted by the Court of Appeal in Howe v. Smith (1884) 27 Ch. D. 89 and by the House of Lords in Soper

v. Arnold (1889) 14 A.C. 429 . In the last mentioned case, Lord Macnaghten observed:

The deposit serves two purposes - if the purchase is carried out it goes against the purchase-money--but its primary purpose is this, it is a

guarantee that the purchaser means business.

4. The price to be paid for the land in the present case was Rs. 7,125 and the Rs. 500 was paid as a guarantee that the respondent would pay the

balance. It cannot be regarded as a payment to the appellant or to the appellant''s guardian for any other purpose. The respondent says that the

contract was not carried out because of the default of the appellant''s guardian, on the other hand, the appellant puts the blame on to the

respondent. It matters not on whose shoulders the blame must be placed. All that we have to consider is the purpose for which this money was

paid. The respondent''s advocate does not contend that a minor can be made liable for the return of earnest money paid under a void contract. He

says that the payment must be treated as falling within Section 68 of the Contract Act or as being for the benefit of a Hindu minor and therefore

repayable under his personal law. We are unable to regard the payment as falling within Section 68 or as being repayable under Hindu law on the

ground that it was paid for the minor''s benefit. We can only regard it as being paid by the respondent as a guarantee that he would fulfill his part of

the contract and as far as we know it remained with the guardian for this purpose.

5. The learned Advocate for the respondent has referred us to Pathak Kali Charan Ram v. Ram Deni Ram (1917) 2 Pat. L.J. 627 which was a

case in which a minor member of a joint Hindu family had executed an agreement of sale of immovable property and had received an advance of

Rs. 125 as earnest money. The object in selling the property was to defray the marriage expenses of the minor''s brother. The Court treated the

expenses as being necessary expenses and granted a decree for the return of the earnest money as the contract was not fulfilled. The learned

Judges regarded the case as falling u/s 68 of the Contract Act. They did not consider the question whether the earnest money should be treated as

security for the performance of a void contract. We are unable to accept this decision as embodying a correct statement of the law applying to a

case like the one before us.

6. For these reasons the appeal will be allowed and the suit dismissed with costs in favour of the appellant in both the Courts. The costs of the

appellant will include the fee paid to the Court guardian and also the cost of the printed papers supplied to him.

