(1953) 02 GUJ CK 0001

In the Gujarat High Court

Case No : Second Appeal No. 117 of 1952

Shah Jethalal Lalchand APPELLANT

Vs

Darbar Shri Amarwala Laxmanwala RESPONDENT

Date of Decision : 27-02-1953

Acts Referred:

Constitution of India, 1950 — Article 14
Contract Act, 1872 — Section 11, 2, 25, 25(2), 64

Citation : (1953) 02 GUJ CK 0001

Hon'ble Judges : Shah, C.J

Bench : Single Bench

Advocate : T.U. Mehta, for the Appellant; G.B. Joshi, for the Respondent

Judgement

Shah, C.J.—This is a Plaintiff''s appeal against the decree of the District Judge, Central Saurashtra Division, confirming on appeal the decree of the trial Court dismissing the Plaintiff''s suit to recover Rs. 693-12-0 being the balance of two instalments of a money bond of Rs. 6000/- dated 26-01-1949 executed by the Respondent in favour of the Appellant. The said bond was in renewal of an earlier Khata of Rs. 5000/- dated 7-2-1947 executed by the Respondent in favour of the Appellant. The defence was that the Khata was passed while the Defendant was a minor and also while his estate was under the management of the Western India States Agency and that on both grounds the contract was void by reason of Section 11 of the Contract Act. It was urged that the consideration stated to have been received under the earlier Khata was for that reason not a good consideration for the document of Rs. 6000/ -. The Defendant raised several other defences but these are not now material. It was admitted at the trial that no fresh consideration had been paid for the second document and that it was passed in renewal of the first. The trial Court upheld the Defendant''s contentions, viz., that the Defendant was a minor at the date of the earlier Khata and that his estate was under the management of the Western India States Agency at the time, that consequently the contract evidenced by the said Khata was a void transaction, which could not be revived by the Defendant on attaining majority, and that the second document was without consideration and the Plaintiff was not entitled to recover anything on the strength thereof. In this view the learned Judge dismissed the suit with costs and this decree was upheld in appeal on substantially the same grounds. The lower appellate Court also rejected the contention urged on behalf of the Appellant, viz., that he could recover by virtue of Sections 65 and 68 of the Indian Contract Act.

2. There is a concurrent finding of both the lower Courts that the Respondent was a minor at the date of the first transaction, viz., the Khata of Rs. 5000/- Ex. 7 dated 07-02-1947, and ordinarily the finding would be conclusive, but Mr. Mehta for the Appellant has urged that the finding ignores material admission of the Defendant and also misinterprets the document Ex. 6, upon which latter the learned District Judge has mainly relied and that it is therefore open to him to dispute the finding. There is substance in Mr. Mehta''s contention. It being the Defendant''s plea that he was a minor at the date of Ex. 7 and for that reason the contract is void, the onus is on him to prove the fact of his minority at the time. He has not produced any evidence in the shape of extracts of his birth register or of the school register, nor any other documentary evidence to substantiate his plea. He has studied upto 5th Standard English and could have easily produced an extract of the School Register to prove his birth date. As it is, he admits in cross-examination that he was born on 08-08-1928 which means that he completed 18th year on 8-8-1946. He is one of the Talukdars of Charkha and it is admitted that the estate was under the management of the Western India States Agency during his minority. By an Order dated 05-02-1948 the Deputy Regional Commissioner, Western India States Region, raised the management so far as the Defendant''s share in the estate was concerned and this order, copy whereof is Ex. 6, has been construed by both the lower Courts as showing that the Defendant was a minor, not having completed 18 years of age on the date of the Khata Ex. 7. It appears from the order, Ex. 6, that the Defendant K.S. Amrawala and one K.S. Ravatwala and their grand mother Bai Sumaribai had applied to the Western India States Region for raising the management. A copy of the said application is not on the record, but it appears that the Assistant Regional Commissioner, Western Kathiawar Region, had sent a letter dated 16-01-1948 on the subject, which indicates that the application must have been prior to that date. Ex. 6 recites that the Defendant had completed 19 years and was capable of looking after his affairs and therefore the management over his share of the estate was ordered to be raised. However, in view of his young age and inexperience he was directed to employ a Kamdar approved by the Deputy Regional Commissioner for a period of two years. Now this order is dated 05-02-1948 and if it was construed literally, it would mean that the Defendant had completed 18 years on or before the 05-02-1948, and the Khata of Rs. 5000/- Ex. 7, having been executed by the Defendant on 7-2-1948, viz., two days after the completed 18 years, must be treated as one having been executed after the Defendant become a major, reckoning the age of majority at 18 years. However such a literal construction need not be put on Ex. 6 and as

contents themselves indicate, the application must have been made after the Defendant had completed 18 years, which means that he must have completed 18 years some time prior to 5-2-1948. This is consistent with his own admission regarding his birth date, which according to him falls in August. It is therefore safe to conclude that he had completed 18 years in August 1946 and was a major at the date of the Khata Ex. 7. In any event even if Ex. 6 were construed literally he was still a major at the date of Ex. 7 and the lower Courts were not right in holding otherwise.

3. It was suggested for the Respondent that he should be taken as having attained majority on completion of 21 years. However no material has been produced by the Defendant to indicate that the age of majority for the purpose of entering into a contract in the case of a Talukdar whose estate was under management was to be 21 years. That suggestion is also not consistent with the order Ex. 6 itself, because in that case the management could not have been terminated during the Defendant''s minority. On the contrary the fact that it was terminated on his completion of 19 years suggests that the age of majority in the case of such Talukdars whose estate was kept under management was reckoned at 18 years. It is true that on account of the young age and the inexperience of the Talukdar he was required to employ a Kamdar approved by the Regional Commissioner, but that was only to safeguard the interests of the estate. This was in accordance with Agency Memorandum dated 12-04-1875 published in Kathiawar Agency Gazette of 22-4-1875, p. 77 (vide The Kathiawar Directory, Vol. I, pages 693-694 by P.C. Govinden). I have not been referred to any Notifications prescribing the age of attaining majority on completion of 21 years in the case of such Talukdar. Both the lower Courts have treated the second document, Ex. 12, which was passed on 26-10-1949, when admittedly the Defendant had not completed 21 years of age, as having been passed while he was a major. In spite of it, the learned District Judge has considered the age of majority as 21 years, which fact is inconsistent with his own view that Ex.12 was passed by the Respondent after attaining majority. It must be taken therefore that it has not been proved that the age of majority in the case of the Defendant was 21 years.

4. The main impediment against the Plaintiff however is that the Defendant was incompetent to contract a debt during the period his estate was under the management so as to bind his estate or himself personally, and this was prescribed by Notification No. 85 published at p. 200 of the Western India States Agency Gazette for 1937. The Notification is in the following terms:

In exercise of the powers conferred by the Government of India (Foreign and Political Department) Notification No. 472-I., dated the 3-10-1924, as amended by Notification No. 138-I., dated the 1st April 1933, and confirmed by Political Department Notification No. 8-Fed. I., dated the 1-4-1937, the Hon''ble the Resident for the States of Western India is pleased to direct, in supersession of the old Kathiawar Agency Notification No. 20 of 1896 and the old Palanpur

Agency Vernacular Circular of 9-2-1866, that when an estate is taken under Agency management, the owner of such estate or any member of his family shall remain incompetent, so long as such management lasts, to enter into any contract involving him or his estate in any pecuniary liability and that if such contract is made it shall be void, and no Agency Officer or Civil Court shall entertain any claim in respect of such contract.

This Notification had the force of law and as the Defendant''s estate was under Agency management at the time of the Khata Ex. 7, the Defendant was incompetent to enter into a contract which would involve him and his estate in a pecuniary liability and the contract was void. It is not disputed that this contract was made during the time his estate was under Agency management, and therefore under the terms of the Notification the contract contained in Ex. 7 was altogether void; and if the contract was void, then it could not be ratified or renewed by Anr. contract after attaining majority. In the view I take, Ex. 12 was executed by the Defendant after the management over his estate had been raised. But that does not affect the point at issue since a contract entered into by the Defendant while his estate was under management is on a par with a contract entered into during majority (minority?). It was admitted throughout that no fresh consideration had passed for the document Ex. 12, and it was executed in renewal of the earlier Khata Ex. 7. The proposition that a void contract entered into while the promisor was still a minor cannot be ratified on attaining majority is too well settled and does not need to be supported by authority, but if authority were needed, reference may be made to-Govind Ram v. Piram Ditta AIR 1935 Lah 561 (FB) (A), where it was held following earlier Lahore rulings that subsequent ratification by a person on attaining the age of majority of a transaction which was originally null and void by virtue of the fact that he entered into it while still a minor, does not form a valid contract on which a suit can be maintained. Since the contract entered into by the minor during his minority is a nullity and unenforceable at law, no question of its ratification arises, and the consideration which passed under the earlier contract cannot be imported into the contract into which the minor entered on attainment of majority. Following this ruling it was held in-Nazir Ahmad v. Jiwan Das AIR 1938 Lah 159 (B), that a contract entered into by a minor, being null and void, its subsequent ratification by the minor on attaining the age of majority cannot form a valid contract on which a suit can be maintained. It was also held that the consideration which passed under the earlier contract cannot be imported into the contract into which the minor entered on attaining majority. This latter proposition was laid down by the Allahabad High Court in- Suraj Narain Dube Vs. Sukhu Aheer and Another , where it was held that consideration received by a person during his minority cannot be good consideration for a fresh promise by him after his attaining majority, and such a contract does not fall within Section 25, Sub-clause (2). In- Bindeshari Bux Singh Vs. Chandika Prasad and Another , it was held that all transactions entered into by a minor are void, and therefore a minor, on attaining majority, cannot take upon himself a liability which from the point of view of law, never really existed, e.g., he cannot execute a fresh bond ratifying an old bond executed during his minority. The same considerations would apply to a contract entered into while the Defendant''s estate was under management. It is clear therefore that the consideration of Ex. 7 cannot form the consideration of Ex. 12 which means that Ex. 12 was without consideration; end it is also clear that Ex. 7 cannot be ratified by the Defendant after attaining majority, it being a void contract altogether.

5. Mr. Mehta for the Appellant agreed to this legal position, but he relied on Section 25(2) of the Indian Contract Act and urged that Ex. 12 is a promise to compensate the Plaintiff for what he had already voluntarily done for the Defendant, viz., that he had given the loan for the expenses of Defendant''s marriage and therefore the agreement Ex. 12 was not without consideration and not void for that reason. He referred to Section 2 Clause (d) of the Contract Act and argued that the loan of Rs. 5000/- was given at the desire of the promisor Defendant and that this act of giving the loan was consideration for the promise made by the Defendant. Mr. Mehta cited-Sindha Shri Ganpatsingji v. Abraham 20 Bom 756 (E) in support of his contention that the loan was given for the marriage expenses of the Defendant and amounted to services rendered to the Defendant. The facts of that case were however altogether different and have no analogy to the present case. Apart from it, this case has not been made in the plaint where it is not alleged that the loan was given at the desire of the Defendant. The Defendant had, therefore, no opportunity of meeting the case on this ground. As it is, the Defendant''s version is that his paternal aunt Devubai had sent a ''chithi'' (letter) to the Plaintiff for the loan and that the Defendant brought the sum from the Plaintiff on the strength of the said note. The plaint does not make a case of the Plaintiff having voluntarily given the sum to the Defendant and of the Defendant having executed Ex. 12 in order to compensate him. Had such a plea been made the Defendant would have been in a position to rebut it. The contention is made for the first time in second appeal, and not having been made in the pleading nor at any earlier stage it cannot be permitted to be taken.

6. Mr. Mehta next cited Section 65 of the Contract Act but that Section has no relevance here because the contract Ex. 7 was void ab initio and has not become void. Dealing with a similar contention. Their Lordships of the Privy Council in-Mohori Bibee v. Dharmodas Ghose 30 Cal. 539 (F) have observed as follows:

A new point was raised here by the Appellants'' counsel founded on Section 65, Contract Act, a section not referred to in the Courts below, or in the cases of the Appellants or Respondent. It is sufficient to say that this section, like Section 64, starts from the basis of there being an agreement or contract between competent parties; and has no application to a case in which there never was and never could have been any contract.

Their Lordships distinctly held that Section 65 presupposes the existence of a contract within the meaning of the Act which is either void or becomes void, and that it has no application to the case where one of the parties was incompetent to contract by reason of his minority. The scope of Section 65 as applicable to a minor''s contract was considered by a Full Bench of the Allahabad High Court in- Ajudhia Prasad and Another Vs. Chandan Lal and Another . After referring to the above Privy Council decision, Sulaiman C.J. held that where one of the parties is a minor and is thus incapable of contracting so that there never is and can never be a contract, Section 65 can have no application to such a case, because that Section starts from the basis of there being an agreement of contract between competent parties. In such a case therefore there will be no case of ordering him to restore the advantage which he has received or to make compensation for what he has received. With respect, I agree with this view and would hold that Section 65 has no application to the case of a minor''s contract.

7. Apart from this legal position, the question again is whether as a fact the Defendant has received any advantage under the contract Ex. 7. That is a question of fact which should have been pleaded by the Plaintiff so that the Defendant would have had an opportunity of meeting the plea and of representing his own version in reply. The facts here are that a sum of Rs. 14,000/- had been sanctioned for expenses of the Defendant''s marriage by the committee appointed for the management of his estate, and there is no plea that this additional sum of Rs. 5000/- was necessary for the expenses of marriage or that they were utilized for the purpose. In the absence of such allegation and proof it would be difficult to hold that the Defendant had received an advantage under the contract, which he was bound to restore to the other party, assuming of course that he was liable to do so under the law. This contention made for the Appellant is therefore unsustainable.

8. Mr. Mehta next invoked the aid of Section 68 of the Contract Act and urged that the loan having been given for the purpose of the Defendant''s marriage, it should be taken that the Plaintiff supplied to the Defendant necessaries suited to his condition in life and the Plaintiff is therefore entitled to be reimbursed from the Defendant''s property. Money advanced to a Hindu minor to meet his marriage expenses may be treated as supplies for ''necessaries'' and may be recovered out of his property, but, as I said there no case in the plaint that the loan was necessary for the purpose of the Defendant''s marriage, and that the Plaintiff was entitled to have it reimbursed from the Defendant''s property. Had such a case been made the Defendant would have been in a position to reply to it and to show that the loan was not at all. necessary. As I stated earlier, a provision of Rs. 14,000/- had already been made, and in order to succeed the onus would lie on the Plaintiff to show that over and above the sanctioned sum of Rs. 14,000/- this sum of Rs. 5000/- was necessary for the expenses of the Defendant''s marriage. In the absence of any idea to that effect, the question cannot be permitted to be raised. The Appellant''s prayer in the lower appellate Court, viz., that he may be permitted to amend the plaint in order to base his claim on this ground was rightly rejected by the learned District Judge. The Appellant has failed to make the plea even after it was contended for the

Respondent in his written statement that he was a minor at the date of the Khata Ex. 7 and that his estate was then under management and that on both grounds the Contract was void. As the learned District Judge observes, no such ground was also taken in the memo of appeal. In the circumstances the lower appellate Court was right in restricting the Appellant to the case made in the plaint.

9. It was finally urged by Mr. Mehta that the law banning the owner of an estate entering into a contract involving him or his estate in a pecuniary liability and making such contract void, contained in Notification No. 85 of the Western India States Agency dated 23-06-1937, is repugnant to Article 14 of the Constitution and is void, the argument being that it denies to the creditor equality before the law and the equal protection of the law within the territory of India. This contention too has not been made in the lower Courts, and the Defendant has thus been denied an opportunity of showing that the classification envisaged in the Notification was founded on an intelligible differentia which distinguishes the persons grouped together, viz., persons whose estates were under management from other and that the differentia had a rational relation to the object sought to be achieved by it. The Defendant could have shown that it was necessary in the interests of such persons and their estates to give them a special protection from the rapacity of money lenders. This ground has also not been taken in the memo of this appeal and the Respondent has no opportunity of meeting it, and to allow it at this stage will be distinctly unfair to him. But apart from it, and on the merits too the contention has no substance. The classification appears to have been made in order to protest impecunious Talukdars and their estates from being involved in debt and in order to prevent the estates from being frittered away and becoming lost to the successors. The protection was particularly necessary during the period the estate was under management so that it may remain intact till the Talukdar attained an age at which the authorities thought it safe to terminate the management. The classification made by the Government was highly reasonable and vital to the class of the persons who were grouped under it and the law rendering void the transactions entered into by them during the time their estate was under management was not discriminatory in the least, and it does not offend against Article 14 of the Constitution (vide Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, ,-State of Bombay v. Balsara AIR 1951 S.C. 318 (I), and- Kathi Raning Rawat Vs. The State of Saurashtra,).

10. In the result this appeal fails and is dismissed with costs.

