

(1894) 06 CAL CK 0003
In the Calcutta High Court

Sham Charan Mal

APPELLANT

Vs

Chowdhry Debya Singh Pahraj

RESPONDENT

Date of Decision : 26-06-1894

Acts Referred:

Contract Act, 1872 — Section 68
Registration Act, 1877 — Section 35

Citation : (1894) ILR (Cal) 872

Hon'ble Judges : Gordon, J; Ghose, J

Bench : Division Bench

Judgement

Ghose and Gordon, JJ.—This was a suit to recover a certain sum of money on a registered bond, dated the 20th April 1886, executed by the four defendants in favour of the plaintiff. At the time of the execution of the bond and of the institution of the suit, the defendant No. 1 was a minor, and the plaintiff's case against him was that he borrowed the money covered by the bond for necessities, that is to say, for the purpose of defraying expenses incurred in defending him in a prosecution for dacoity before the Criminal Courts. This defendant, through his guardian ad litem, denied his liability under the bond, and he also pleaded limitation. The Subordinate Judge decreed the claim against all the defendants. He found that the minor defendant borrowed the money for necessities, as alleged by the plaintiff, and relying on Section 681 of the Contract Act, and on certain authorities cited in his judgment, he held that the bond was good and valid as against the minor, On the question of limitation the Subordinate Judge was of opinion that, notwithstanding the fact that defendant No 1 was a minor when he admitted execution before the registering officer, the bond was duly registered under the Registration Act, and that, therefore, under Article 1162, Schedule 11 of the Limitation Act, the suit having been brought less than six (though more than three) years after the due date was within time. And as regards the plea of fraud in the registering officer, which appears to have been raised before him at the trial, the Subordinate Judge held that, although there was certainly a league between the plaintiff and the minor defendant to defraud

the Sub-Registrar, still "it cannot be contended that thereby the plaintiff has committed an act of fraud on defendant No. 1. The learned vakil for the defence referred me to the definition of fraud in Section 173 of the Contract Act. That definition abundantly shows that it is no fraud unless committed by a party, and the Sub-Registrar was certainly not a party within the meaning of the definition." On appeal by the minor defendant the District Judge has reversed the decree of the Subordinate Judge and dismissed the suit as against him. He agrees with the Subordinate Judge that the minor defendant borrowed the money on the bond for necessities, and he holds therefore on the authority of the case *Walter v. Everard* (1891) 2 Q.B. 369 that he is liable, But as regards limitation he finds that the suit is barred. Relying upon certain passages in the judgment of Lord Esher in the case of *Walter v. Everard* the learned District Judge is of opinion that the present suit should be dealt with as if there were no bond at all, and that therefore the suit, having been instituted more than three years after the due date of payment, is barred. And on the question of registration of the bond the learned Judge observes: "Registration of a document executed admittedly by a minor is no registration as against him, for a minor is incompetent to admit execution before the registering officer, and that officer has no jurisdiction to record a minor's admission." Against this decision the plaintiff has appealed to this Court and his learned Counsel has contended before us that the District Judge has taken an erroneous view of the questions of limitation and registration, while the learned vakil for the respondent has argued in support of the judgment of the District Judge on the ground decided against him, that the contract was not for necessities within the proper meaning of the term, and that therefore it is not binding on the minor. We think, however, that this latter contention is not correct. The liberty of the minor was in jeopardy. There was a charge of dacoity impending over him in the Criminal Courts, and in order to defend him and to save him from punishment and incarceration in jail it was necessary to raise funds for legal advice and assistance. Pleaders were employed to defend him, and the money borrowed under the bond was paid to them as remuneration. In these circumstances, we think it may fairly and reasonably be said that the money was borrowed for necessities within the meaning of Section 68 of the Contract Act, and that the minor is accordingly liable on the contract. As an authority for the view we take we may refer to the decision of Mr. Justice Broughton in *Watkins v. Dhunoo Baboo* ILR Cal. 140 in which that learned Judge held that a minor is liable for costs incurred in successfully defending a suit in which his property was in jeopardy, and that such costs are recoverable from him as if they were necessities. Whether the principle which underlies that decision can be supported in its entirety, it is not necessary to discuss in this case. It is sufficient to say that the liberty of the minor being at stake, we think the money should be taken to have been borrowed for necessities.

2. Then as to the plaintiff's appeal we think it must succeed. We think the learned District Judge is in error in holding that the present suit should be treated as if there were no bond at all, and that it is accordingly barred, and

further that on this point he has not rightly construed the judgment of Lord Esher in the case of *Walter v. Everard*, to which we have already referred. That suit was brought on a covenant under seal, in which a consideration is implied, and Lord Esher in his judgment says: "It is not true that you can sue an infant upon a bond given by him for the price of necessities supplied to him, with all the ordinary incidents of such an action. The plaintiff cannot simply put in the bond against the infant, and say that bond is under your seal, and there can be no inquiry into the consideration given for it." And further on in his judgment the same learned Judge observes: "You cannot sue the infant upon his bond as a bond. But if the bond is what is called a single bond, that is, if it is given only for the reasonable price of necessities supplied to the infant, and there is no penalty, the infant can be sued upon it." We think that the principle thus enunciated when applied to the present case means this—that before the minor defendant could be fixed with liability, it was necessary for the plaintiff to prove not only the execution of the bond by him, but also that he borrowed the money covered by it for necessities; in other words, it was incumbent on the plaintiff to establish this fact as if there were no bond at all, and in this sense we think the suit must be treated as Lord Esher observes: "Just as if there had been no deed." The bond cannot be ignored and treated as non-existent, because it is the basis of the suit, and it has been proved to have been executed by the defendant. On the question of registration also we are unable to agree with the District Judge. The point for determination is whether the bond has been duly registered in accordance with the provisions of the Registration Act, and we are of opinion that it has. Section 85 of the Act provides: "If any such person (by whom the document purports to be executed) appears to the registering officer to be a minor * * * the registering officer shall refuse to register the document as to the person so appearing." In the present case the defendant No. 1 appeared before the Registrar and admitted execution of the bond, and the document was accordingly registered. We may well assume that before the registering officer registered it, he was satisfied in his own mind (at any rate it did not appear to him to be otherwise) that the defendant No. 1 was not a minor, and by so registering, we are unable to say that he has in any way violated the law relating to the registration of documents. That law nowhere lays down that registration of a document, execution of which is admitted by a minor, is ipso facto void as against such minor, or void for want of jurisdiction on the part of the registering officer. No doubt deception appears to have been practised on the registering officer by the plaintiff and the minor by concealing from him the fact of the minority of the latter, but that, in our opinion, does not amount to fraud in the proper sense of the term, so as to invalidate the registration proceedings as against the minor defendant. In this view we think that the suit is not barred, it having been instituted within six years from the due date of the bond.

3. We accordingly decree the appeal, and restore the decree of the Subordinate Judge with costs.

1 Claim for necessities supplied to person incapable of contracting, or on his

account.

[Section 68: If a person, incapable of entering into a contract, or one whom he is legally bound to support is supplied by another person with necessaries suited to his condition in life the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.]

2	[Article	116	:
-----	Period		
of Time from which period begins	Description of suit.	limitation.	to run.

	For		
compensation for the breach	Six years	When the period of limitation of a contract	
in writing registered.	would begin to run against a suit brought on a similar		
contract	no	registered.]	

3 "Fraud" defined.

[Section 17 : Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

- (1) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) The active concealment of a fact by one having knowledge or belief of the fact;
- (3) A promise made without any intention of performing it;
- (4) Any other act fitted to deceive;
- (5) Any such act or omission as the law specially declares to be fraudulent.

Explanation: Mere silence as to facts, likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is in itself equivalent to speech.]