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S.A.No.862 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.862 of 2017
and
CMP.No.21703 of 2017

1.J.Sukumar (Died)
2.J.Ganesamurthy
3.J.Srinivasan
4.J.S.Rajeswari

...Appellants

(A1-died, A4 brought on record as
legal heirs of the deceased A1 vide
Court order dated 19.04.2022 made
in CMP.No.5251/2022 in S.A.No.862/2017)

Vs.

K.S.P.Pandian (Deceased)

1.P.Gnanaselvi
2.Venkatasubramanian
3.Subbiah
4.Sundaram
5.Suresh
6.Subash

... Respondents



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Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree passed in A.S.No.77 of 2010 by the VI Additional City Civil Court, Chennai dated 31.01.2011 reversing the judgment and decree passed in OS.No.4005 of 1996, dated 14.07.2009 by the IV Assistant City Civil Court, Chennai.

For Appellants : Mr.S.Saravanakumar
for Mr.I.Abrar MD. Abdullah

For Respondents : Mr.K.Ravi
Senior Counsel
for M/s.Rugan and Arya

JUDGMENT

The unsuccessful plaintiffs in the suit for specific performance are the appellants. The suit for specific performance filed by the plaintiffs was decreed by the trial Court and the findings of the trial Court was reversed by the First Appellate Court. Aggrieved by the same, the plaintiffs have come up with this Second Appeal.

2. For the sake of convenience the parties are referred to in this Second Appeal as per their ranking in the suit.



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3. According to the plaintiffs, they were in occupation of agreement mentioned property as a tenant. Later on plaintiffs, agreed to purchase the said property for a sale consideration of Rs.6,00,000/- and agreement was entered on 11.02.1985 and on the date of agreement an advance of Rs.1,00,000/- was paid by the plaintiffs. As per the terms of agreement the defendants agreed to treat the possession of the plaintiffs as the one under agreement. The defendants also agreed to adjust the rental advance of Rs.40,000/- towards the balance sale consideration. It was also agreed in the agreement that necessary permission from the Court shall be obtained for selling the agreement mentioned property to the plaintiffs insofar as the share of minor defendants 4 to 7. The time fixed for performance was 11.05.1986. The plaintiffs issued a notice on 12.08.1985 reminding the defendants their obligation under the agreement. The defendants issued a reply on 16.09.1985 stating that as per terms of agreement, the plaintiffs had to pay a further sum of Rs.1,00,000/- to the defendants on 11.05.1985 and the same was not paid. Subsequently, the plaintiffs paid further amount of Rs.1,00,000/- on 10.02.1986 and entered into another agreement incorporating the new terms under Ex.A12. The time fixed for performance was six months from the date of 2nd agreement entered on 10.02.1986. As the defendants failed to perform



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their part of contract the plaintiffs issued a lawyer's notice on 31.03.1987. The defendants filed Rent Control proceedings against the plaintiffs seeking their eviction. In these circumstances, the plaintiffs were constrained to file a suit seeking specific performance of the sale agreement expressing their willingness and readiness for paying the balance sale consideration of Rs.3,60,000/-.

4. The defendants filed their written statement and additional written statement stating that on the date of execution of rental agreement the defendants 3 to 7 were minors. It was further averred by the defendants that the agreement mentioned property originally belonged to the first defendant and he executed a settlement deed on 13.07.1977 granting life estate in favour of the second defendant with vested remainder to the defendants 3 to 7, in respect of a portion of the property. Again the first defendant executed another settlement deed on 14.07.1977 settling remaining portion of the property to the defendants 3 to 6. Therefore, the first defendant had no right over the agreement mentioned property on the date of agreement. The second defendant had only life estate in respect of a portion of the property. The defendants 3 to 7 have got vested remainder in respect of major portion of the



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property and with regard to remaining portion, the defendants 3 to 6 acquired title under the second settlement deed executed by the first defendant on 14.07.1977.

5. It was also contended by the defendants that on the date of execution of suit sale agreement the defendants 3 to 7 were minors and there was a clause in the agreement stipulating that the first defendant who represented the defendants 4 to 7 in the agreement, as natural guardian, should obtain permission from the Court for selling property. It was also contended by the defendants that the amount received by the first defendant towards advance was not utilized for the benefit of minors. The claim of the plaintiffs that they were in possession of the suit property in pursuance of the agreement was also denied by the defendants. On these pleadings, the defendants sought for dismissal of the suit.

6. Before the trial Court, the first plaintiff was examined as PW1 and 20 documents were marked on behalf of the plaintiffs as Ex.A1 to Ex.A20. On behalf of the defendants, the third defendant was examined as DW1 and six documents as Ex.B1 to Ex.B6.



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7. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the suit property was mortgaged even prior to the execution of settlement deed and only to discharge mortgage debt, the first defendant entered into an agreement of sale with the plaintiffs and therefore, the agreement was entered into by the first defendant on behalf of the minors only for their benefit.

8. Aggrieved by the same, the defendants preferred an appeal in A.S.No.77 of 2010 on the file of the VI Additional City Civil Court, Chennai. The first Appellate Court found that sale agreement entered into by the first defendant on behalf of the minors defendants 4 to 7 was unenforceable, as he failed to get permission from the Competent Court to sell minors property. Therefore the first appellate Court reversed the findings of the trial Court and allowed the appeal. Aggrieved by the said judgment and decree, the plaintiffs have come up with this Second Appeal.

9. The learned counsel for the appellant submitted that trial Court based on the evidence available on record came to the conclusion that earlier suit property was mortgaged and only to discharge the mortgage debt, the first



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defendant entered into suit sale agreement with the plaintiffs on behalf of the minor defendants 4 to 7. In such circumstances, the agreement was entered into for the benefit of minors and therefore, the same is binding on the minors. The said legal position was not properly appreciated by the first Appellate Court and the suit was dismissed only on the ground that the first defendant failed to obtain Court's permission for selling minors' property and therefore, the agreement entered into for selling minor share was enforceable.

10. The learned counsel for the appellant further submitted that as per agreement there is a stipulation which compels the first defendant to obtain necessary permission from the Court. The person who failed to perform the obligation under the agreement cannot take advantage of the same and resist the suit for specific performance on that ground.

11. As per admitted facts of the case originally the suit property belonged to the first defendant. He executed a settlement deed on 13.07.1977 under Ex.B1 in respect of 2727 sq.ft., of agreement mentioned property granting life estate in favour of the second defendant and absolute estate in favour of the defendants 3 to 7. Likewise, with regard to the remaining portion



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of the agreement mentioned property namely 2273 sq.ft., he executed another settlement deed on 14.07.1977 in favour of defendants 3 to 6.

12. Thus, the first defendant has no right over the agreement suit property on the date of agreement. The defendants 3 to 6 have got absolute right over the portion of the suit property 2273 sq.ft., under Ex.B2 and with regard to the remaining extent namely 2727 sq.ft., the same was settled in favour of the second defendant with life estate and vested remainder in favour of male issues namely the defendants 3 to 7. Therefore, the second defendant settlee as life estate holder is in possession of the suit property during her life time and has been collecting rent and enjoying the income.

13. Thus, it is clear that the defendants 3 to 7 have got vested remainder in respect of 2727 sq.ft., agreement mentioned property and the defendants 3 to 6 have got absolute right over 2273 sq.ft., in this property. The suit agreement have been entered into by the first defendant on behalf of the minor defendants 4 to 7. The third defendant signed agreement as if he was major on the date of agreement. However, in the written statement a plea was raised that the third defendant also was minor on the date of plaint. In order to



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prove that the third defendant was a minor on the date of agreement the transfer certificate of third defendant was produced as Ex.B3 wherein his Date of Birth has been mentioned as 28.04.1968. Therefore, he attained majority on 28.04.1986. Both the sale agreements namely Ex.A5 dated 07.03.1984 and Ex.A12 dated 10.02.1986 were prior to the said date. Therefore, it is clear that on the date of agreement the third defendant was a minor.

14. It is settled law, when a minor entered into an agreement during minority representing himself as a major, the agreement is void *ab initio* and unenforceable. (**Mohori Bibee Vs. Dharmodas Ghose**, reported in [1903 ILR 30 Cal 539 (P.C)]).

15. Therefore, suit agreement entered into with the third defendant during his minority is void *ab initio* and unenforceable, as far as 3rd defendant's share is concerned. The view of privy council in **Mohori Bibee Vs. Dharmodas Ghose** (cited supra) was quoted with approval by Apex Court in **Mathai Mathai Vs. Joseph Mary and Ors.**, reported in **MANU/SC/0473/2014=AIR 2014 SC 2277**. The relevant observation of Apex Court reads as follows:



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“9.The first point is required to be answered against the

appellant for the following reasons:-

It is an undisputed fact that Exh. A1 is the mortgage deed executed by the uncle of the appellant and the first respondent in favour of the deceased mother of the appellant as collateral security towards the dowry amount. At the time of execution and registration of the document, it is an undisputed fact that the age of the mortgagee, the deceased mother of the appellant was 15 years as mentioned in the mortgage deed itself. Therefore, she had not attained the majority under the Indian Majority Act, 1875. To acquire the competency to enter into a contract with the uncle of both the appellant and the first respondent the parties should have been of age of majority as required under Section 11 of the Indian Contract Act, 1872. The aforesaid aspect fell for interpretation before the Privy Council in the case of *Mohori Bibee v. Dharmodas Ghose*[1], wherein the Privy Council after interpretations of relevant provisions of Section 11 of the Indian Contract Act, 1872, has held that the contracting parties should be competent to contract as per the above provision and the minor's contract was held to be void as he cannot be the mortgagor, the relevant paragraphs referred to in the aforesaid decision are extracted hereunder :-

“Looking at these sections their Lordships are satisfied that the Act makes it essential that all contracting parties should be “competent to contract,” and expressly provides that a person, who by reason of infancy is incompetent to contract, cannot make a contract within the meaning of the Act”

In the later part of the same paragraph, it is stated,

“The question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in the case of an infant. Their Lordships are therefore of opinion that in the present case there is not any such voidable contract as is dealt with in section 64.”



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Thus, it was held that a minor cannot be a contracting party, as a minor is not competent to contract as per Section 11 of the Indian Contract Act. At this juncture, it is also necessary to extract Sections 2 and 11 of the Indian Contract Act, 1872 which read as under:-

“2.Interpretation-clause. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :-

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;
- (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;
- (c) The person making the proposal is called the “promisor” and the person accepting the proposal is called the “promisee”;
- (d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;
- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement;
- (f) Promises, which form the consideration or part of the consideration for each other, are called reciprocal promises;
- (g) An agreement not enforceable by law is said to be void;



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- (h) An agreement enforceable by law is a contract;
- (i) An agreement which is enforceable by law at the option of one or more of the parties- thereto, but not at the option of the other or others, is a voidable contract;
- (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

11. Who are competent to contract- Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.”

This important factual and legal aspect has been conveniently ignored by the authorities including the High Court while advertizing to Exh.A1, the mortgage deed. A strong reliance was placed upon it by both the Land Tribunal and the Appellate Authority in allowing the claim application of the appellant holding that he is a deemed tenant under Section 4A of the K.L.R. Act without noticing the aforesaid relevant factual aspect of the matter. Therefore, we have to hold that the mortgage deed-Ex. A1 executed by the uncle of the appellant and the first respondent, in favour of the deceased mother of the appellant, is not a valid mortgage deed in respect of the property covered in the said document for the reason that the deceased mother at the time of execution and registration of the document was a minor, aged 15 years, and she was not represented by her natural guardian to constitute the document as valid as she has not attained majority according to law. Many courts have held that a minor can be a mortgagee as it is transfer of property in the interest of the minor. We feel that this is an erroneous application of the law keeping in mind the decision of the Privy Council in *Mohori Bibee's case* (supra).

10.As per the Indian Contract Act,1872 it is clearly stated that for an agreement to become a contract, the parties must be competent to contract, wherein age of majority is a condition for competency. A deed of mortgage is a contract and we cannot hold that a mortgage in the name of a minor is valid, simply because it is in the interests of the



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minor unless she is represented by her natural guardian or guardian appointed by the court. The law cannot be read differently for a minor who is a mortgagor and a minor who is a mortgagee as there are rights and liabilities in respect of the immovable property would flow out of such a contract on both of them. Therefore, this Court has to hold that the mortgage deed-Ex.A1 is void *ab initio* in law and the appellant cannot claim any rights under it. Accordingly, the first part of first point is answered against the appellant.”

Therefore, suit agreement entered into with the third defendant during his minority is void *ab initio* and unenforceable, as far as his share is concerned.

16. As far as the other defendants namely 4 to 7, admittedly they were minors on the date of suit sale agreement and they were represented by the natural guardian first defendant. It was submitted by the learned counsel for the appellant that under Hindu Law the natural guardian of minors have got power to sell the property of the minors for legal necessity and for the benefit of minors and such agreements are enforceable against the minors. In the case on hand, in the plaint filed by the appellants/plaintiffs there is no plea regarding legal necessity or benefit of minors. When the appellants/plaintiffs failed to plead that the suit sale agreement was entered into for legal necessity and for the benefit of minors it is not open to them to argue that the suit sale agreement was entered into for the legal necessity and for the benefit of minors and hence the same was enforceable against the minors/defendants.



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17. The trial Court observed that even before execution of settlement by the first defendant the agreement mentioned property were subjected to mortgage debt and the suit sale agreement was entered into only for discharging the said mortgage debt and in such circumstances, the agreement shall be treated as one entered into for the benefit of minors. I am unable to accept the said conclusion of the trial Court for the simple reason that there is no plea by the appellants/plaintiffs that agreement was entered into for legal necessity or for the benefit of the minors. When there is no plea by the plaintiffs that the suit sale agreement was entered into by the first defendant on behalf of the minors for legal necessity and for the benefit of minors, the appellants/plaintiffs are not entitled to lead any evidence and argue that the agreement was for legal necessity and for the benefit of minors.

18. In such circumstances, the conclusion reached by the first Appellate Court that the suit sale agreement entered into by the guardian without obtaining Court permission is not specifically enforceable is in accordance with law. The said conclusion requires no interference by this Court. Finding no substantial question of law arising for consideration in this Second Appeal, the same is dismissed.



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19. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the First Appellate Court.

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

07.12.2023

Index : Yes
Internet : Yes
Neutral Citation Case : Yes
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S.SOUNTHAR, J.

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To

- 1.The VI Additional City Civil Court, Chennai.
- 2.The IV Assistant City Civil Court, Chennai.

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and
CMP.No.21703 of 2017

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