

**KITHSIRI PERERA
VS.
DAYASIRI PERERA**

COURT OF APPEAL.

WIJETUNGA J. AND ANANDACOOMARASWAMY J.

C.A. NO. 558/82 (F).

D.C. KULIYAPITIYA NO. 6067/L.

23 OCTOBER, 1990.

Contract of sale of land by minor without court sanction - Presumption of invalidity - Restitutio in integrum - Void ab initio and voidable - Assisted and unassisted contracts of minor - Damage, loss or prejudice - laesio enormis.

The plaintiff sued for rescission of the contract of sale of land to the defendant on the grounds of minority at the time of the sale and laesio enormis - the land being sold for Rs. 25,000/- when it was worth Rs. 100,000/-. The District Judge entered judgment for the plaintiff on both grounds and ordered the return of the Rs. 25,000/- to the defendant. The plaintiff's father had joined in the sale but there was no court sanction. The defendant appealed to the Court of Appeal.

Held:

1. In certain types of contract like sale of land even where the minor is assisted by a guardian but had no court sanction, the presumption of invalidity attaches to the contract and all the minor has to prove is his minority at the time of the impugned transaction. This he had done. He can succeed in his action for restitution. No proof of loss, damage or prejudice is necessary. The deed is invalid.

2. Strong proof of the true value of the land had been placed before court. The plaintiff had in fact suffered loss, damage or injury.

Cases referred to:

1. *Silva v. Mohamadu* (1916) 19 NLR 426
2. *Phipps v. Brassgirdle* (1933) 35 NLR 302
3. *Majeeda v. Paramanayagam* (1933) 36 NLR 196
4. *Siman Naide v. Aslin Nona* (1945) 46 NLR 337

APPEAL from the District Court of Kuliyaipitiya.

H. L. de Silva P.C. with *Sunil Cooray* for defendant – appellant,

A. C. Gooneratne Q.C. with *C. Ladduwahetty* for plaintiff – respondent.

Cur. adv. vult.

28 March, 1991.

WIJETUNGA, J.

The Plaintiff instituted this action to have a deed of transfer No. 8522 dated 17.5.77 attested by M. Victor, Notary Public (P5) declared invalid on the ground that at the date of execution of the said deed he, the vendor, was a minor. In the alternative, the plaintiff claimed that the land sold under the said deed was for a price far below its market value and he was therefore entitled to the same relief on the principle of *laesio enormis*. The consideration on the said deed was Rs. 25,000/-. The plaintiff claimed that the land in question was worth about Rs. 100,000/-

The defendant, in his amended answer, stated *inter alia* that the plaintiff had misled him by falsely representing that he was of full age and had thereby induced him to enter into this transaction. The plaintiff was thus estopped by his conduct from claiming that the said deed was invalid. He further stated that the parties were aware of the true value of the property in question at the time of the said transaction and the defendant paid the plaintiff the said value. He prayed for dismissal of the plaintiff's action.

The case went to trial on a number of issues and the learned trial judge entered judgement for the plaintiff in terms of paragraphs (a) and (b) of the prayer to the plaint and further directed that the plaintiff refund to the defendant the sum of Rs. 25,000/- obtained by him on the said deed (P5). The present appeal by the defendant is from that judgement and decree.

The learned trial judge has rejected the plaintiff's claim that the land in question had been sold by the plaintiff far below its market value and has accordingly refused him relief on the alternative cause of action. There is no cross appeal by the plaintiff from the said finding. The only matter that needs consideration, therefore, is whether the learned trial judge was right in declaring the said deed invalid on the ground of the plaintiff's minority at the time of the said transaction.

The plaintiff admittedly was a minor of the age of 18 years and 7 months at the relevant time. The property in question had earlier belonged to the plaintiff's father, who had gifted a half share of the said land with the house standing thereon to the plaintiff on deed No. 1703 dated 30.1.70, attested by C. Premachandra, Notary Public (P2) and the other half share to another son on deed No. 1704 attested by the same Notary on the same date (P3). The latter had conveyed his interests to the plaintiff on deed No. 1996 attested by T.B.C. Edirisinghe, Notary Public dated 6.9.76 (P4). In all the three deeds the father had joined in the transactions but had reserved his life-interest. Thereafter, on the deed in question (P5) the plaintiff, together with his father, had sold the entire property to the defendant on 17.5.77 for a sum of Rs. 25,000/-.

On the evidence led in this case, the learned trial judge has held that it cannot be concluded that the plaintiff had, at the time of executing the said deed, fraudulently represented himself to be of full age and had thus deceived or misled the defendant; consequently the principle 'fraud supplies the want of age' does not apply to this case. Dealing with the defend-

ant's claim that the plaintiff was an emancipated minor at the time of the said transaction, he has further held that the evidence does not permit such a conclusion being reached.

The basis on which the learned trial judge has reached the conclusion that the deed (P5) is invalid is that, though the plaintiff who was a minor was assisted in this transaction by his guardian (the father), the latter had not obtained the authority of the Court to so transfer the property in question and as such the transaction falls into the category of an unassisted contract by a minor. He states that as a minor on coming of age is entitled to apply to Court for restitution by declaring such transaction to be invalid, the plaintiff was entitled to the relief claimed.

It was the contention of learned President's Counsel for the defendent-appellant that this transaction was not *void ab initio* but was only voidable. Thus, the plaintiff, though entitled to the remedy of restitio in integrum within three years of attaining majority, had to satisfy the Court that damage, loss or injury had been caused to him by reason of the transaction. The proposition that a sale of land by a minor is not void, but only voidable at his instance and that an action to have a deed of sale executed by him during his minority set aside should be brought within three years of his attaining the age of majority finds support in *Silva v. Mohamadu*, (1). But learned counsel submitted that in the instant case the plaintiff has failed to prove damage, loss or injury to him and consequently the trial judge was in error when he declared the deed (P5) invalid and of no force or avail in law.

He further submitted that restitution contemplates serious loss and damage. In Voet's Commentary on the Pandects (Gane's translation) Vol. I, Book IV at page 586, it is stated that restitution is not granted for trivial cause. "Nevertheless it is not to be vouchsafed at random to anyone claiming it and setting up a cause; but only after cognisance has been taken of

the question whether the cause is really genuine, just and sufficiently serious. In the first place indeed it ought never to be bestowed if only slight damage has occurred."

In *Phipps v. Brassgirdle* (2), it has been held that restitution is not allowed unless the applicant can show that he has suffered actual damage.

It is stated by Driberg J. in the course of that judgement, quoting Maasdorp's Institutes of Cape Law (1907 ed.) Vol. III, pages 58 and 67, that the form of relief known as *restitutio in integrum* was primarily one intended for relief from contracts on the ground of minority, error, fraud, and duress. The object of the action was to recover any property lost through the contract, or compensation in damages, or damages generally, but actual damage had to be proved."

Again in *Majeeda v. Paramanayagam* (3), where a Muslim woman, though married was under the age of twenty-one years, entered into a contract with the assistance of her husband, it was held that relief from the contract must be sought by way of restitution and to obtain such relief there must be proof of damage, loss, or prejudice. Driberg J. states at page 197 that "where a minor contracts with the assistance of a guardian with the due observance of all the other essentials of a contract, relief from the contract must be sought by the process of restitution, and for this, among other conditions it is necessary for the minor to prove that he has suffered serious loss, damage, or prejudice."

It was stated by Soertsz C.J. in *Siman Naide v. Aslin Nona* (4), that it must be regarded as settled law ever since *Silva v. Mohamadu* (supra) that a sale of immovable property by a minor without the sanction of a competent Court is voidable, not void and that a minor may relieve himself by *restitutio in integrum* or 'some equivalent legal proceeding'. He described it as a hybrid proceeding partaking both of the character of *restitutio in integrum* and of *rei vindicatio*.

He further stated that where a minor himself has alienated immovable property, his remedy ought to be by way of *restitutio* for he has purported to divest himself of his title and he ought not to be allowed to be the judge in his own case as to the validity or invalidity of his alienation and to *sue rei vindicatione* by assuming that the dominium is still in him.

The principle laid down by Driberg J. in *Majeeda v. Paramanayagam* (supra) that "it is necessary for the minor to prove that he has suffered serious loss, damage or prejudice...." was also considered by Soertsz A.C.J. and he went on to hold that "where it has not been shown that the minor has been benefited as the recipient of some *singulare emolumentum*, he must be taken to have suffered the kind of loss or damage sufficient to enable him to obtain relief."

Weeramantry in his Law of Contracts, Volume I, deals with the action for restitution and states thus at page 444 in regard to the burden of proof: "There is an important difference between the burden of proof in actions relating to unassisted and assisted contracts. In the case of the former, there is a presumption of invalidity, while in the case of the latter there is on the other hand a presumption of validity. The resulting difference in regard to the burden of proof is that all that need be proved in regard to the first group of contracts is the fact of minority, while in regard to the second group, proof is required not merely of minority but also of prejudice. While, therefore, in the first group of cases the burden of providing benefit to the minor is on the party relying on the contract, the second group of cases throws on the party impugning the contract the burden of establishing a detriment to himself."

He states at page 438 that "assisted contracts of a minor may be either those entered into by a minor with the assistance of a guardian or those entered into by the guardian for and on behalf of the minor. In regard to certain types of contracts, even the assistance of the guardian is insufficient to

enable a valid contract to be formed. The consent of court is required in addition to the assistance of the guardian. Contracts by minors for the alienation or burdening of their immovable property are the principal types of such contract."

He further states at page 445 that "contracts in relation to immovable property.... do not attract different rules in regard to the burden of proof. All that need be remembered is that, in regard to such contracts, the presumption of validity arises when the contract has been sanctioned by court and that in the absence of such sanction there is a presumption of invalidity..... Consequently, in the absence of such approval, the minor need only prove his minority and where there is such approval, he must prove prejudice as well. This principle must not be applied indiscriminately to all contracts of minors relating to land but only to those sanctioned by Court and in this respect our courts have sometimes fallen into error." The learned author cites *Siman Naide v. Aslin Nona* and *Majeed v. Paramanayagam* (supra) as examples.

In the instant case, as was mentioned earlier, the plaintiff who was then a minor had alienated immovable property. Though assisted by his guardian (the father), the transaction was without the sanction of Court. Applying the aforesaid principles enunciated by Professor Weeramantry, the presumption of invalidity, therefore, attaches to the said contract and the burden on the plaintiff was only to prove his minority at the time of the impugned transaction. He has discharged that burden.

In any event, the subject matter of this transaction, as is evidenced by the reports submitted to Court by J. Alpheus Perera, Auctioneer, Valuer and Court Commissioner, marked (P6) and (P7), and as deposed to by him in his evidence in Court, is a productive coconut land situated at Apaladeniya by the main Kuliypitiya-Hettipola road, 1 acre 1 rood and 33 perches in extent, with a residential house consisting of three bed-rooms, an office-room, a hall, verandah, dining room and

kitchen, constructed of brick and cement. The roof is of valuable timber, partly covered by tiles and partly by asbestos sheets. There is also a latrine and a well. The property had been transferred on the deed (P5) for a sum of Rs. 25,000/- on 17.5.77.

What the plaintiff is said to have purchased out of the proceeds of the said sale on deed No. 1427 dated 24.5.77 attested by G. Sooriyaarachchi, Notary Public (V5) is a coconut land 5 acres in extent, situated in Bowatta in Kinyama Korale. Even on that assumption, the purchase price thereof being only Rs. 15,000/-, the plaintiff had obviously not received the full benefits of the sale of the premises in question on (P5), as the proceeds of the sale, viz. Rs. 25,000/- had not been applied in full towards this purchase. The plaintiff had thus suffered loss, damage or injury by reason of the said transaction.

For the reasons aforesaid, I am of the view that the learned trial judge was right in declaring the said deed (P5) invalid.

I would accordingly dismiss this appeal with costs.

ANANDACOOMARASWAMY, J. - I agree.

Appeal dismissed
