

Present: Fisher C.J. and Garvin J.

1928.

MAHAWOOF *et al.* v. MARIKKAR.

108—D. C. Matara, 2,121.

Curator—Lease of property—Sanction of Court—Civil Procedure Code, s. 532.

A curator of a minor's estate appointed under section 532 of the Civil Procedure Code has no power to grant a lease of property without the sanction of court.

*Perera v. Perera*¹ followed.

A PPEAL from a judgment of the District Judge of Matara.

H. V. Perera (with *Gnanapragasam*), for first defendant, appellant.

N. E. Weerasooria (with *Samarawickreme*), for plaintiff, respondent.

E. G. P. Jayatilleke (with R. C. Fonseka), for second and third defendants, respondents.

October 22, 1928. FISHER C.J.—

In this case the plaintiff claimed possession of a half share of certain land and half share of the boutiques standing thereon as lessee under a lease which was granted by a curator as such for a term of three years and nine months, and the question for our decision on this appeal is whether that lease is valid or not.

The date of the lease is March 13, 1924, and on March 6, the then Judge of the District Court made an order which clearly indicated his opinion that the curator had exceeded his authority by granting certain previous leases in respect of this or other properties of which he was curator and directed him to "take charge of all the lands from April 1." The words "accounts accepted" appeared at the end of that order, and it is contended that even if it was not within the power and authority of the curator to grant the lease in question the Judge must be taken to have ratified the lease by going into and accepting accounts connected with it. In my opinion this contention cannot prevail. If ratification could make the lease valid it should at least be apparent that it was the definite intention of the Court to ratify it.

In my opinion the extent of the powers of the curator in this case must be ascertained from the terms of his appointment, and therefore we must consider the terms of the certificate granted

¹ (1902) 3 *Browne's Reports of Cases*, 150.

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to him under section 582 of the Civil Procedure Code. In clause 1 of that certificate (Form No. 94) he is given "the same powers in the management of the estate as might have been exercised by the said . . . , if not a minor." In my opinion this power of management does not include the power to grant a lease. The granting of the lease is, in fact, parting with the management of the property.

In my opinion, therefore, the lease is invalid. In holding this view we are following and giving effect to the decision of this Court in *Perera v. Perera*.¹ In his judgment in this case Wendt J. says:—

" At all events the terms employed in the form of letters show that the curator was only to have the management of the minor's estate. It would be productive of great inconvenience and uncertainty if the validity of a lease by a curator, granted without the Court's special sanction, were made to depend on the circumstances of each case as to the length of the term, amount of rent, necessity for leasing, &c.; and I think it is the better course to hold, for the reasons given by my brother Middleton, that any lease whatever for a term exceeding one month needs the Court's previous sanction for its validity."

The appeal therefore must be allowed. The judgment will be set aside and the appellant will be entitled to his costs in this Court and in the Court below.

GARVIN J.—I agree.

Appeal allowed.