

Present : Garvin J. and Jayewardene A.J.

1928.

AHAMADU LEBBE v. AMINA UMMA.

3—D. C. Kandy, 33,864.

*Minor—Conveyance of immovable property—False representation by minor—Act void or voidable—Restitution.*

Where a minor by falsely representing himself to be of full age deceived a person and induced him to purchase his immovable property,—

*Held*, that the conveyance was valid.

Whether an act be void or voidable, a minor who seeks relief from it must apply to the Court for restitution.

Restitution is not granted to a minor who falsely represented himself to be a major.

**A** PPEAL from a judgment of the District Judge of Kandy. The facts appear from the judgment.

A. E. Keuneman, for defendant, appellant.

H. V. Perera, for plaintiff, respondent.

June 7, 1928. JAYEWARDENE A.J.—

By deed No. 17,351 dated December 29, 1924, the plaintiff conveyed to the defendant a half share of a land called Jamanarangahamullahena. The plaintiff was at the execution of the deed, and still is, a minor. He brings this action, assisted by his next friend, to have the deed declared of no avail in law and to be declared the owner of the half share sold by him. The defendant pleaded that at the time of the execution of the conveyance, the plaintiff represented and held himself out to be a person of full age and thereby induced the defendant to purchase the property.

The learned District Judge was satisfied that the plaintiff had held himself out as of full age, and had also urged in proof of that fact that he had already executed three mortgages and a lease, all of them in favour of his present next friend, who is his brother. The learned Judge declared the deed null and void, but condemned the plaintiff to pay to the defendant the sum of Rs. 643 which was paid to the plaintiff on the transfer. The defendant appeals. It has been clearly established that the plaintiff fraudulently represented himself to be of full age, and hereby deceived the defendant and induced him to purchase the property, in the belief that the plaintiff was a major.

In the Roman law no relief was granted to a minor who fraudulently represented himself to be a major. "*Si is, qui minorem nunc se esse adserverat, fallaci majoris aetatis mendatio te deceperit; cum*

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*juxta statuta juris errantibus non etiam fallentibus minoribus publica jura subveniant, in integrum restituti non debet.*" (Codex, lib. II. tit. 43, s. 2.)

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Perezius, Professor of Law at the University of Louvain, in his commentary on the Codex, remarks—

*"Sequitur alia causa, ob quam denegatur restitutio in integrum nec minore succuritur; nempe si minor dolo malo se majorem dixerit, ut induceret alium ad contrahendum,"*

and again—

*"Nam ante hanc 25 annorum aetatem, virilem animi vigorem minor compleri non solet, inquit, Ulpain de Minore—licet malitia interdum aetatem suppleat."* (Perezius—Praellectiones in Cod., tit. 43 and 45.)

The view of the Roman law thus was that the remedy of *restitutio in integrum* should not be granted to a minor who was fraudulent, fraud supply the want of age.

The same principle was adopted in the Roman-Dutch law. Van Leeuwen states that the "decree of reinstatement is not granted to those who committed fraud, as for instance, if they have lied in saying they were of age." (*Van Leeuwen's Cens. For.*, pt. I., bk. IV. ch. 43.)

According to Voet, restitution is denied if the minor is held, in the interpretation of the law, to be a major at the time of entering into the contract—when, for instance, he has obtained *venia aetatis*, or is regarded as having attained majority by marrying, or if he has fraudulently represented himself as a major to the person with whom he has contracted, if the other acted *bona fide* and under a genuine mistake; or finally, if at the time of the contract he was held generally to be a major, not through a foolish mistake or ignorance of law—having acted publicly and fulfilling duties as a major:—

*"Generaliter enim errantibus quidem minoribus, at non fallentibus ac dolosis, jura publica subvenire constitutum est, malitia in mentientibus aetatem supplente."* (Voet ad Pand., lib. IV. tit. 4, s. 43.)

Voet thus adopts the view that fraud supplies the age in the case of those who make false statements as to age. Sir A. F. S. Maasdorp (Chief Justice of the Orange River Colony) points out that a contract of a minor entered into by him even without the authority of the tutor would be binding on the minor when the minor has falsely represented himself to be of full age and has deceived the other contracting party by such representations. (*Maasdorp's Institutes of Cape Law*, bk. I. ch. 43, p. 247.)

According to Professor Lee, restitution is refused when a minor has fraudulently misrepresented his age. (*Introduction to Roman-Dutch Law by R. W. Lee, p. 43.*)

He quotes two cases—*Johnston v. Keiser*<sup>1</sup> and *Vogel & Co. v. Geentley*<sup>2</sup>—which are not available locally. He also refers to the Ceylon case of *Wijesooriya v. Ibrahimsa*.<sup>3</sup> In that case it was held that a minor who falsely represented himself to be a major, and deceived the other contracting party, was bound, and the sale of a piece of land of the minor was held to be good. Hutchinson C.J. refused to allow the minor to obtain the benefit of the fraud which he had committed, and Middleton J. held that a fraudulent minor should not expect the Courts to extract him from a position in which his own improbity had placed him.

This case was considered in *Sinno Appu v. Podi Nona*,<sup>4</sup> but the principle was not departed from, Lascelles C.J. holding that, although an untrue statement had been made as to age, evidence of fraud, in the proper sense of the word, was almost entirely wanting, so far as the minor was concerned.

It was contended that the contract of a minor was *ipso jure* null and void (*Grotius, bk. III. ch. 48, s. 10, Lee's Trans. p. 505*, and *Sande's Restraints on Alienation, ch. 1. 6, 79*), that a minor is protected by the mere operation of the law, that the reinstating is effected *ipso jure*, and that there is no necessity for the extraordinary remedy of reinstating, and in effect that the relief is sought *ex abundantia cauteld*.

Professor Lee observes that the phrase *ipso jure* void must not be taken too literally, for such obligations are not so void as voidable at the minor's option. (*R. W. Lee, R. D. L., p. 39.*)

The question, whether the contract of a minor is wholly void, was considered in the case of *Fernando v. Fernando*<sup>5</sup> and *Silva v. Muhammadu*,<sup>6</sup> and it was held that a minor's deed was not *ipso jure* void but only voidable at his instance. In the South African case, *Breytenback v. Frankel*,<sup>7</sup> Lord Villiers held that in all cases it was necessary for the minor to relieve himself by obtaining *restitutio in integrum*.

Sampayo J. observed in *Silva v. Muhammadu* (*supra*) that even in the case of void contracts, the universal practice in Holland, according to Lord Villiers, was to apply for *restitutio*, and what was the universal practice in Holland must be taken to be law with us, this being in accord with the general principle that a person cannot be judge in his own cause, and when he wishes to get rid of his own act he must seek the assistance of the Court. In *James v. Solomon*<sup>8</sup> it was held that a conveyance of land by a minor was voidable only,

<sup>1</sup> (1879) K. 166.

<sup>2</sup> (1903) 24 Natal L. R. 252.

<sup>3</sup> (1910) 13 N. L. R. 195.

<sup>4</sup> (1912) 15 N. L. R. 241.

<sup>5</sup> (1916) 19 N. L. R. 193.

<sup>6</sup> (1916) 19 N. L. R. 427.

<sup>7</sup> (1913) S. L. R. Ap. Div. 390.

<sup>8</sup> (1925) 3 T. L. R. 124.

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and the deed not having been set aside effectually passed title to the purchaser; and in *Velupillai v. Elaris*,<sup>1</sup> where a minor executed a mortgage bond in favour of the plaintiff and subsequently, after attaining majority, sold the land to a third party, the bond was held to be voidable only, and as the minor had taken no proceedings to have the bond declared void, the mortgagee was held entitled to judgment for the claim on the bond.

In view of these authorities it must be now taken as settled law that whether an act is void or voidable, restitution must be sought from the Courts, and neither the minor nor his subsequent purchaser can treat the alienation as never having taken place at all.

The authorities which I have quoted are all agreed that restitution is not granted to those who committed fraud by falsely stating their age.

Even regarding this action as a merely vindicatory one, a fraudulent minor who states he is of full age, is bound by his contract, and the minor must be at the time of the contract held to have been a major in the eye of the law (*juris interpretatione*).

*Johannes à Sande* in his *Decisiones Frisicæ* makes particular reference to alienation of immovable property by minors: "*Si minor communi opinione vel errore existimatus major, rem immobilem alienaverit, valet alienatio, si modo is, qui cum minore contraxit, communi erroris deceptus, credidit eum esse majorem.*" (*Sandé Decis. Fris., bk. II. tit. 9, def. 16.*)

Sandé, who was Senator of the Supreme Court of Friesland, says that the Court had so decided in many cases.

Voet says that the sale of immovable property, which a minor had made without judicial decree and without his guardian's authority, will be valid, where the minor has conducted and represented himself as a major and so deceived the purchaser. (*Voet ad Pand., lib. XXVII. tit. 9, s. 13.*)

In his note to this section Nathan says that the terms of section 24 of the Cape Ordinance 105, 1833, are so imperative that one might be justified in holding that even where a minor represents himself to be a major, a sale of landed property cannot take place without a decree of the Court, but that where there is no decision of any Court on the subject, it would be safer to hold with Voet that in case of fraud the minor is bound by the sale. (*Nathan's Common Law of South Africa, p. 193.*)

In that view the alienation of the plaintiff was a valid one.

I am of opinion that the plaintiff's action fails, whether viewed as a vindicatory action or as one for restitution. I would allow the appeal and dismiss plaintiff's action with costs in both Courts.

GARVIN J.—I agree.

*Appeal allowed.*

<sup>1</sup>(1926) 7 C. L. Rec. 162,