

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. _____ OF 2024
(Arising out of SLP(C) No.23655/2019)

KRISHNAVENI

Appellant(s)

VERSUS

M.A. SHAGUL HAMEED & ANR.

Respondent(s)

O R D E R

Leave granted.

2. Heard Mr. B. Balaji, learned counsel appearing for the appellant. Also heard Mr. G. Sivabalamurugan, learned counsel appearing for the respondents.

3. The appellant, was a minor (16+ years) at the time when the sale agreement dated 03.09.2007 (Annexure P-1) was executed with the respondents. Under the said agreement, the minor had agreed to purchase some immovable property. The sellers were given advance for the purchase of the property, as can be seen from the recital in the sale agreement.

4. The O.S. No. 924 of 2010 was filed by appellant-Krishnaveni (minor) through her mother (Gowri), seeking a direction to the defendants to perform their part of the contractual obligation, in terms of the sale agreement dated 03.09.2007. The defendants in the suit, who were the sellers in the sale agreement dated 03.09.2007, filed

application under Order XII Rule 6 of the Civil Procedure Code based on admission of PW1 Gowri (appellant's mother) that the appellant was a minor at the time of the sale agreement dated 03.09.2007 and therefore, no claim for specific performance can lie on the basis of such void sale agreement.

5. However, the learned II Additional Subordinate Judge at Tiruchirapalli, Tamil Nadu in his order dated 28.04.2017 (Annexure P-7) opined that the objections of the defendants can be considered during the trial of the suit and the same need not be considered as a preliminary issue and accordingly, the application filed by the defendants under Order XII Rule 6 of CPC, came to be dismissed.

6. The defendants then moved the Madurai Bench of the High Court of Madras by filing a Revision Petition. The learned Judge in the impugned order dated 02.01.2019 allowed the Revision Petition with the following order;

"3. The simple point projected by the Revision Petitioners is that even as per the admission made by P.W.1, when the suit agreement dated 03.09.2017 (sic 03.09.2007) was entered into, the plaintiff Krishnaveni was a minor. A minor is not competent to enter into an agreement. It is void as per Section 11 of the Indian Contract Act, 1872. Therefore, the suit founded on the strength of such a void agreement is liable to be dismissed. The Court below declined to accept the said stand on the ground that a minor can be a beneficiary under an agreement.

4. The learned counsel appearing for the Respondent placed reliance on the decision of the Delhi High Court rendered on 15.09.2017 in RFA No. 788 of 2017 & CM Nos.33659-61/2017(Bhupinder Kaur & Ors vs. Davindar Kaur & Ors). He also contended that grant of relief in terms of Order 12 Rule 6 of CPC is rather discretionary. He relied on the decision of the Hon'ble Supreme Court reported in (2015) 8 SCC 428 (Raveesh Chand Jain vs. Raj Rani Jain) and the one rendered on 18.12.2003 in Appeal (Civil) No. 1036 of 2000 & Appeal (Civil) No. 4770 of 2001 (K.Balakrishnan vs. K. Kamalam & Ors.)

5. I am of the view that as rightly contended by the learned counsel appearing for the revision petitioners, the case on hand is squarely covered by the decision of the Hon'ble Supreme Court reported in (2015) 5 SCC 622 (Mathai Mathai vs. Joseph Mary Alias Mary Kutty Joseph and Ors. Following a privy council decision, the Hon'ble Supreme Court held in categorical terms that a contract to which a minor is a party is void ab initio. In this case, admittedly, the plaintiff Krishnaveni was not represented by her natural guardian. A copy of the said agreement has been enclosed in the typed set of papers. Even the stamp documents have been purchased only in the name of Krishnaveni. Her mother Gowri who was a special power agent for filing the suit had deposed that Krishnaveni was a minor on the date when the suit agreement was entered into.

6. Therefore, this Court has to necessarily hold that such a suit agreement is void. Such a void agreement cannot be enforced. In this view of the matter, the order impugned in this Civil Revision Petition is set aside. The Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed."

7. There is no dispute on the contention raised by the defendants in the suit that the appellant was a minor at the time of the said agreement dated 03.09.2007. Therefore, such contract with a minor, was rightly found to be a void contract by the High Court. For such conclusion, the High Court relied on the ratio in *Mathai Mathai vs. Joseph Mary Alias Marykutty Joseph (2015) 5 SCC 622*. In this judgment, the Court opined that a 15 year old could not have entered into a valid contract in her own name and she ought to be represented either by her natural guardian or a guardian appointed by the Court in order to lend legal validity to the contract in question. The conclusion drawn by the High Court is also supported by the Privy Council's decision in *Mohori Bibee vs. Dharmodas Ghose, ILR (1903) 30 Cal 539*.

8. Mr. B Balaji, learned counsel for the appellant, submits at this juncture, that a contract in favour of a minor is enforceable and is not void. He further submits that the II Additional Subordinate Judge (28.04.2017) has rightly placed reliance on *Raghava Chariar vs. Srinivasa Raghavachariar, (1916) 40 Madras 308* and *Thakur Das vs. Mt. Pulti, AIR 1924 Lah. 611*, to hold that every contract with a minor is not necessarily void, and a contract for a minor's benefit is enforceable and the validity of such a contract can be considered during trial. The appellant's argument deserves to be negated in light of

the decision in *Mathai Mathai (supra)*, wherein this Court has held:

"18. ... 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 case [Mohori Bibee v. Dharmodas Ghose, (1902-03) 30 IA 114 : ILR (1903) 30 Cal 539].

19. As per the 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 interest of the 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, Ext. A-1 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."

9. In view of the decision in *Mathai Mathai (supra)*, the judgments in *Raghava Chariar (supra)* and *Thakur Das (supra)* are no longer good law, and the II Additional Subordinate Judge's (28.04.2017) reliance on the aforesaid decisions to hold that the contract in favour of the minor is enforceable is misconceived.

10. Having considered the basis of the impugned judgment, we see no infirmity with the view taken by the High Court. The appeal is accordingly dismissed. The

interim order merges with this final order.

11. Pending application(s), if any, shall stand disposed of.

.....J.
(HRISHIKESH ROY)

.....J.
(PRASHANT KUMAR MISHRA)

New Delhi
15th February, 2024

ITEM NO.8

COURT NO.6

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 23655/2019

(Arising out of impugned final judgment and order dated 02-01-2019 in CRPMD No. 898/2018 passed by the High Court Of Judicature At Madras At Madurai)

KRISHNAVENI

Petitioner(s)

VERSUS

M.A. SHAGUL HAMEED & ANR.

Respondent(s)

Date : 15-02-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. B. Balaji, AOR
Mr. S. Arun Prakash, Adv.

For Respondent(s) Mr. G.Sivabalamurugan, AOR
Mr. K S Nagakumaran, Adv.
Mr. D Mohan, Adv.
Mr. Selvaraj Mahendran, Adv.
Mr. C Adhikesavan, Adv.
Mr. P V Harikrishnan, Adv.
Mr. S B Kamalanathan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(NISHA KHULBEY)
SENIOR PERSONAL ASSISTANT

(KAMLESH RAWAT)
ASSISTANT REGISTRAR

(signed order is placed on the file)