

**MOHRI BIBEE V. DHARMADAS GHOSE [(1930) 30 CAL. 539]**

**FACTS OF THE CASE:**

1. On 20<sup>th</sup> of July, 1895 Dharmadas Ghose executed a mortgage of his immovable property in favour of Bramho Dutt, who was a money lender having business at Calcutta to secure the payment of Rs. 20,000/- at interest rate of 12%.
2. The amount advanced is in dispute which is less than 20,000/-. Kedar Nath was an Attorney to the Bramho Dutt and has a control over his (Bramho Dutt's) business in Calcutta.
3. At the time of the actual Mortgage, Dharmadas Ghose was still a minor and has not attained the age of 21 years. Dharmadas Ghose's mother who was appointed as a guardian by High Court; has sent a notice on 15<sup>th</sup> July to Kedar Nath stating minority of Dharmadas Ghose.
4. Dedraj, who was a local manager of Bramho Dutt and in-charge of money, has given money or sum to Dharmadas Ghose although he had full knowledge that he is a minor and is incompetent to mortgage his property.
5. After 10<sup>th</sup> September, 1895, Dharmadas Ghose filed a suit through his (guardian) mother as next friend against Bramho Dutt stating that he was under age when he executed the mortgage and praying for declaration that it was void and inoperative. Bramho Dutt contended that, neither he nor his attorney receive any notice regarding the minority of the Dharmadas Ghose and further contended that court should not grant any relief to Dharmadas Ghose without making him repay the money advanced.
6. But this case failed and court has given judgment in favour of Dharmadas Ghose and the case was subject to appeal. During the pendency of the appeal, Bhramho Dutt died and this appeal was prosecuted by his executors. This appeal was dismissed by the court of first instance i.e. High Court of Judicature at Fort Williams.
7. Therefore, being aggrieved by this second appeal lies before Privy Council.

**ISSUES RAISED:**

1. Whether mortgage deed was void under sections 2, 10 and 11 of the Indian Contract Act, 1872?
2. Whether mortgage was voidable or not?
3. Whether Dharmadas Ghose was liable to return the amount advanced?

## **RULE OF LAW WHICH APPLIES:**

### **1. Section 2: Interpretation Clause:**

- (1) Every promise and every set of promises, forming consideration for each other is an agreement<sup>1</sup>.
- (2) An agreement not enforceable by law is said to be void<sup>2</sup>.
- (3) An agreement enforceable by law is a contract<sup>3</sup>.
- (4) An agreement which is enforceable by law at the option of one or more of parties thereto, but not at the option of other or others, is a voidable contract<sup>4</sup>.

### **2. Section 10: what agreements are contracts<sup>5</sup>:**

All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

### **3. Section 11: Who are competent to contract<sup>6</sup>:**

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

## **STATING THE APPLICATION OF RULE OF LAW WHICH APPLIES:**

The crux of this case lies in the Indian Contract Act, 1872. Sections 11 and 12 of the Indian Contract Act, 1872 defines competency of a person to a contract and sound mind of such person.

It was contended that, declaration as to the age of Dharmadas Ghose was fraudulently made by him to deceive Bramho Dutt and his executors. Therefore, there was a clash of arguments on the point of Estoppel by both sides. Section 115 of the Indian Evidence Act was used to prove this and in this regard, their Lordships were of the opinion that, there can be no estoppel where truth of the matter is known to both the parties and their Lordships held that, *“A false representation, made to a person who knows it to be false, is not such a fraud as to take away the privilege of infancy<sup>7</sup>”*. Same principle is explained in section 19 of the Indian Contract Act, 1872 and which says that, a fraud or misrepresentation which did not cause consent of a party on whom such fraud was being practised, does not render a contract voidable.

Section 11 says that, every person is competent to contract who is of the age of majority according to the law to which he is subject, who is of sound mind and is not disqualified from contracting by any law to which he is subject. The point of using this section here was, a

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<sup>1</sup> Section 2 (e) of Indian Contract Act, 1872

<sup>2</sup> Section 2 (g) of Indian Contract Act, 1872

<sup>3</sup> Section 2 (h) of Indian Contract Act, 1872

<sup>4</sup> Section 2 (i) of Indian Contract Act, 1872

<sup>5</sup> Section 10 of Indian Contract Act, 1872

<sup>6</sup> Section 11 of Indian Contract Act, 1872

<sup>7</sup> Nelson v. Stoker, De G and J. 458

person's age of majority can be equated by the capacity of the person who before the Indian Majority Act, 1875 come into force has attained the age of majority under law applicable to him<sup>8</sup> or person domiciled in India completed the age of majority i.e. eighteen years and not before<sup>9</sup>. But in the case in hand, there is a question of law regarding whether the contract is void or voidable as it was entered into by a minor i.e. Dharmadas Ghose.

In this context, appellants have relied upon section 64 of the Indian Contract Act, 1872 which is consequences of recession of voidable contract which states, party rescinding a contract; if has received any benefit from other party shall restore such benefit so far as may be to the person from whom he had received it. This section was relied upon by the appellants because, prior to this case, contract of infants was only voidable and not void ab-initio. This section can only be used when parties to a contract are competent and not to infants.

Appellants have also relied upon the section 68 of the Indian Contract Act, 1872 i.e. claim for necessities supplied to a person incapable of contracting, or on his account. But it was held that, infant falls under the class of who are incapable of entering into a contract and Act expressly provides that, he is not liable for necessities and no demand in that respect is enforceable, although a statutory claim to is created against his property. It was also held that, under section 183 and 184 of the Indian Contract Act, 1872 no person under the age of majority can employ or be an agent.

It was believed that a contract with an infant was voidable i.e. An agreement which is enforceable by law at the option of one or more of parties thereto, but not at the option of other or others, is a voidable contract. There have been clash of thoughts on this regard, various Judges, various jurists gave a ray of thoughts for the same. But, this case changed all of it as it was held that, a contract with a minor is not a voidable but void ab-initio (void at the beginning).

It was argued in this case that, the Indian Contract Act, 1872, in its Preamble provides Act was only intended to define and amend certain parts of law relating to contract only and contract of infant was not considered. But in their Lordships' opinion Act clearly provides that infant is not a competent person to bind himself by a contract of this description.

Section 10 of the Indian Contract Act, 1872 provides what agreements are contract. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. That means this section provides essentials for a valid and legal contract as – (1) there must be two parties to a contract. (2) Parties must be competent to contract. (3) Parties must be of sound mind. (4) there must be free consent by parties regarding willing to enter in a contract with each other. There must be meeting of minds (*consensus ad-idem*) for the same. (5) there must be a lawful consideration in a contract. (6) there must be a valid and lawful object for a contract. (7) the contract must not be expressly declared as a void by any law i.e. enforceability

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<sup>8</sup> Section 2 (c) of Indian Majority Act, 1875

<sup>9</sup> Section 3 (a) of Indian Majority Act, 1875

factor as seen in the definition of a contract. And in the case in hand, out of every essential, except 1<sup>st</sup> one, all others are not being fulfilled.

It was held that, when a minor is entered into a contract with a person that contract is void ab-initio i.e. void from the beginning. Since a minor is incompetent to a mortgage hence such contract made or commenced shall also be void and not valid in the eyes of law.

A person entering into a contract is below 18 years of age or has not completed 18 years of the age is not competent to contract or agreement. According to me, contract or an agreement with a minor comes into a category of persons who are unable to give their free consent for a contract. They cannot distinguish between the good and bad things and they cannot distinguish between them as if an ordinary prudent man could do. In an agreement, free consent of parties plays a major role determining the nature of that agreement i.e. a valid contract or a valid agreement or a voidable contract but, in case of minors their free consent is dominated either by their parents or next friend in a suit. And section 14 of Indian Contract Act, 1872 provides that a consent is said to be free is it is not obtained by Coercion, undue influence, fraud, misrepresentation and mistake<sup>10</sup>. Therefore, such a contract or an agreement with a minor is null and void which means it is neither valid nor voidable. Such contracts may create reverse effect on the mind of minor and which may lead to harmful consequences.

### **CONCLUSION:**

A contract or an agreement with a minor is null and void which means it is neither valid nor voidable. Any agreement with an infant cannot be administered against them. In these cases, parents of minor or custodian or next friend cannot be made liable for dealings done by minor without their consent.

contract or an agreement with a minor comes into a category of persons who are unable to give their free consent for a contract. They cannot distinguish between the good and bad things and they cannot distinguish between them as if an ordinary prudent man could do.

Competency and the capacity to contract is most important aspect to a contract as - Every person is competent to contract who is of the age of majority according to the law to which he is subject, who is of sound mind and is not disqualified from contracting by any law to which he is subject. A person is allowed to enter into a valid contract having lawful object and lawful consideration once he attains the age of majority i.e. 18 years of the age.

Just like a capacity and competency of a person is important to a valid contract, free consent of the parties to a contract is also important aspect to a contract as - All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. And this consent must be free and not to be obtained by Coercion, undue influence, fraud, misrepresentation and mistake.

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<sup>10</sup> Section 14 of Indian Contract Act, 1872

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