



ILE

LEX SPECULUM

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



ILE LEX SPECULUM

APIS – 3920 – 0036 | ISBN – 978-81-964391-3-2

(Free Publication and Open Access Journal)

Journal's Home Page – <https://ls.iledu.in/>

Journal's Editorial Page – <https://ls.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://ls.iledu.in/category/volume-1-and-issue-1-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ls.iledu.in/terms-and-condition/>

CASE ANALYSIS ON MOHORI BIBEE AND ANOTHER V. DHURMODAS GHOSE

AUTHOR – RACHANA SINGH, STUDENT AT S.S KHANNA GIRLS DEGREE COLLEGE, PRAYAGRAJ

BEST CITATION – RACHANA SINGH, CASE ANALYSIS ON MOHORI BIBEE AND ANOTHER V. DHURMODAS GHOSE, *ILE LEX SPECULUM (ILE LS)*, 1 (1) OF 2023, PG. 461-464, APIS – 3920 – 0036 | ISBN – 978-81-964391-3-2.

Abstract

According to the Indian Contract Act of 1872, minors in India are normally under the age of 18, and as it is believed that they are not incapable of entering into any kind of contract, they are free from all kinds of responsibilities. Any contract entered into by a minor is null and void, according to a well-defined rule established in the Mohori Bibi v. Dhurmodas Ghose case. The competency is an essential element of contract law and the basis of every legally valid transaction. The Indian Contract Act, 1872 offers the minors an unfair advantage because they are completely free from it and may do anything they want without ever being held personally accountable or having their property taken into use in the event of a breach or default. The author shall be discussing about the case in detail along with its important provisions included and its judgments.

Keywords: Minor, Section 11 Indian Contract Act, Minor's Agreement, Competency to Contract, Minority age in India.

i. Details of the case –

Name of the Case

“Mohori Bibee and Another V. Dhurmodas Ghose (1903) ILR30 Cal539 (PC)”.

Date of Judgement-

04 March 1903

Court –

Privy Council of India

Bench of the Judges

The bench comprises of six judges who formed the judicial committee was namely of “Sir Lord Macnaghten, Sir Lord Davey, Sir Lord Lindley, Sir Ford North, Sir Andrew Scoble, And Sir Andrew Wilson”.

Provisions Included

i. Section 3 of the Majority Act⁶⁸⁵ which states that a person is considered to be a minor

if they have reached the age of 18, and they are considered to have reached majority when they have reached the age of 21 (with the exception of situations where the court has assigned a guardian).

ii. Section 115 of IEA⁶⁸⁶ which deals with the concept of Estoppel. It states that in any dispute or proceeding between himself and that person or his representative, neither he nor his representative shall be permitted to challenge the truthfulness of any statement provided by one party that intentionally caused or permitted another to believe something to be true and act on that belief.

iii. Section 11 of ICA⁶⁸⁷ deals with the person's capacity to enter into a contract which must meet the qualifications mentioned under the legislations. It states that anyone who has attained the age of majority under the

⁶⁸⁵ The Majority Act, 1872, § 3, No. 9, Acts of Parliament, 1875 (India).

⁶⁸⁶ The Indian Evidence Act, 1872, § 115, No. 1, Acts of Parliament, 1872 (India).

⁶⁸⁷ The Indian Contract Act, 1872, § 11, No. 9, Acts of Parliament, 1872 (India).

legislation to which they are subject and is of sound mind and is not restricted from signing contracts by the laws to which he is subject, is considered to be as competent to contract.

iv. Section 64 of ICA⁶⁸⁸ deals with the effects of cancelling a voidable contract which states that the other party to a contract has no obligation to fulfil any promise that was made therein when the person at whose discretion it is voidable retracts it. If a party to an avoidable contract gained any advantages under it from another party, the party rescinding the agreement must return those benefits, to as much as feasible, to the party from whom those benefits were received.

ii. Introduction

The concept of minorities is handled differently in law. Juvenile laws are distinct from adult laws. In India, a person who is younger than 18 is considered a minor. The minors are often exempt from all forms of responsibility; thus, no lawsuits are brought against them either. Any deal with the minor is considered to be invalid since it is believed that they lack the legal capacity to enter into contracts. In the case of *Mohori Bibee and Others v. Dhurmodas Ghose*, the Privy Council decided whether or not the contract with the minor is under the ambit of the Indian Contract Act, 1872, and if it is void or voidable.

iii. Facts of the Case

i. Dhurmodas Ghose (Respondent) who was a minor which means he was below the age of 18 years and was the owner of his immovable asset. Being under the age of 18, he mortgaged his personal immovable property to Brahmo Dutta (Appellant) for Rs. 20,000/- at the rate of 12% interest which needs to be paid off on the yearly basis.

ii. Mr. Kedar Nath who was handling all the business affairs of the appellant and was working and serving him as his lawyer too. He

was having all the knowledge that the respondent was below the age of 18 years thus he was incapable of entering into the contract as per the law and was not even eligible to mortgage. Even though he had given the loan to the respondent.

iii. In the year 1895, on 10th of September the respondent and his mother filed a legal action against the appellant by stating that the mortgage which had been executed is not considered to be valid as when the deed was executed at that time, he was still a minor, thereby making him incapable and incompetent person which meant that as a consequence of it the contract should also be revoked.

iv. The appellant died while the procedures were ongoing, thus the proceedings were pushed ahead and executed by his widow Mohori Bibee.

iv. Issues Raised in this Case

The following issues which were raised in this case are as follows –

i. Does the aforementioned Contract hold the respondent accountable for paying the required sum to Mr. Brahmo Dutta's executor?

ii. What is the status of the mortgage or contract that was executed?

v. Arguments on the behalf of the Appellant

The appellant argued that the respondent had made a fraudulent representation regarding his age and thus due to this deception he is not entitled for seeking any relief from the learned court. The appellant should be excused from all kinds of liabilities incurring from this action as he was having no knowledge that his agent Mr. Kedar Nath was having the knowledge of the age of the respondent. The respondent is not permitted to assert that he was a minor when the contract was signed in accordance with

⁶⁸⁸ The Indian Contract Act, 1872, § 64, No. 9, Acts of Parliament, 1872 (India).

Section 115 of IEA⁶⁸⁹. Thus, the respondent should pay all the amounts to the appellant by the virtue of Section 64 and 38 of the ICA⁶⁹⁰.

vi. Arguments on the behalf of the Respondent

The respondent argued that the appellant and his agent was having all the information and they were of the fact that respondent was below the age of 18 years thus he is incompetent to enter into the contract and thus making the contract unenforceable.

vii. Judgement

When this matter was brought before the Trial Court, the judge there determined that the mortgage deed or contract that the plaintiff and defendant signed was invalid since the underlying mortgage was executed when the respondent was minor. The trial court made a verdict in favour of the respondent, and given that he was aggrieved by the ruling, he appealed the Calcutta High Court. The Calcutta High Court rejected the appeal and maintained the lower court's decision. Aggrieved by the decision of the High Court the appellant filed the appeal in the Privy Council.

The Privy Council ultimately decided that ***“any contract sought with a juvenile or a new born or a person below the age of 18 years is void as the minor lacked the mental capacity needed to enter into such a mortgage, thus, the contract that was entered into or started, as a result, is also void and inadmissible in court and the respondent was a minor who was not bound by the commitment made in a contract, thus he cannot be made to return the money that was advanced to him”***

viii. Related Case Laws –

i. ***Thurstan v. Nottingham Permanent Benefit Building Society L. R. (1902)***⁶⁹¹ – “In this case, a female baby acquired a portion of the

purchase money for certain land she purchased from the Society of which she was a member, and the Society also agreed to make her advances to construct specific buildings on the site. They made the advances and obtained a mortgage from her for the sum. She filed an action under the Infants Relief Act when she turned 21 to have the mortgage declared void. The Court ruled that, in terms of the purchase money given to the vendor, the Society was entitled to stand in his place and had a lien on the land, which the Legislature deemed invalid.”

ii. ***Sri Kakulam Subrahmanyam Vs. Kurra Subba Rao***⁶⁹² – In this case, the Privy Council ruled that a contract entered into by a child's guardian for the benefit of a minor is lawful.

iii. ***Suraj Narain Dube v. Sukhu Aheer and Anr***⁶⁹³ – The Allahabad High Court ruled in this instance that the minor's previous consideration is not valid consideration for a new contract.

iv. ***Kunwarlal Daryavsingh vs Surajmal Makhanlal and Ors.***⁶⁹⁴ – In this case, the property was rented to a minor owing to the necessity of living and continuing education, and a minor is required to pay rent.

v. ***The Great American Insurance Co Ltd vs Madanlal Sonulal***⁶⁹⁵ – In this case, a minor sued the other party for breach of contract, and the contract was signed into by the minor's guardian with the other party and was deemed legal.

ix. Conclusion

This judgment is one of the landmark cases under the Contract Act. It helped in establishing the principle that ***“a contract with is a minor is void-ab-intio”***. Thus, it is the duty of the person to see that the other is competent to contract or not as if the other party is incompetent then the aggrieved party will not be able to claim any losses from him. It can be easily said that the

⁶⁸⁹ The Indian Evidence Act, 1872, § 115, No. 1, Acts of Parliament, 1872 (India).

⁶⁹⁰ The Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872 (India).

⁶⁹¹ Thurstan v. Nottingham Permanent Benefit Building Society L. R. (1902).

⁶⁹² Sri Kakulam Subrahmanyam Vs. Kurra Subba Rao 1948 (50) BOMLR 646.

⁶⁹³ Suraj Narain Dube v. Sukhu Aheer and Anr AIR 1928 All 440.

⁶⁹⁴ Kunwarlal Daryavsingh vs Surajmal Makhanlal And Ors. AIR 1963 MP 58.

⁶⁹⁵ The Great American Insurance Co Ltd vs Madanlal Sonulal (1935) 37 BOMLR 461.



minors have been given a unfair advantage but this is done so by keeping the mentality of such persons as they can be easily influenced and one can gain advantage by infringing their rights.

The judgement given by all the three courts i.e., the learned Trial Court, Calcutta High Court and the Privy Council were identical in nature and was inclined in the favour of the minor only. The rationale behind of this view was to protect the interest of the minor as they can be easily moulded, manipulated and threatened by the major thus it is the duty of the court to work in safeguarding their interest and protect them from all kinds of abuse of powers. The idea of free consent is crucial in this situation since it assumes that everyone enters into a contract voluntarily and without malice. Therefore, it is clear from all of these that anybody who enters into a contract with a child should be mindful of any possible consequences from the law

References –

1. The Majority Act, 1872, § 3, No. 9, Acts of Parliament, 1875 (India).
2. The Indian Evidence Act, 1872, § 115, No. 1, Acts of Parliament, 1872 (India).
3. The Indian Contract Act, 1872, § 11, No. 9, Acts of Parliament, 1872 (India).
4. The Indian Contract Act, 1872, § 64, No. 9, Acts of Parliament, 1872 (India).
5. The Indian Evidence Act, 1872, § 115, No. 1, Acts of Parliament, 1872 (India).
6. The Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872 (India).
7. Thurstan v. Nottingham Permanent Benefit Building Society L. R. (1902).
8. Sri Kakulam Subrahmanyam Vs. Kurra Subba Rao 1948 (50) BOMLR 646.
9. Suraj Narain Dube v. Sukhu Aheer and Anr AIR 1928 All 440.
10. Kunwarlal Daryavsingh vs Surajmal Makhanlal And Ors. AIR 1963 MP 58.
11. The Great American Insurance Co Ltd vs Madanlal Sonulal (1935) 37 BOMLR 461.