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Case Analysis of Mohori Bibee vs Dharmodas Ghose

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ABSTRACT

There had been a dilemma, whether a contract can be entered by a minor and if so, whether it would be a valid contract, until this case. This case had concluded to the doubts and answered the questions surrounding with regards to the validity of minor's agreement. Through this case, the author has tried to analyse the instant case while dealing various provisions of Indian Contract Act, 1872 and Indian Majority Acts, 1875 and made efforts to conclude the question surrounding the validity of minors' agreement. The author tried to conclude by drawing the consequences or legal repercussions of an agreement with a minor.

Keywords: Minor, Contract, Indian Contract Act 1872, Estoppel, Indian Majority Act, 1875.

I. INTRODUCTION

The landmark case of Mohori Bibee vs Dharmodas highlights the ambit of minors' agreement where it states that if a minor enters into a contract, it would be *void ab initio* and that is the main legal concern which was raised in this case. In Indian contract Act 1872, any contract or agreement which is entered into with minor i.e. someone who has not attained the legal age or the age of majority i.e. 18 years, as per Indian Majority Act 1875, Section 3 will amount to a void contract rather it will be *void ab-initio* as mentioned above. Even in today's scenario, this case stands as a landmark case when it comes to the ambit of minors' agreement.

II. BACKGROUND OF THE CASE

There were two parties in this case. An overview of the parties and issues have been discussed below:

1. **Dharmodas Ghose:** He was the plaintiff in this case at the time of the agreement, belonging to an affluent Bengali family that lived in Calcutta, Bengal. But he had not attained his legal age which has been prescribed by the law in force. Here, he had obtained a loan when he was a minor by mortgaging his family's assets, land to be precise.

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2. **Brahmo Dutt:** He was the defendant in this case. He was a money lender carrying on his business in Calcutta. He lended loan to Dharmodas by mortgaging *his in lieu* of Rs 20000 at an interest of 12 per cent (%).

III. FACTS OF THE CASE

On 20th July 1895 the respondent, **Dharmodas Ghose**, entered into an agreement with Brahmo Dutt, the defendant. Since *Brahmo Dutt* was out of station, the further process was proceeded by his attorney Kedar Nath Mitter on his behalf.

The mother of Dharmodas had informed to Kedarnath, the agent of Brahmo Dutt that the respondent was still a minor at the time when the mortgage was being assessed for advancement of money. Hence, he was unable to execute the deed, yet he signed a mortgage from Dharamdas Ghose.

Subsequently, Dharmodas Ghose and his mother sued Brahmo Dutta on September 10, 1895, arguing that the mortgage was invalid and improper since Dharmodas had been a minor when they got into an agreement. They preferred to terminate the agreement which was made by Dharmodas.

Unfortunately, Brahmo Dutta had passed away during the legal proceedings. Therefore, his representatives took up the legal action.

The plaintiffs argued that the contract should be cancelled because the defendant, Dharmodas Ghose, had been fraudulent about his age when he made the mortgage request.

The plaintiff claimed that the defendant had intentionally forged Dharmodas's age and argued that no consideration should be given.

IV. ISSUES RAISED

1. Was the instant contract null and void according to the Indian Contract Act, 1872, Sections 2, 10, 11?
2. Was the defendant bound by the mortgage deed to repay the full loan amount?
3. Whether the contract with a minor is valid?

V. ARGUMENT/CONTENTIONS PUT FORWARD BY BOTH PARTIES

Brahmo Dutt [defendant]:

1. The plaintiff's minority was concealed to the defendant, Subsequently Dharmodas was fraudulently presented by the respondents as a major with contract-related competence.

2. The respondent under Section 115[2] of the Indian Evidence Act, 1872 is prohibited from claiming that he was a minor at the time of entering the contract.
3. In response the contention of the plaintiff, Section 115 of the Indian Evidence act of 1872 will apply in this case. In a lawsuit or other proceeding neither the parties nor their representatives may later deny the fact of the situation when a person intentionally leads another person to believe somethings to be true through their acts, declaration, or omissions and that person act on the belief.
4. As a result, according to Sections 64[3] and 38[4] of the Indian Contract Act of 1872 and Section 41 of the Specific Relief Act of 1877, the respondent is required to repay the amount that was made.
5. Section 41 of Indian Contract Act ,1872, states that the promisee who accepts the performance of a promise from a third party is not able to later enforce that promise against the original promisor.
6. Section 64 [3] of the INDIAN CONTRACT ACT,1872, states if one party chooses to cancel a contract and rescinds it the other party who is the promisor is discharged from any obligation to fulfil out any of the promises made in the contract.
7. Section 38 [4] it stated that if a promisor offers to perform their part of the contract to the promisee and the offer is not accepted, the promisor is not held liable for the non-performance and they do not lose their rights under the contract.

Dharmodas Ghose [plaintiff]

1. In response the contention of the plaintiff was stated that Brahma Dutt and his agent Kedar already know about the plaintiff age because of the plaintiff mother, since Dharmodas did not attend his legal age so The High Court has appointed his mother as his legal guardian.
2. Plaintiff mother already send a letter informing about the same which was fully acknowledge by Kedar Nath and yet he continued with the execution of the deed.
3. Since the plaintiff was minor at the time of contract so this contract is void.

VI. JUDGMENT

Brahma Dutt filled a suit in trial court and according to the trial court's decision the agreement was ruled null and void. The decision determined that the deed between the plaintiff and the defendant was null and void due to the fact that the executor was underage when the mortgagee

was issued.

Later Brahma Dutta challenged the Trial Court's decision to the Calcutta High Court since he was not happy with it. The Calcutta High Court dismissed Brahma Dutta's appeal, ruling that it agreed with the trial court's interpretation of the facts.

Later they challenge it to privy council, and The privy council stated that the agreement made with a minor is void ab initio or void from the very beginning, considered/examine by the court.

1. In the first instance in the case of *Mohori Bibee v Dharmodas Ghose* the court has decided that the Brahma Dutt 's attorney was aware of Dharmodas's minority status, so the principal of estoppel will not be applicable in this particular case.
2. In the second instance the court clarified that the provisions of 64 and 65 of the INDIAN CONTRACT ACT Would not be applicable since there had never been a valid agreement between the parties and the contract must be between competent parties to be valid for these sections to be applicable.
3. As a result of this, the court's decision in *Mohori Bibee v Dharmodas Ghose* set a precedent that says contract made by minors are void ab-inito which means void from the very beginning.
4. Since Dharmodas Ghose was a minor, he is not bound to by any promise to perform in the contract so he is not bound to return the advance which is given to him earlier.

VII. RATIO DECIDENDI

After this case it was decided that a contract related to a minor will be void ab- inito instead of void or voidable. The court further stated that an agent acting in behalf of a principal has the major liability, if he has knowledge of that matter. The Majority Act which revealed a person's majority and minority characteristics, has put into effect. It stated that an Indian citizen would be considered a major after completing of the age of 18, and that there would be no further changes. If a minor has a guardian chosen by the court itself, the minor's age of majority would be 21 instead of 18 years old. consequently, the idea of majority and minority was made clearer.

VIII. CONCLUSION

The conclusion of this case *Mohori Bibee v Dharmodas Ghose* was led down that any contract made by minor are void ab-intio [void from very beginning]. It was considered that there is no rule of estoppel will be applicable in the case of minor which means minor can use it as a defence even if they frauduantly represent themselves as a major. A minor cannot be asked to return or pay back the benefits which he would be receive it from a void agreement. A supply

of necessary items to a minor can claim refreshment from minor's property. At last the court led down the Majority Act where the court clearly mentioned the criteria who will be considered as a minor.
