LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

DEVINDER SINGH,—*Appellant*

versus

SHIV KAUR AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 500 of 1969.

April 23, 1970.

Contract Act (IX of 1872)—Section 64—Guardian selling minor's property without permission of the Court and purchasing other property with the money received—Minor on attaining majority filing suit avoiding the sale—Vendee—Whether entitled to the return of the sale money only—Property purchased by the guardian with the sale money—Whether a "benefit" received by the minor under the voidable sale.

Held, that where a guardian of a minor sells minor's property without the permission of the Court, purchases other property with the consideration in lieu thereof and the minor files a suit to avoid the sale, the vendee is only entitled to receive back the sale money and not the property purchased by the guardian. The fact alone of the guardian purchasing other property with the sale money, does not make the contract of the sale of minor's property in favour of the vendees as one integrated transaction so that it may be said that the property purchased is the "benefit" received by the minor from the vendees under the contract of sale entered into by the guardian of the minor. There must be something more than a mere application of the consideration in a particular way in order to entitle the vendee to claim restoration of the properties acquired with the consideration paid by him. The "benefit" received as envisaged under section 64 of the Contract Act should be part of the same transaction and should be direct. (Paras 6 & 8)

Appeal under Clause 10 of the Letters Patent against the Judgment passed by the Hon'ble Mr. Justice D. K. Mahajan, in Regular Second Appeal No. 1350 of 1969 dated the 29th July, 1969 reversing that of Shri Dev Raj Saini, Additional District Judge, Jullundur, dated the 29th July, 1969.

The Additional District Judge, Jullundur modified the decree of the Sub-Judge 1st Class, Jullundur, dated the 30th May, 1968 (granting the plaintiff a decree for possession of the land in suit on the express condition that he would not be entitled to execute the decree till he pays or deposits Rs. 9,000 (nine thousand only) for sale-deed executed on 10th December, 1957 and Rs. 7,000 (Seven thousand only),—vide sale deed dated 29th November, 1957 and leaving the parties to bear their own costs) to the extent of granting the plaintiff a decree for possession of 45 Kanals and 18

Marlas of land against the defendants on payment of Rs. 7,000 comprising of Rect. No. 100 Killa No. 6, 8 Kanals, 7/1, 4 Kanals Rect. No. 83 Killa No. 9/1, 3 Kls. 4 Marlas, Killa No. 13, 6 Kanals 7 Marlas, and one Kanal of land out of khasra No. 450, Rect. No. 57, Killa No. 12, 3 Kanals and 16 Marlas, Killa No. 19, 8 Kanals, Killa No. 22, 7 Kanals and 10 Marlas, Killa No. 23/1, 3 Kanals, and one Marla and 1 Kanal of land out of khasra No. 451, and leaving the parties to bear their own costs.

J. N. KAUSHAL AND H. L. MITAL, ADVOCATES, for the appellant.

H. L. SIBAL AND S. C. SIBAL, ADVOCATES, for the Respondents.

JUDGMENT

This judgment will be read in four connected appeals under Clause 10 of the Letters Patent (L.P.A. 500 of 1969 *Devinder Singh* v. *Shmt. Shiv Kaur and others*, L.P.A. 501 of 1969, *Devinder Singh* v. *Kapur Singh and others*, L.P.A. 25 of 1970 *Devinder Singh* v. *Shmt. Shiv Kaur and others* and L.P.A. 26 of 1970 *Devinder Singh* v. *Kapur Singh and others*), which have arisen out of two suits filed by Devinder Singh against the respondents and which were consolidated. L.P.A. 500 of 1969 was filed against the judgment of the learned Single Judge, dated September 24, 1969, deciding R.S.A. 1350 of 1969. There was some typographical mistake in the said judgment and for the correction of the same an application under section 151 of the Code of Civil Procedure was filed, which was allowed by the learned Single Judge on November 28, 1969, with the result that the judgment was corrected. L.P.A. 25 of 1970 was then filed against the judgment of the learned Single Judge dated September 24, 1969, as amended on November 28, 1969. In substance both the appeals are against the same judgment. Similar is the case with regard to L.P.A. 501 of 1969 and L.P.A. 26 of 1970.

(2) The facts are not in dispute and can be stated in a short compass. Devinder Singh is the son of Bhagat Singh who died in Pakistan. He was a minor in 1957 and his mother Shmt. Dalbir Kaur sold 48 Kanals of land belonging to the minor situate in village Dhogri, tehsil and district Jullundur, to Shmt. Shiv Kaur and Shmt. Kartar Kaur for a sum of Rs. 7,000/- on November 29, 1957. The vendees sold 10 Marlas of land to defendant 5 (Khushia, son of Nathu) and Shmt. Kartar Kaur sold another piece of land measuring 10 Marlas in favour of defendant 4 (Parkash, son of Tulsi). These subsequent vendees were made defendants to the suit. The number of the suit in respect of the land sold in favour of Shmt. Shiv Kaur and Kartar Kaur was 63 of 1967.

(3) Shmt. Dalbir Kaur effected a second sale of the minor's land measuring 64 Kanals 1 Marla for a sum of Rs. 9,000/- in favour of Kapur Singh and others on December 10, 1957. The suit in respect of this land filed by Devinder Singh was numbered as 64 of 1967.

(4) No permission was obtained from the Court under section 8 of the Hindu Minority and Guardianship Act, 1956 for effecting the above two sales by Shmt. Dalbir Kaur, the natural guardian of Devinder Singh plaintiff with the result that the sales effected by Shmt. Dalbir Kaur were voidable at the instance of Devinder Singh as provided in section 8(3) *ibid.* Devinder Singh minor on attaining majority filed suits against the vendees and his mother Dalbir Kaur for possession of the land sold by means of the sale-deeds mentioned above. The suits were contested by the defendants and it was pleaded that, with the consideration received from the vendees, Shmt. Dalbir Kaur purchased land measuring about 112 Bighas, being 8/17th share of 238 Bighas 19 Biswas, in the name of Devinder Singh in tehsil Samana, district Patiala, on February 5, 1958, and the sale-deed in respect thereof was registered on the following day. The other co-vendees with the minor Devinder Singh were his maternal uncles at the time of the purchase of that land. The defendant-vendees paid the balance amount due from them under the sale-deeds dated November 29, 1957, and December 10, 1957, by bank drafts, which were passed on to the vendors of the land at Samana. In the first sale-deed dated November 29, 1957, it is mentioned that Shmt. Dalbir Kaur had received Rs. 1,000/- as earnest money in cash and the balance amount of Rs. 6,000/- would be paid by the vendees at the time when she purchases land in Patiala region for the minor within a week. In the other sale-deed dated December 10, 1957, it was mentioned that she had received Rs. 1,700/- on account of earnest money in cash and the balance amount of Rs. 7,300/- was left in trust with the vendees to be paid to her at the time of purchase of the land with her real relatives within two weeks.

(5) The question of law that has arisen and which has been argued at length by the learned counsel for the parties is whether the defendant-vendees are entitled to receive back only the sums of Rs. 7,000/- and Rs. 9,000/- paid by them to Shmt. Dalbir Kaur, the mother of Devinder Singh minor, which was the consideration for the sales, or they are entitled to receive the land which was purchased with that money by Shmt. Dalbir Kaur for the minor in tehsil

Samana, district Patiala. The answer to this question depends on the interpretation to be placed on section 64 of the Indian Contract Act (Act 9 of 1872), which reads as under :—

> "When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received."

(6) It is the second sentence of this section which is applicable to the facts of the present cases. On the language of this sentence it is quite clear that the vendees in the instant cases are entitled to the benefit received by Devinder Singh from them under the contracts of sale dated November 29, 1957, and December 10, 1957. What requires determination is the meaning of the word 'benefit' under the voidable contracts which Devinder Singh avoided. From the language of the sale-deeds, it is also quite clear that the consideration for the sales was the amounts of Rs. 7,000/- and Rs. 9,000/- and not any land that might be purchased by Shmt. Dalbir Kaur with that amount. It is true that the amounts which were left in trust with the vendees had to be paid by them at the time of the purchase of the land by Shmt. Dalbir Kaur for the minor, as per her representation to the vendee, which was recorded in the sale-deeds. The defendant-vendees, however, did not bring about the purchase of the land in tehsil Samana for the minor Devinder Singh by his mother Dalbir Kaur. That transaction of purchase of land was brought about by the brothers of Shmt. Dalbir Kaur. The land purchased in tehsil Samana measured 238 Bighas 19 Biswas in which the minor's share was 8/17th and the share of other co-vendees was 9/17th. The sale consideration was Rs. 33,500/- so that the price of 8/17th share of Devinder Singh came to Rs. 15,764.70. There is no doubt that Shmt. Dalbir Kaur purchased the land for Devinder Singh in tehsil Samana with the consideration received from the defendant-vendees but this fact alone does not make the contracts of sale of Devinder Singh's land in favour of the defendant-vendees and the purchase of land for him by his mother in tehsil Samana, as one integrated transaction so that it may be said that the land purchased in Tehsil Samana was the benefit received by Devinder Singh from the defendant-vendees under the contracts of sale entered into by his mother with them on November 29, 1957, and December 10, 1957.

(7) On behalf of the defendant-vendees reliance has been placed on a judgment of a Division Bench of the Madras High Court in *Chinnaswami Reddi* v. *Krishnaswami Reddi and others* (1), wherein Kumaraswami Sastri, J., observed as under :—

> "Ordinarily, the benefit which a party receives when he sells the property is the price which the vendee pays. Any profits which the vendor might make with the moneys would be too remote in estimating what he has to return in case he is entitled to avoid the sale and elects to do so. Where however for the protection of a purchaser contracting with a guardian or a qualified owner, a particular dealing with the money was in the direct contemplation of the parties such as the purchase of other lands with the consideration and the money is so applied, the benefit which the other party obtains will be the land or other property acquired with the consideration. There must, in my opinion, be something more than a mere application of the consideration in a particular way in order to entitle the purchaser to claim restoration of the properties acquired with the consideration paid by him. Section 35 of the Transfer of Property Act makes this clear. It requires that the benefit received should be part of the same transaction and should be direct. The authorities cited by the learned Advocate-General do not support the view that the purchaser is entitled to follow up properties purchased with the consideration irrespective of whether there was any arrangement or not."

(8) These observations, in my opinion, do not help the learned counsel as the learned Judge himself pointed out that there must be something more than a mere application of the consideration in a particular way in order to entitle the purchaser to claim restoration of the properties acquired with the consideration paid by him and that the benefit received should be part of the same transaction and should be direct. In the instant cases it cannot be said that the purchase of land in Tehsil Samana was part of the same transaction as the sales of land in favour of the defendant-vendees or that the purchase of land was in any way directly connected with the said sales. The last sentence of the learned Judge makes it further clear that

(1) (1918) 35, M.L.J. 652.

the purchaser is not entitled to follow up properties purchased with the consideration irrespective of whether there was any arrangement or not. In the instant cases, in the sale-deeds with the defendant-vendees, there was no stipulation or arrangement that in case the minor on attaining majority avoided the sales in their favour, the vendees would be entitled to the lands purchased with the consideration paid by them, nor was there any condition that the sales in their favour were to be null and void in case Shmt. Dalbir Kaur did not purchase any land for the minor with the consideration received from them. *In the Madras case* (1), the decree for the land purchased with the consideration received from the vendees was not allowed because it had been found as a fact that the purchase of the lands at Sriperumbudur was not in the contemplation of the parties, at the time of the sale to he plaintiff. In the instant cases, there is no doubt that the purchase of some land in Patiala region was in the contemplation of Shmt. Dalbir Kaur but no stipulation for that land or with regard to that land was made by the defendant-vendees, as has been pointed out above. No assistance, therefore, can be derived from this decision of the Madras High Court.

(9) The learned counsel for the defendant-vendees has then relied upon a Division Bench judgment of the Kerala High Court in *Cheriathu Varkey* v. *Meenakshi Anma* (2). That judgment is distinguishable on facts. In that case the mother of the minors sold some properties belonging to her and the minors to the second defendant and with a part of the consideration received she purchased some other properties in her name and in the names of the minor-plaintiffs on the same day. The plaintiffs disowned the acquisition of the latter properties and contended that the sale of their properties in favour of defendant 2 was for no necessity and sought to set aside the alienation and recover the properties which had been sold by their mother to defendant 2. The suit of the plaintiffs was decreed but the counsel for defendant 2 pleaded that in cancelling the alienation as regards the plaintiffs' share, the benefit conferred on the plaintiffs' estate by that alienation should be directed to be surrendered to the alienee-defendants. This plea was accepted and the alienee-defendants too were held entitled to recover 3/4th of plaint B schedule properties with mesne profits from the date of their eviction from the property decreed with a

(2) 1964 Kerala Law Times 952.

further direction that they would be paid compensation for their improvements on the property from where they were ousted. In making this decree in favour of defendant 2 the learned Judges followed the decision of the Madras High Court in *Chinnaswami Reddi* v. *Krishnaswami Reddi and others* (1) (supra). In the instant cases the acquisition of land in Tehsil Samana has not been disowned or avoided by Devinder Singh. He has accepted the purchase of that land and the contract of that purchase cannot be said to be a part of the voidable contracts of sale with the defendant-vendees.

(10) On behalf of the appellant, the learned counsel has relied upon a judgment of Privy Council in *Murlidhar Chatterjee* v. *International Film Co., Ltd.* (3), wherein the following observations occur :—

> "Sections 64 and 65 do not refer by the words 'benefit' and 'advantage' to any question of 'profit' or 'clear profit' nor does it matter what the party receiving the money may have done with it. To say that it has been spent for the purposes of the contract is wholly immaterial in such a case as the present. It means only that it has been spent to enable the party receiving it to perform his part of the contract—in other words, for his own purposes."

(11) No assistance can be had from this judgment as the defendant-vendees are not seeking to recover any 'profit' or 'clear profit' from the plaintiff-appellant in the garb of 'benefit'. They lay their claim to the land acquired by the plaintiff's mother for him in Tehsil Samana on the ground that it had been purchased with the consideration paid by them and the plaintiff's estate benefited by the acquisition of that land and that benefit was directly in the contemplation of the parties at the time of the sales. This argument is fallacious as the utilisation of the consideration paid by the defendant-vendees does not amount to the benefit derived from them under the voidable contracts of sale with them which the plaintiff-appellant avoided, as he was entitled to do. The benefit under those contracts of sale received by the minor (plaintiff-appellant) from the defendant-vendees was only in the form of cash consideration and not the land purchased with that consideration in Tehsil Samana.

(3) A. I. R. 1943 P.C. 34

(12) The learned counsel for the appellant has then referred to Single Judge judgment of the Kerala High Court in *Chandrasekhara Pillai and others* v. *Kochu Koshi* (4), in which the consideration for sale of the suit property as per Exhibit 1 was Rs. 862½/- made up of a cash consideration of Rs. 10/- and a sum of Rs. 789¼/- to be advanced for an assignment, Exhibit II, in the name of 2nd defendant's *tavazhi,* of a mortgage on a property belonging to Velayuda Kurup, the husband of the 2nd defendant, and Rs. 63¼/- for paying for a *puravaippa,* Exhibit III, taken from Velayuda Kurup in regard to the same property. Thus, excepting the cash consideraion of Rs. 10/-, the rest of the price was for investment on a mortgage of property that belonged to Velayuda Kurup, the husband of the 2nd defendant and the father of plaintiffs 1 and 2 and the 3rd defendant. The sale of the suit property was avoided and the counsel for the alienee contended that, in the event of rescission of the sale, the plaintiffs' *tavazhi* should be directed to surrender the mortgage rights they had acquired with the consideration of the impugned sale. Reliance was placed on sections 64 and 65 of the Indian Contract Act. After setting out those sections, the learned Judge observed :—

> "These sections require only that, when a transaction is avoided, or found to be void, the party, who had received any benefit or advantage thereunder, shall restore the same to the person from whom he received it. The benefit or advantage received by the plaintiffs' *tavazhi* under the impugned sale was only the sum that the *tavazhi* received as consideration for the sale, namely, the sum of Rs. 852½/-, leaving out of account the cash consideration of Rs. 10/-, not shown to have been utilised for the *tavazhi.* The plaintiffs' *tavazhi* is bound to restore the same to the 1st defendant before they recover the property from him.
>
> The further contention that the plaintiffs' *tavazhi* should surrender the mortgage right which they acquired with that amount does not appear to be warranted by law. The acquisitions of the mortgage rights under Exhibits II and III were not benefits received under Exhibit I, but were benefits derived by a further investment which the plaintiffs' *tavazhi* made with that amount. As observed by the Privy Council in *Murlidhar* v. *International Film Co.* (3)

(4) 1961 Kerala Law Times 1018

(supra), sections 64 and 65 do not refer by the words 'benefit' and 'advantage' to any question of 'profit' or 'clear profit', nor does it matter what the party receiving the money may have done with it. Whether the investment made by the vendor with the consideration paid under the impugned sale ended in a profit or a loss, is of no consequence to the alienee. He can neither claim the benefit of the investment nor be bound by the loss resulting therefrom. He is concerned only with what he paid, and nothing more. I would, therefore, repel the claim for a surrender of the mortgage rights taken by the plaintiff's *tavazhi* with the price paid under Exhibit I and direct the plaintiffs' *tavazhi* to restore the sum of Rs. 852½/- only to the Ist defendant before they take the property from him."

(13) For the reasons given above, I hold that the plaintiff-appellant Devinder Singh is entitled to a decree for possession of the lands claimed by him in the suits subject to his paying Rs. 7,000/- and Rs. 9,000/- to the respective vendees, provided the land claimed in the suits is found to be the land allotted to the vendees in lieu of the lands sold to them by Dalbir Kaur, in consolidation proceedings. In the suit filed by Devinder Singh against Shmt. Shiv Kaur and others the land sued for was mentioned as measuring 102 Kanals 8 Marlas whereas the land sold measured 48 Kanals. The first appellate Court has observed that it was necessary to find out whether the entire land in suit had been allotted to the vendees of that suit in lieu of the land sold by Shmt. Dalbir Kaur, but the necessity for determining the identity of the land was not felt in view of the compromise entered into by the parties before him according to which Shmt. Kartar Kaur was to deliver possession of land measuring 22 Kanals 11 Marlas to the plaintiff-appellant and Shmt. Shiv Kaur was to deliver possession of 23 Kanals 7 Marlas of land to him. and regarding the rest of the land the plaintiff's suit was to stand dismissed. The particulars of the land, the possession of which was to be delivered to Devinder Singh by Shmt. Shiv Kaur and Kartar Kaur, were given in the statements of parties and were incorporated in the decree passed by the first appellate Court. This compromise was conditional, that is, it was to be effective in case the plaintiff-appellant was held entitled to the decree in suit. Since the first appellate Court held that the plaintiff-appellant was entitled to the decree sought for by him, the suit was decreed in terms of the compromise entered into by the parties before him. Since I have also

come to the same conclusion, the plaintiff-appellant is entitled to the decree passed in his favour by the first appellate Court. I accordingly accept L.P.A. 500 of 1969 and L.P.A. 25 of 1970 and setting aside the judgment and decree passed by the learned Single Judge restore the decree passed by the first appellate Court on July 29, 1969. In view of the complicated nature of the point of law involved in the appeals, I leave the parties to bear their own costs in this Court.

(14) In the other suit against Kapur Singh and others there has been no compromise. There is a dispute with regard to the land to the possession of which the plaintiff-appellant is entitled. In paragraph 3 of the plaint, the plaintiff stated that in lieu of the land described in paragraph 1 of the plaint and entered in the sale-deed dated December 10, 1957, the land described in the heading of the plaint and entered in the *jamabandi* for the year 1961-62 was allotted to defendants 1 to 5 in consolidation proceedings and the plaintiff-appellant was, therefore, entitled to the possession of that land. The reply to this paragraph of the plaint by the defendants was:—

> "Para 3 of the plaint is not admitted as correct and the plaintiff is put to proof."

No issue, however, was framed on this part of the case and no evidence was led to show that the allegations in paragraph 3 of the plaint were correct. The learned Single Judge observed in his judgment that in case his decision was not affirmed in appeal, this matter would have to be put in issue and determined. With this observation I entirely agree. I accordingly frame the following issue:—

> "What was the land allotted to defendants 1 and 2 in consolidation proceedings in lieu of the land purchased by them from Shmt. Dalbir Kaur as guardian of the plaintiff by sale-deed dated December 10, 1957?"

(15) The case is remitted to the learned trial Court with a direction to try this issue by affording an opportunity of leading evidence

to the parties, and to return the evidence to this Court together with its findings thereon and the reasons therefor within four months from today. L.P.As. 501 of 1969 and 26 of 1970 may be set down for hearing after the receipt of the report from the trial Court.

MEHAR SINGH, C.J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before R. S. Narula and P. C. Jain, JJ.

M/s. ISHTOO & Co.,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 118 of 1970.

April 23, 1970.

Punjab Excise Act (I of 1914)—Section 36—Power of cancellation or suspension of liquor licence—Whether of quasi-judicial nature—Breach of condition under section 36—Such breach within the knowledge of the defaulter—Cancellation or suspension of licence therefor—Rules of natural justice—Whether not to be followed.

Held, that power of cancellation or suspension of a liquor licence by the appropriate authority under Section 36 of the Punjab Excise Act, 1914 is of quasi-judicial nature. From the plain reading of this section, it is clear that 'cancellation' or 'suspension' can be ordered in the event of a breach or violation of conditions expressly specified therein. Before any action can be taken it is necessary for the appropriate authority to investigate if the licensee has committed any violation or breach of any of the conditions specified in section 36 of the Act. The power conferred by this section is circumscribed and cannot be exercised outside the matters specified therein, nor arbitrarily. If an opportunity is given to the defaulting licensee, he may be able to disprove the allegations of breach or may bring out circumstances which may convince the authority not to take the drastic step of cancelling or suspending the licence. Section 36 gives power to the authority to determine questions affecting the rights of citizens and the very nature of the power inevitably imposes limitation that it should be exercised in conformity with the principles of natural justice.

Held, that the power of cancellation or suspension of liquor licence is discretionary as the words used in section 36 of the Act are "may cancel