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## Mathai Mathai v Joseph Mary and How a Mortgagee was not given the Right over his Land even after 50 Years

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*The current article presents an exploratory study of the Indian Contract Act, with a focus on the majority being an essential factor for the contract to be valid. The article further provides a detailed analysis of the judgment of Mathai Mathai v Joseph Mary. The analysis is done by presenting the facts of the case, discussing the key issues of the case, and explaining the judgment held by the court along with the rationale given by the judges for the same, followed by the critical analysis of the further events and the judgment itself. The basic principles followed in the landmark judgment of Mohiri Bibee v Dharmodas Ghose have also been examined in detail. However, the judgment of the above-mentioned cases starkly varies from one another due to which one of them is highly criticized by the legal scholars while the other one is used as a precedent for the cases to follow.*

**Keywords:** mortgage, contract, legal scholar, rights of mortgagee, land rights.

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### INTRODUCTION

Indian Contract Act, of 1872<sup>1</sup> is an extremely remarkable piece of legislation in India's legal system passed by the colonizing power of the British which finds its origin in the English

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<sup>1</sup> Indian Contract Act 1872

common law. This law came into effect on September 1<sup>st</sup>, 1872, making it one of the oldest mercantile laws. This law has been fundamentally in charge of enforcing contractual agreements and relationships and the act within its ambit grants contractual rights to the citizens of India which aids them in the successful conclusion of their business transactions over the years. It is worthwhile to mention that the important aspect of this act is its adaptability, particularly in the context of Indian Society as there have been no amendments in the act so far, thereby highlighting the fact that the law still stands good that too in its original form.

A legal complication will in all certainty be reached when an agreement involves minors because any contact with a minor is null and void as specified in section 11 of the Indian Contract Act, 1872<sup>2</sup>. A minor becomes a major usually at the age of 18 but in case a guardian has been appointed on behalf of a minor, then the age for the majority will become 21.<sup>3</sup> The applicable law will determine if the person is of majority age or not.<sup>4</sup> It is specified in Section 10 of the Indian Contract Act, of 1872<sup>5</sup> that the parties, who are competent to contract, and Section 11<sup>6</sup> states that a party, who is a minor when entering into the contract will be considered not to be competent to contract. The minority status in India is more like a privilege for a minor as all the contracts with them are expressly declared null and void, except for a few of them like contracts for basic necessity goods and services like food, clothing, education, and so on. Such contracts are generally enforceable as if the minor had a capacity equal to an adult.

A minor is restricted from agreeing because he is believed to show poor judgment and is deemed to be legally incapable of making a particular decision, and the act provides him with special protection against his judgments and immaturity. The general presumption in the case of a contract with minors is that the man should be capable of understanding the implications of the obligation under the contract on his interests and this very assumption is suspended in the case of the minors.

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<sup>2</sup> *Ibid*

<sup>3</sup> India Majority Act 1875, s 3

<sup>4</sup> *Dharmeshwar Kalita v Union of India* AIR 1955 Ass 86

<sup>5</sup> Indian Contract Act 1872, s 10

<sup>6</sup> Indian Contract Act 1872, s 11

## COMPETENCY AND MINORITY

A contract, to become a valid contract, has to have valid fundamentals. These essentials are a valid offer and acceptance, **capable parties**<sup>7</sup>, a lawful consideration, and the final essential is the existence of a lawful object. If any of these requirements are not met, the legal contract ceases to exist. An agreement may become void if the object it is destined to fulfill is the object which is against the applicable law. One of the essentials that have been mentioned in **Section 10**<sup>8</sup> is the free consent of parties competent to contract<sup>9</sup> and the said competency has been prescribed under **Section 11**<sup>10</sup> which is as under:

### WHO ARE COMPETENT TO CONTRACT

Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject. –Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.<sup>11</sup>

The Indian Contract Act, of 1872 does not specifically deal with the agreement of minors yet this act (Sec 11) states that those who haven't attained the majority are incompetent to enter into a contract. The minor, particularly in the Indian context, is defined as any individual who is domiciled in India and the age of majority has not yet been attained which is generally 18 years as specified by **Section 3 of the Indian Majority Act of 1875**<sup>12</sup>. In the case of *Mohini Bibee v Dharmodas Ghose*<sup>13</sup>, the stand with which the law has been viewed concerning the contract with minors was clarified in 1903 by the Judicial Committee of the Privy Council. The agreements with minors have been considered to be void ab initio and not even close to a lawful contract. The cases which followed the above-mentioned landmark judgment have been viewed by the

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<sup>7</sup> *Ibid*

<sup>8</sup> Indian Contract Act 1872, s 10

<sup>9</sup> *Ibid*

<sup>10</sup> Indian Contract Act 1872, s 11

<sup>11</sup> *Ibid*

<sup>12</sup> Indian Majority Act 1875, s 3

<sup>13</sup> *Mohiri Bibee v Dharmodas Ghose* (1903) ILR 30 Cal 539 (PC)

court to conform with the law and these have also been followed by them concerning the benefit of minors and oftentimes to their disadvantage as well.

However, along with changing times and society, we can't solely stick to the fact that a minor's agreement will always be declared "Absolutely void" as these minors have been very active in engaging in public life, buying necessities, booking rooms, purchasing items related to their enjoyment and academics. If in these mentioned cases, the minors could be oppressed by the other parties to the contract based on the fact that agreements with minors are void since the very beginning, then these minors would have no legal protection against the present contractual liability. Owing to such problems, the Privy Council has to alter its earlier stand in *Subramanyam v Kurra Subba Rao*.<sup>14</sup> Therefore, after this judgment, for the minor's advantage, a guardian was allowed to contract on the minor's behalf.

The Indian Contract Act provides an ease to minors when they enter a contract by misrepresenting their age. One such instance is **No estoppel against minors**. Estoppel primarily refers to a legal principle wherein the court forbids any party from establishing any fact or statement that contradicts their original fact or statement. This is stated in **Section 115** of the Indian Evidence Act<sup>15</sup>. In other words, estoppel stops parties to a contract from contradicting their originally stated statements or actions. The main place where this principle comes into effect is when it stops people from being oppressed unjustly by the turn of statements or actions by the other party. The problem which has to be highlighted while speaking about estoppel in contract law is that there exists no such estoppel against minors. Therefore, a minor can easily use his minority as a defence in a court of law. The reason for the same is clear estoppel cannot stand against a statute. Thus, it can be concluded that the law of contract protects minors from all contractual obligations and liabilities and the policy would not be able to be brought down by the doctrine of estoppel. The principle of no estoppel against a minor was deduced from the

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<sup>14</sup> *Subramanyam v Kurra Subba Rao* AIR 1944 Mad 337

<sup>15</sup> Indian Evidence Act 1872, s 115

judicial decision of 1929 in the case of *Gadigeppa Bhimappa Meti v Balangowda Bhimangowda*<sup>16</sup> in which the court held that the infant won't be estopped from setting up infancy.

A minor's agreement also envisages '**No liability in the contract or tort arising out of the contract.** Since the consent of the minor is equivalent to no consent in the eyes of law, all agreements are devoid of legal effects. Hence, it was decided in early 1665 in English law in *Jhonson v Pye*<sup>17</sup> that to avoid people abusing an indirect method of an agreement being enforced, the minor will not be held responsible for any of the contractual obligations. The same principle is generally followed in India. It's important to note that a minor cannot be held liable for something that will ostensibly carry out his arrangement. As a result, converting a contract into a tort and allowing action against a minor is not possible. However, if the breach occurred outside of the contract and is not directly related to the deal, the fact that the contract is still in play does not absolve the child of responsibility. The case of *Burnard v Haggi*<sup>18</sup> s exemplifies this point. The following are the specifics of the case:

The convict, who was a junior and a juvenile at the time, borrowed a horse to go on a trip. He stated unequivocally that he did not want the horse to leap. The minor then gave the horse to a friend, who made the horse jump, causing him to fall and be injured. In this case, the court held that the defendant was liable under tort law as the act which caused the horse's injuries were outside the scope of the contract and had an inferred link to it.

Lastly mentioning the **Doctrine of Restitution** which is somewhat advantageous to the party who was party to the contract with the minor. In such doctrine, if an infant has via misrepresentation obtained any property or good and that property is in his possession or traceable then the minor can be compelled by the court to restore the said property to its rightful owner. The principle, which is referred to in the above statement, is the principle of the equitable doctrine of restitution. But in certain cases wherein the property has been sold or converted by the minor, he/she can't be forced to repay the value as it would amount to indirect enforcement

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<sup>16</sup> *Gadigeppa Bhimappa Meti v Balangowda Bhimangowda* (1929) 31 BOMLR 340

<sup>17</sup> *Jhonson v Pye* (1665) 1 Sid 258: 82 ER 1091

<sup>18</sup> *Burnard v Haggi* (1863)143 ER 360

of the void contract. Also, this doctrine will not be applicable wherein the minor has acquired cash instead of property. This was established in the case of *Leslie (R) Ltd v Shell*.<sup>19</sup>

## FACTS OF THE CASE

The Appellant had applied to the Law Tribunal an original application in which he stated that his uncle had executed a mortgage deed (A mortgage deed is a document in which the mortgagor transfers an interest in real estate to a mortgagee to provide a mortgage loan<sup>20</sup>) for the sum of 7000 chakrams (which was the dowry amount) in favour of the appellant's mother (deceased who was a minor at the time of the execution of mortgage deed), who held the property in her possession till her death and thereafter the appellant demanded his registration as a tenant of the mortgaged land under Section 4A of the Kerala Land Reforms Act, 1963<sup>21</sup> read with Kerala Land Reforms Tenancy Rules. However, the father of the appellant completely denied all such claims made by the appellant and his son and got impleaded, thereby opposing the appellant's claim, moreover, he stated that as per the updated provision of the Section 4A Kerala Land Reforms (KLR) Act the appellant's mother did not have the right as the mortgagee and he further denied that the mother of appellant was not a deemed tenant due to which she did not own the land. Owing to this the father has argued that the appellant cannot obtain the purchase certificate as the appellant is not to be regarded as a deemed tenant of the land.

The provisions of this act stated that the appellant was authorized to receive a purchase certificate and as far as the purchase of land is concerned, he could obtain the statutory rights of the same that could enable him to qualify the land in question. It was later held by the Law Tribunal that the appellant had all the rights as a tenant and henceforth was entitled to purchase a certificate.

However, the Supreme Court turned down the judgment of the Law Tribunal and held that there exists no dispute on the possession of land by the appellant but the sole possession didn't

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<sup>19</sup> *Leslie (R) Ltd v Shell* (1914) 3 KB 607

<sup>20</sup> 'What Is a Mortgage Deed?' (*First Foundation*) <<https://www.firstfoundation.ca/mortgage-glossary/mortgage-deed/>> accessed 06 November 2022

<sup>21</sup> Kerala Land Reforms Act 1963, s 4A

give him the right of tenancy as per the Sec 4 of KLR Act<sup>22</sup>, as it was an obligation on his part to prove himself as a cultivating tenant which was absent in this case, thereby disapproving the application by relying upon *Pratap Singh v Director of Consolidation*<sup>23</sup> and *Ramkishorelal v Kamal Narayan*<sup>24</sup> which held that the mere fact of mortgagee happening to have the property which is mortgaged does not suffice the fact that the appellant at the time of the possession of the deed was a mortgagee.

### THE KEY ISSUES OF THE CASE

There cannot be practically the implementation of the contracts void ab initio as in the said case. The Indian Contract Act, of 1872<sup>25</sup> clearly and explicitly specifies that the competency of the parties to the contract is a requisite factor for the contract to be enforceable and the majority of parties play a vital role as far as the competency is concerned. Thus, the key issues and questions before the law were as under Whether Exh. A1, the mortgage deed dated 1909-1910 is a valid mortgage deed, and even if it is so, whether it is a simple or usufructuary mortgage in terms of Sections 58(b) and 58(d) of the Transfer of Property Act, 1882

- Is the mortgage deed in question a valid deed or not?
- If the appellant's claim of deemed tenancy for mortgaged land in question be considered valid under Sec 4-A of Kerala Land Reforms Act<sup>26</sup>, 1963, which was earlier executed in favour of the minor mortgagee (appellant's mother)?
- How the mortgagee possessed the land in question as a minor on account of the mortgage deed and continued to hold the same for 50 long years defying the provisions of Sec. 11 of the Indian Contract Act, 1872<sup>27</sup>, which made her incompetent to contract and thereby making the contract void ab initio?

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<sup>22</sup> Kerala Land Reforms Act 1963, s 4

<sup>23</sup> *Pratap Singh v Director of Consolidation* 1985 AIR 989, 1985 SCR (3) 969

<sup>24</sup> *Ramkishorelal v Kamal Narayan* 1963 AIR 890 1963 SCR Supl

<sup>25</sup> Indian Contract Act 1872

<sup>26</sup> Kerala Land Reforms Act 1963, s 4A

<sup>27</sup> *Ibid*

## **THE CONTENTION RAISED BY THE PARTIES**

The Arguments and contentions raised by the plaintiff and defendant are discussed in detail below-

### **THE PLAINTIFF'S SIDE**

The Plaintiff's mother has had a piece of land mortgaged in her favour by the plaintiff's uncle. She has held the mortgaged land for about 50 years. The plaintiff, under Section 4A of the Kerala Land Reforms Act, 1963<sup>28</sup>, based on this fact, applied and demanded an exclusive right be deemed as a tenant for the aforementioned piece of land. He was also enabled by this Act, to acquire a purchase certificate, receiving statutory rights allowing him to buy the piece of land at pre-determined rates, furthermore, he also attained the possession of the property in the picture, as a tenant, from his deceased mother.

### **THE DEFENDANT'S SIDE**

The first step the defendants took was to file an appeal before the appropriate appellate authority (Land Reforms) under Section 102 of the Kerala Land Reforms Act<sup>29</sup> challenging the order given by the Land Tribunal, Kottayam, on various legal and factual fronts. The Appellate Authority replied to the application by stating that improvements have been made to the property involved in the original application and cultivation of the said property has also been done. Exh.A1 was the mark given by the authority to the registered mortgage deed. It was also held that the first respondent has no title or possession over the property nor did he have any rights over the property at any given point in time.

## **THE JUDGEMENT AND THE RATIONALE BEHIND IT**

The Supreme Court in this case held that the appellant's mother has been minor as per the Indian Majority Act, of 1875<sup>30</sup>. The judge presiding over the case was **Justice V Gopala Gowda**, he also

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<sup>28</sup> Kerala Land Reforms Act 1963, s 4A

<sup>29</sup> Kerala Land Reforms Act 1963, s 102

<sup>30</sup> India Majority Act 1875, s 3



stated that the fact that the appellant's mother has been a minor is not a matter of dispute, and the same is considered to be an undoubted fact. Moreover, the same was mentioned in the mortgage deed itself. Therefore, when Section 11 of the Indian Contract Act, of 1872 is considered, then she is proven to be incompetent to contract. This judgment is also in conformity with the principle of contracts that have been executed by minors in the landmark judgment of *Mohori Bibi v Dharmodas Ghose*<sup>31</sup>.

Also, the question of whether there exists a possibility of voidability of the contract, as stated in Section 64 of the Indian Contract Act<sup>32</sup>, is not in question, and thereby the judge concluded by stating the ICA, "For an agreement to become a contract, the parties must be competent to contract, wherein the age of majority is a condition for competency". A deed of mortgage cannot be construed as a contract and the court would not hold a mortgage valid if it is in the name of the minor. The only possible situation wherein a mortgage deed, which is under the name of a minor, may be considered valid is if the minor is represented by his/her guardian. A guardian to the minor can be a natural guardian or can be a guardian appointed by the court. The court also added that the law cannot be read and interpreted differently in case of a minor being a mortgagor or a minor being a mortgagee as the rights and obligations that arise out from such a contract are regarding immovable property and such rights and obligations would flow out of such a contract for both of them. **Therefore, the court held that the mortgage deed entered into by a minor is void ab initio in the eyes of law and the appellant will not be able to claim any right under such a mortgage deed.**

Further, as far as the appellant's claim of the transference of possession as the tenant is concerned the court referred to the preceding decision of the Law Tribunal as an error in Law as there exists no mention of the fulfillment of the obligations that were accused to be fulfilled by the parties and there exists no mention of the standing of the originally asked dowry amount for which the land was, supposedly, mortgaged in the first place. Since there exists neither clarity nor any evidence on such matters, therefore, the court decided that the appellant cannot

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<sup>31</sup> *Mohori Bibi v Dharmodas Ghose* (1903) ILR 30 Cal 539 (PC)

<sup>32</sup> Indian Contract Act 1872, s 64

be allowed to claim to have been the deemed tenant, under the Kerala Reforms Act, 1963<sup>33</sup>, of the land in question. It also elaborated that it will be the decision of the parties to the contract over whether or not the parties want to go to the court of law to litigate on the question of ownership rights of the property, the said dispute shall be done before an appropriate authority and the parties shall get settled upon the ownership rights upon the property in question.

### **CRITICAL ANALYSIS: CONCLUDING REMARKS**

The above-stated facts and the judgment of the court depict the rationale of the Supreme Court and further emphasize the fact that whenever there arises the question on the interpretation of the law it must be similar for both the parties i.e., mortgagor and mortgagee in the case of a minor. As far as the decision of the court is concerned, I find myself in opposition to the reason and rationality of the court because if the facts and circumstances of the landmark judgment of *Mohiri Bibee v Dharmodas<sup>34</sup> Ghose* are taken into account it doesn't straightaway side-line the minors from being party to a contract in any case whatsoever. Rather, the judgment specifies the clear provisions of exceptions such as in the case of the executed contracts, contracts for necessity goods, and the contract beneficial for the minor like his education. Applying the same analogy here in the present case, it is suggested by the facts of the case that the rationality of the executed contracts should be followed and the appellant must have a right on the mentioned piece of land in dispute according to the Section 4A of Kerala Land Reforms Act<sup>35</sup>, 1963. The judgment, in this case, was certainly staggering as certain legal thinkers have viewed it as a step backward without properly analysing the facts, particularly when the goods are of necessity in nature as in the landmark judgment and the case in the discussion, both deal with the minority and the necessary goods with contrasting judgments.

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<sup>33</sup> Kerala Reforms Act 1963

<sup>34</sup> *Mohori Bibi v Dharmodas Ghose* (1903) ILR 30 Cal 539 (PC)

<sup>35</sup> Kerala Land Reforms Act 1963