1948 *Present :* **Dias and Gratiaen JJ.**

ASSANAR, Appellant, *and* HAMID, Respondent

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Muslim law—Contract by minor—Age of discretion—Validity of contract—Burden of proof—Age of Majority Ordinance—Chapter 53—Application to Muslims—Sections 2 and 3.

A Muslim minor on attaining the age of puberty can enter into binding contracts and manage or dispose of his property unless it is found that he still lacks sufficient understanding for the purpose. The burden of showing this is on the minor. This rule of the Muslim law is not affected by the Age of Majority Ordinance, Chapter 53.

Muttiah Chetty v Dingiri (1907) 10 N. L. R. 371 followed.
Narayanen v. Saree Umma (1920) 21 N. L. R. 439 dissented from.

APPEAL from a judgment of the District Judge, Batticaloa.

F. A. Hayley, K.C., with *Peri Sunderam*, for the defendant, appellant.

E. B. Wikramanayake, K.C., with *G. Thomas*, for the plaintiff, respondent.

Cur. adv. vult.

November 25, 1948. GRATIAEN J.—

The plaintiff is a Muslim. He was born on January 1, 1924. When he was twelve years old his father, by a deed P1 of October 13, 1936, gifted to him the land which is the subject-matter of this action. The donation was accepted on his behalf by his mother Pathumma. Three years later the father died. In February, 1942, the plaintiff's elder brother Abdul Salam applied to the defendant for a loan of Rs. 1,000 to meet certain expenses in connection with a testamentary action in which he was protecting the plaintiff's interests. On February 15, 1942, the loan was granted on the security of a mortgage over the property which had been gifted to the plaintiff by the deed P1. The mortgage bond (marked P2) was executed in favour of the defendant by the plaintiff and also by his mother and his brother. The plaintiff was at the relevant date a little over 18 years old. A month later, in February, 1942, the plaintiff married and left his mother's home to live with his bride. On November 14, 1942, a few weeks before his nineteenth birthday, the plaintiff sold the property outright to the defendant for an agreed consideration of Rs. 3,000 which from a commercial point of view is not alleged to have been inadequate. Pathumma and Abdul Salam joined as grantors in this conveyance (P3) as well. The consideration consisted of a cash payment of Rs. 2,000 and the cancellation of the debt created by the execution of bond P2. The parties are not agreed as to which of the brothers actually received the cash from the hands of the notary who attested the deed. The notary is now dead. The defendant asserts that the money was paid to the plaintiff himself. The plaintiff

on the other hand protested that it was paid to his brother Abdul Salam but in his presence. There is no substantial disagreement between the parties on any other material question of fact.

Since November 14, 1942, the defendant having paid what was admittedly a fair price for the property in dispute, remained in possession as absolute owner. In January, 1945, the plaintiff celebrated his twenty-first birthday, and appears thereafter to have found the time to examine the many mysteries of the law of minority in this country. His first experiment in litigation was directed against his own mother to whom he had conveyed certain property in May, 1943, when though only 19½ years of age, he was not only a married man but a proud father. He claimed that he was entitled to relief from the commercial transactions into which he had voluntarily and even profitably entered during his somewhat precocious youth. He demanded a reconveyance of the property which he had conveyed to his mother, but that action was in due course withdrawn, no doubt in a rare moment of filial piety. But the plaintiff by now felt that the law, such as he understood it, should again be invoked to his aid. Hence his present action against the defendant claiming that the mortgage bond P2 and the deed of conveyance P3 be set aside on the ground that he was a minor at the dates of their execution. The contention is that he was entitled to repudiate the transactions, and that the defendant must lose not only the property and his money but must also be mulcted in damages. His contention was upheld by the learned District Judge, and judgment was entered in favour of the plaintiff. From this judgment the defendant has appealed to this Court.

Dr. Hayley and Mr. Wickremanayake are agreed that the main question of law which arises for consideration in this case, namely, the contractual capacity of a Ceylon Muslim who has not yet attained the age of twenty-one, must be considered in accordance with the principles of the Muslim Law, subject of course to any statutory modification or variation of those principles. I am satisfied that this view is the correct one, particularly as in this case both parties to the contract are Ceylon Muslims. It had apparently been argued in 1937 during the appeal in *S. C. No. 22/D. C. Colombo No. 24,309* that Muslims may in certain cases be governed by the Roman Dutch Law as far as their contractual capacity is concerned, and the question had been referred to a Divisional Bench (vide *Shorter v. Mohamed* [1]) but the case was ultimately settled before the ruling of the Divisional Bench could be obtained. In any event I note from the observations of Poyser J. at page 114 of the report that the application of the Roman Dutch Law instead of the Muslim Law was claimed only for cases where one of the parties is a Muslim. As the position here is admittedly different, that question need not be decided in the present case, although I myself should have thought that the contractual capacity of each party to a transaction should normally be ascertained with reference to the personal law by which he himself was governed.

What then is the Muslim Law with regard to the contractual capacity of a male person under 21 years of age, and to what extent, if any, has that law been modified or varied by local statutes ? The recognized

[1] *(1937) 39 N. L. R. 113 at 115.*

authorities and text books on the Muslim Law are in substantial agreement on the first of these questions. Sir Ronald Wilson quoting the Hedaya states in his *Digest of Anglo-Mohammedan Law* (*6th edition, page 200*) that, *subject to one qualification*, " puberty and majority are in the Mussellman Law, one and the same ". The qualification referred to is that " a youth who has attained puberty might still, under that law, be ' inhibited ' from *dealing with his property* if the Kazi considered him to be lacking in discretion ". In such cases, apparently, the period of " inhibition " would continue until the minor had either developed the necessary " discretion " or reached a prescribed age, *whichever was earlier*. The attainment of puberty was proved by the manifestation of the appropriate physical signs, and in default of such evidence a minor was considered adult on the completion of his fifteenth year. (*Hamilton's Hedaya* (*Volume 3*) *page 483.*) The law is similarly set out in *Tyabji's Muhammedan Law* (*3rd edition*) *page 269*, and its origin is apparently traced to certain verses in the Koran which exhort guardians to protect minors " until they attain the age of marriage ; then, if ye perceive that they are able to manage their affairs well, deliver unto them their substance ". *Ameer Ali's Muhammedan Law* (*5th edition*) *Volume 2 page 535* tells us that " there are cases in which a boy may have arrived at puberty and may yet not be sufficiently ' discreet ' (possessed of understanding) to assume the direction of his property. *In such cases* the Muhammedan Law separates the two ages of majority and, whilst according to the minor personal emancipation, takes care to retain the administration of his property. If the minor should not be ' discreet ' at the age of puberty he is presumed to be so on the completion of the eighteenth year ". It is in this sense that the Islamic Law recognises the possible separation of " two distinct periods of majority ", namely, " bulughyet " (the age of puberty) and " rushd " (the age of discretion). *These two periods are presumed, however, to commence simultaneously in the absence of evidence to the contrary.* With great respect, certain *obiter dicta* of de Sampayo J. in *18 N. L. R. at page 485* to the effect that " the latter kind of majority cannot be attained before 15 years of age " are not borne out by the text books I have quoted.

In the light of the authorities to which I have referred the resulting position appears to be that according to the Muhammedan Law by which the plaintiff is governed :—

(*a*) a minor, on the happening of a certain event, i.e., the attainment of puberty, is personally emancipated from the *patria potestas* and thereupon acquires *inter alia* the capacity to marry unfettered by the power of his father or guardian to contract a marriage on his behalf ;

(*b*) this personal emancipation is acquired on proof of the attainment of puberty or on reaching the age of 15, whichever is earlier ;

(*c*) a minor, on the attainment of puberty, also becomes emancipated in the further sense that he can enter into binding contracts and manage or dispose of his property , *unless* it is found that he still lacks sufficient " discretion " or " understanding " for the purpose ;

(*d*) if contractual capacity and the power to manage and dispose of his property are not acquired on the attainment of puberty owing to the proved absence of the necessary "discretion" their acquisition is postponed until the necessary "discretion" is developed or until the age of 18 is reached, *whichever is earlier*.

The underlying principle appears to be that irrespective of age, the emancipation of a Muslim minor is in normal cases contemplated by the Muslim Law as having been acquired on the happening of an event (such as the attainment of puberty accompanied contemporaneously, as a rule by the attainment of sufficient capacity to manage one's own affairs). The Muslim Law only regards a minor as attaining majority on reaching a certain age if the qualifying event has not already occurred.

It is now necessary to apply this principle of the Muhammedan Law to the facts of the present case. The cancellation of the bond P2, which was executed a month before the plaintiff's marriage at the age of 18, does not arise for consideration because it has already been discharged by mutual agreement as part consideration for the sale of the property. The real question refers to the plaintiff's capacity to sell his property in terms of P3 to the defendant when he was a few weeks short of 19 years of age. At the relevant date the plaintiff had obviously attained puberty and had in fact been married for over 8 months. There is no evidence to suggest and it is not pretended that on the attainment of puberty he was not in fact possessed of the requisite degree of "discretion" or understanding to entitle him to manage his own affairs. Indeed, the indications seem to be all the other way, and unless some local statute gives the plaintiff the protection which he claims but hardly seems to deserve, it must follow that he is bound by the terms of the contract which he now seeks to repudiate.

It has been contended on behalf of the plaintiff that the rule of the Muhammedan Law which emancipates a minor on his attaining the requisite capacity to manage his own affairs has been swept away by the provisions of the Age of Majority Ordinance of 1865 (Chapter 53). Section 2 declares that all persons, including Muslims, shall, notwithstanding any law or custom to the contrary, be deemed to have attained the legal age of majority when they have attained the age of twenty-one years, and not "except as is *hereinafter provided*" at an earlier period. The plaintiff's contention would undoubtedly be entitled to prevail unless the Muhammedan Law of emancipation or any part of it is saved by a later provision of the Ordinance. The question turns therefore on the meaning of section 3 which reads as follows :—

> "Nothing herein contained shall extend or be construed to prevent any person under the age of twenty-one years from attaining his majority at an earlier period by operation of law."

The question is whether a Muslim minor can, in accordance with the personal law by which he is governed, be emancipated on the happening

of some event before he reaches the age of twenty-one years, and thereby attain his majority "*by operation of law*" within the meaning of section 3.

The scope of the Ordinance had been considered by a Divisional Bench of this Court in *Muttiah Chetty v Dingiri* [1]. "The intention", said Chief Justice Hutchinson, "appears to have been to abolish any local law or custom which fixes *any other age than twenty-one* as the age of majority, but without prejudice to any rule by which a person may *on the happening of any event* attain majority by operation of law *irrespective of his age*". In accordance with this very clear ruling, it follows and it had never been disputed that a minor who is governed by the Roman Dutch Law can, notwithstanding the provisions of the Ordinance, become emancipated before he is twenty-one on the happening of any event which is regarded by that system of law as determining the *patria potestas*. It must surely follow that a Muslim minor can also claim emancipation "by operation of law" and irrespective of his age in accordance with any rule of the Muslim which is applicable in his case. He cannot of course claim the benefit of a method of emancipation which is peculiar only to the Roman Dutch Law. I would accordingly hold that the plaintiff having attained the requisite discretion entitling him to manage his own affairs prior to the execution of the conveyance P3 in favour of the defendant became emancipated in accordance with the principles of Muhammedan Law, and that there is nothing in the provisions of the Age of Majority Ordinance (Chapter 53) which is inconsistent with this view. The Ordinance would, of course, apply in cases where a Muslim minor has not developed the capacity to manage his affairs before he is 21 years of age. I am aware that my view is at variance with the opinion expressed in *Naraynen v. Saree Umma* [2] but, with very great respect I think that the unqualified view expressed in that case that "no Muhammedan in Ceylon who is under the age of 21 has the legal capacity to transact business or to enter into contracts in Ceylon" is not justified. If that were indeed the law, the law should be speedily amended, but I think that the correct view is to the contrary. The rule of general application laid down by the Divisional Bench in *Muttiah Chetty v. Dingiri* (*supra*) regarding the scope of the Age of Majority Ordinance (Chapter 53) does not appear to have been referred to in *Naraynen v. Saree Umma*, and I find that the decision in *Naraynen v. Saree Umma* was one of the questions which had been referred to a Bench of three judges in the abortive appeal in *S. C. No. 22/D. C. Colombo No. 24,309* (*vide* Poyser J. in 39 N. L. R. at page 115). In this state of things I feel that I must adopt the *ratio decidendi* in *Muttiah Chetty v. Dingiri* with which I respectfully agree and by which I am bound. In *Marikar v. Marikar* [3], this Court held that, notwithstanding the provisions of the Ordinance, a Muslim minor on the attainment of puberty was emancipated to the extent, at any rate, that he became entitled to choose his own wife "provided that the *pubes* had also reached the age of discretion". On principle I find it difficult to understand why a person who is regarded in law as possessing sufficient "discretion" to select his bride should

[1] *(1907) 10 N. L. R. 371.* [2] *(1920) 21 N. L. R. 439.*
[3] *(1915) 18 N. L. R. 481.*

necessarily be considered too immature to be compelled to honour his commercial contracts. It is important to note that in both cases the attainment of puberty is generally regarded by the Muslim Law as conferring the requisite qualification upon the minor concerned.

The Muslim Law of emancipation appears to attribute to the persons whom it governs maturity in matters relating to commerce at a comparatively early stage, and this special confidence is no doubt very well deserved and greatly prized. It would certainly be unsatisfactory if a young trader, subject to the Muhammedan Law, were to be placed in a position to repudiate his contracts more lightly than other young persons who have become emancipated by trade in accordance with the principles of the Roman Dutch Law by which the latter happen to be governed. Each system of law seems to me to arrive, from a practical standpoint, at an analogous conclusion though not perhaps by the same process of reasoning. I consider it fortunate that this is so. The law of minority should not be made unduly attractive to young gentlemen of any race who are engaged in commerce or trade.

In my opinion the correct view is that a Muslim cannot repudiate any contract entered into by him after attaining puberty but before he has reached the age of 21 years unless he can satisfy the Court that at the relevant date he did not possess the requisite understanding to qualify him to be entrusted with the management of his own affairs. In the present case the plaintiff has entirely failed to establish this, and his action cannot therefore be maintained.

I would set aside the judgment of the learned District Judge and make order dismissing the plaintiff's action with costs in this Court and in the Court below.

DIAS J.—I agree.

Appeal allowed.