

O.G. Sankar and anr. Vs. S. Veera Sameera Kumar Dev and anr.

O.G. Sankar and anr. Vs. S. Veera Sameera Kumar Dev and anr.

SooperKanoon Citation : sooperkanoon.com/435629

Court : Andhra Pradesh

Decided On : Aug-30-1996

Reported in : I(1997)DMC352

Judge : R. Bayapu Reddy, J.

Acts : [Hindu Minority and Guardianship Act, 1956](#) - Sections 6, 8(2) and 11

Appeal No. : A. No. 1788 of 1989 and Tr. A.S. No. 677 of 1993

Appellant : O.G. Sankar and anr.

Respondent : S. Veera Sameera Kumar Dev and anr.

Advocate for Def. : B.V. Subbaiah, Adv. for the Respondent No. 1

Advocate for Pet/Ap. : V. Parabrahma Sastry, Adv.

Judgement :

R. Bayapu Reddy, J.

1. These two appeals are filed against the decree and judgment of the Principal Subordinate Judge, Guntur dt. 17.3.1989 passed in S. No. 191/1983 and O.S. No. 9/86 respectively.

2. The plaintiff in O.S. No. 191/83 Who is the first respondent in A.S. No. 1788 of 1989 had filed the said suit against the defendants 1 to 4 in that suit contending as

follows : The plaint schedule house originally belonged to the first defendant in the suit, by name, Ogirala Venkata Subbamma. She had one son, by name, Krishnamurthy who is the father of the defendants 2 and 3 in the suit and the husband of Ramathulasamma who is the mother of the defendants 2 and 3. As the said Krishnamurthy was leading a wayward life and was not looking after the family and attending to the welfare of the children, the first defendant who was holding the property settled the said property in favour of the defendants 2 and 3 who are her grand-son and who were minors represented by their mother Ramathulasamma as guardian by executing a registered settlement deed dt. 13.12.1970 reserving life interest for herself and giving vested remainder rights in the property to the defendants 2 and 3. The property is situated at Guntur. The family of the defendants later on moved to Ongole and they were residing there. As the suit house, which is an old tiled-house, was badly in need of repairs and as it was not fetching proper rents and as they were also in a position to effect the required repairs, the first defendant, who was having life interest and the defendants 2 and 3, who were having vested remainder rights represented by their mother, as guardian wanted to dispose of the property and they entered into the suit agreement of sale dated 25.6.1980 in favour of the plaintiff agreeing to sell the same for an amount of Rs. 37,500/-. An amount of Rs. 7,500/- out of sale consideration amount was paid as advance to the defendants 1 to 3 who specifically agreed to obtain the permission of the District Court, Guntur for selling the property on behalf of the minor defendants 2 and 3 and then execute the required registered sale deed in favour of the plaintiff within the specified period.

3. Subsequently the defendants 1 to 3 filed a petition in the District Court directed the mother of the defendants 2 and 3 to get herself appointed as guardian of the minors and as such they filed O.P. No. 206 / 80 on the file of the District Court and the mother was appointed as guardian of her two minor sons in the said petition. Subsequently the defendants failed to pursue the matter and obtain permission of the District Court for selling the suit house to the plaintiff. Later on the southern portion of the suit house, which was in the occupation of some tenants, fell vacant and the plaintiff was permitted to take possession of the said portion of the house and he accordingly took possession of the same and continued to reside in that portion. Later on the defendants 1 to 3 became evasive and failed to obtain the

required permission from the District Court and execute the registered sale deed in favour of the plaintiff in pursuance of the suit agreement of sale. Instead, the defendants started issuing notices setting up the plea that the plaintiff was occupying a portion of the suit house as their tenant and demanded him to pay the rent. In spite of the notice issued by the plaintiff demanding the defendants 1 to 3 to execute the required registered sale deed after obtaining the permission of the District Court as agreed upon, they refused to do so. As such the suit O.S. No. 191 of 1983 on the file of the Subordinate Judge, Guntur was filed by the plaintiff against the defendants 1 to 3 and also against the fourth defendant who was occupying the other portion of the suit house as tenant under the defendants 1 to 3 seeking specific performance of the suit agreement of sale from the defendants 1 to 3 and also recovery of possession of the property from all the defendants.

4. The first defendant and the defendants 2 and 3, who were minors represented by their mother as guardian, contested the suit contending that the plaintiff manipulated the suit agreement of sale in his favour by colluding with the father of the minor defendants 2 and 3 and by committing fraud and misrepresentation and that therefore the suit agreement is not valid and legal as the plaintiff is not entitled for the discretionary relief of specific performance of such an agreement. It was further contended by them that having come to know about such fraud and misrepresentation the mother of the minor defendants 2 and 3 resiled from the contract as it was not for the benefit of the minors and that the plaintiff is herefore not entitled to seek the relief of specific performance of such agreement. It was also contended by them that the plaintiff occupied the southern portion of the suit house as their tenant promising to pay tile rent and later on failed to pay such rent to them and that he is therefore liable to pay rent due to there for occupying their house as tenant. During the pendency of the suit the second defendant attained majority and he contested the suit by filing separate written statement contending that the agreement said to have been executed by his mother and grand mother in favour of the plaintiff is not valid and binding upon him and his brother who is the third defendant as their mother had no right to alienate such property by entering into a contract with the plaintiff, that such contract is repudiated by him as it was executed in violation of the provisions of Section 8 of the [Hindu Minority and Guardianship Act, 1956](#) and that therefore the suit agreement is not valid and legal

and not enforceable and the plaintiff is not entitled for the relief of specific performance of such an agreement.

5. The first defendant in O.S. No. 191/83 filed the other suit O.S. No. 9/86 A' on that file of the Subordinate Judge's Court, Guntur (Originally O.S. No. 577/84 on the file of District Munsif Court, Guntur) against the plaintiff in O.S. No. 191 of 1983 contending that the plaintiff in O.S. No. 191 of 1983 occupied the southern portion of the suit house in which she is having life interest as her tenant and is refusing to pay the rent, that he is liable to pay such rent for the amount prayed for in the suit from 1.10.1981 onwards and that the suit was therefore filed seeking recovery of such arrears of rent from him. As the plaintiff in that suit died during the pendency of the suit, her daughter-in-law, by name, Ramathulasamma was added as second plaintiff representing her minor sons who are the defendants 2 and 3 in O.S. No. 191 of 1983. The defendant in O.S. No. 9/86 who is the plaintiff in O.S. No. 191/83 contested the suit contending that the plaintiffs in O.S. No. 9/86 executed an agreement of sale in his favour regarding the suit property that in pursuance of such contract of sale he was permitted to occupy the southern portion of the house and ever since then he is occupying the same, that he is not a tenant under them and is therefore not liable to pay me rent to them, that they, however, subsequently resiled from the contract and refused to execute registered sale deed in his favour, that he therefore filed the suit O.S. No. 191 of 1983 against them for specific performance of the agreement of sale, that the suit O.S. No. 9/86 is filed against them with all false allegations and that the said suit is liable to be dismissed.

6. Later on the Subordinate Judge tried both the suits jointly by recording evidence in O.S. No. 191 of 1983 and disposed of both the suits by the common Judgment dt. 17.3.1989. On the basis of the evidence adduced before him, the learned Subordinate Judge came to the conclusion that Ex.A-2, agreement of sale executed by the first defendant and the mother of the minor defendants 2 and 3 in O.S. No. 191/83 as their guardian, is true and valid and is binding on the defendants 2 and 3 also as it was for their benefit and that the plaintiff was therefore entitled for the specific performance of the suit agreement of sale. The suit O.S. No. 191 of 1983 was therefore decreed for the said relief of specific

performance of agreement of sale. The defendants 2 and 3 in O.S. No. 191 of 1983 have filed the present Appeal Suit No. 1788 of 1989 questioning the said decree and judgment contending that the suit agreement of sale executed by their mother as their guardian when they were minors is not valid and enforceable and not binding upon them as it is not for their benefit and as the permission of the District Court for selling the property on their behalf was not obtained by their mother and that the lower Court has therefore erred in decreeing the suit for the relief of specific performance. The lower Court had dismissed the suit O.S. No. 9/86 filed for recovery of arrears of rent holding that the defendant therein who is the plaintiff in O.S. No. 191/83 is not their tenant and he did not occupy the suit house as tenant and that he had occupied the house only in pursuance of the agreement of sale executed in his favour and that therefore the suit was not maintainable and liable to be dismissed. Questioning such decree and judgment, the plaintiffs therein who are the defendants 2 and 3 in O.S. No. 191/83 have filed transfer A.S. No. 677 of 1993. The lower Court has disposed of both the suits by a common judgment. The present two appeals are also heard and are being disposed of by a common judgment as common points are involved for consideration in both the appeals. The discussion in this judgment is made with reference to the parties as arrayed in O.S. No. 191/83 for the sake of convenience.

7. The points that arise for consideration in the present appeals are :

(1) Whether the plaintiff in O.S. No. 191/83 is entitled for the relief of specific performance of Ex.A-2 agreement of sale from the defendants 2 and 3 as directed by the lower Court ?

(2) Whether the defendants are entitled to seek recovery of arrears of rent from the plaintiff in O.S. No. 191 /83.

8. Point No. 1 : It is an admitted fact that the first defendant Ogirala Venkatasubbamma, who was the absolute owner of the suit house, had executed Ex.A-1 registered sale (sic. settlement) deed keeping life interest for herself and giving the vested remainder rights in favour of the defendants 2 and 3, who are minor sons of her son, by name, Krishnamurthy showing their mother Ramathulasamma as their guardian. It is also an admitted fact that the first

defendant and the minor defendants 2 and 3 represented by their mother as guardian subsequently executed Ex. A-2 agreement of sale dated 25.6.1980 in favour of the plaintiff agreeing to sell the suit house. The contention of the plaintiff is that the defendants agreed to sell the suit house in his favour for Rs. 37,500/- and executed Ex. A-2 agreement of sale and received an amount of Rs. 7,500/- as advance and agreed to execute registered sale deed after obtaining permission of the District Court to sell the property on behalf of the minor defendants 2 and 3 by their mother and subsequently they, however, failed to obtain such permission from the District Court and refused to execute the registered sale deed and that the suit O.S. No. 191 of 1983 was therefore filed for the relief of specific performance of the agreement against them. The defendants 1 to 3, however contended that such agreement was the result of fraud and misrepresentation committed on the part of the plaintiff by colluding with Krishnamurthy who is the father of the defendants 2 and 3, that the said agreement is also not for the benefit of the minors and as such it is not valid and legal and not binding on the defendants 2 and 3 especially as the permission of the District Court was not obtained for alienating the property on behalf of the minors and that the plaintiff therefore is not entitled for the relief of specific performance of such agreement. The lower Court has come to the conclusion on the basis of the evidence adduced that Ex. A-2 agreement of sale was in fact executed by the first defendant and the mother of defendants 2 and 3, who are minors, agreeing to sell the property in favour of the plaintiff, that such an agreement of sale was for the benefit of the minors and that it is therefore a valid agreement. The dispute in the present case relates to the factual aspect as well as the legal aspect regarding the validity and the binding nature of the suit agreement of sale. The factual aspect relates to the question whether the suit agreement was voluntarily executed by the defendants 1 to 3 and whether it was for the benefit of the minors. The legal aspect relates to the question whether such an agreement of sale executed by the mother of the minor defendants 2 and 3 without obtaining the permission of the District Court for selling the property is valid and binding on the defendants 2 and 3 and is enforceable against them.

9. Regarding the factual aspect, as already stated above, the lower Court has clearly discussed the evidence and after giving valid and justifiable reasons has

come to the conclusion that the said agreement of sale was executed by the first defendant and the mother of the minor defendants 2 and 3 voluntarily and out of their free Will and the proposed sale of the property was for the benefit and in the interest of the minor defendants 2 and 3. There are absolutely no valid reasons to interfere with such findings given by the lower Court in view of the evidence adduced in the suit. It is seen even from Ex. A-1 registered settlement deed dt. 30.12.1970 executed by the first defendant long prior to the suit agreement of sale that she chose to settle the property in favour of her two minor grand children who are the defendants 2 and 3 by giving vested remainder rights in their favour reserving life interest for herself by showing the mother of the minor as their guardian on account of the fact that her only son Krishnamurthy, who is the father of the defendants 2 and 3, was leading a way-ward life and was not looking after the interest of the minors. Even Ex. A-2 sale agreement executed by the first defendant and the mother of the defendants 2 and 3 clearly shows that such an agreement was sought to be executed as the house was not fetching proper rents and as it was an old tiled-house badly in need of repairs and as they were not in position to incur the required expenditure for effecting such repairs thereof as they had gone and settled at Ongole which is far away from Guntur where the suit house is situated. It is also specifically mentioned in Ex. A-2 agreement, that the sale consideration amount shall be placed in fixed deposit for the benefit of the two minor boys. The agreement also contemplated that the permission of the District Court shall be obtained by the mother of the minor boys for executing the sale deed within the specified time. These circumstances revealed from Ex. A-2 agreement itself clearly show that the proposed sale of the property was felt as a necessity and also for the benefit of the minor boys.

10. Ex. A-3 and Ex. A-4, which contain the affidavits of the mother of the minor defendants 2 and 3 in the petitions filed before the District Court, Guntur seeking permission for selling the property, clearly reveal that the mother of the minors had specifically sworn in those affidavits to the effect that the proposed sale under Ex. A-2 agreement executed in favour of the plaintiff was for the benefit of the minors and that therefore she sought the permission of the District Court to sell the property on behalf of the minors and also requested the Court for appointing her as guardian of the minors inasmuch as her husband was not looking after their

interests. It is clear from such evidence that the proposed sale under Ex. A-2 was for the benefit of the minors and that the mother who was acting as guardian of the minors had admitted such facts in those petitions filed before the District Court, Guntur. Subsequently she however chose to resile from the contract, and instead, came up with the version that the plaintiff had occupied a portion of the suit house as their tenant and was refusing to pay rent. Ex. A-5 notice issued by the defendants to the plaintiff contains such version and nothing is alleged in the said notice that the suit agreement was not for the benefit of the minors. As a matter of fact, no reference was made to such an agreement in Ex. A-5 notice which was issued by the first defendant for the first time subsequent to Ex. A-2. The plaintiff got issued Ex. A-10 reply to Ex. A-5 notice specifically contending that he was not a tenant in the suit house, that the defendants executed the suit agreement of sale in his favour and subsequently failed to execute the registered sale deed in his favour and they should obtain permission of the District Court and execute such registered sale deed. But inspite of the said reply notice, the mother of the minor defendants again issued Ex. A-6 notice dt. 5.2.1982 claiming rent from the plaintiff and without mentioning anything about the suit agreement. The first defendant once again issued Ex. A-8 notice dt. 20.7.1982 without mentioning anything about the suit agreement and again claiming rent from the plaintiff. Thereupon the plaintiff once again got issued Ex. A-11 reply dt. 1.8.1982 reiterating his contentions regarding his claim for specific performance of the suit agreement of sale. It is clear from such correspondence between the parties that even till 1.8.1982 the defendants never came up with the plea that the suit agreement of sale was not for the benefit of the minors and therefore not binding upon the minors. Such a plea was raised only after suit was filed for the relief of specific performance of the agreement. Under those circumstances the lower Court rightly felt that the suit agreement was validly executed and it is for the benefit of the minors.

11. Apart from this it is to be seen that Ex. A-2 was attested by P.W.3, who is the second at testor as well as another person who figures as first at testor and who is no other than the brother-in-law of Ramathulasamma, who is the mother of the minor defendants 2 and 3. P.W.3 has deposed that Ex. A-2 suit agreement was validly executed by the first defendant and the mother of the defendants 2 and 3. Therefore, the contention of the defendants that Ex. A-2 was the result of fraud

and misrepresentation cannot be accepted and was rightly negated by the lower Court. Exs. A-19 to A-23 letters written to the plaintiff by the brother-in-law and the father of Ramathulasamma who executed Ex. A-2 agreement on behalf of her minor sons clearly reveal that all through they were expressing their willingness to take necessary steps to obtain permission from the District Court and proceed to honour the agreement by executing the required registered sale deed. Ex. A-23 is the reply notice issued subsequent to the abovesaid notice and reply notices marked as Exs. A-5 and A-6. As already stated above, the mother of the minor defendants had specifically admitted in Exs. A-3 and A-4 filed in the District Court that she voluntarily executed Ex. A-2 agreement in favour of the plaintiff and that she required the permission of the District Court to sell the properties on behalf of other minor sons. It is clear from all such circumstances that Ex. A-2 agreement of sale is true and was voluntarily executed by the mother of the minor defendants 2 and 3 in favour of the plaintiff and that the proposed sale is clearly established to be in the interests and for the benefit of the minor defendants 2 and 3.

12. Regarding the legal aspect involved in the present case concerning the validity and binding nature and enforceability of Ex. A-2 agreement of sale the first contention of the learned Counsel for the appellants is that Ramathulasamma who is the mother of the minor defendants 2 and 3 cannot be considered as their natural guardian while their father is alive, that she cannot therefore alienate the properties of the minors and the proposed sale is therefore void and the agreement cannot be enforced. He has also relied upon the decisions of this Court reported in *Kanchi Kamma v. Yerramsetti* case, 1973(2) An.W.R. 74 and *Meka Peethambaram v. Nanduri Lakshminarayana*, 1978(1) An.W.R. 512, in support of such contention. But such contention cannot, however, be accepted. The facts in the above-cited two decisions clearly show that the alienation was sought to be made by the de facto guardian of the minors as contemplated under Section 11 of the Hindu Minority and Guardianship Act and not by natural guardian. Section 11 of the Act specifically provides that after the commencement of the Act no person shall be entitled to dispose or deal with the property of Hindu minor merely on the ground of his or her being the de facto guardian of the minor. Therefore, in view of such circumstances it was held in the above-cited decisions that the alienation sought to be made by de facto guardian is not valid. But in the present case it is

the mother of the minor defendants 2 and 3 that has chosen to execute Ex. A-2 agreement and she cannot be considered as 'de facto guardian' as contemplated under Section 11 of the Act.

13. The contention of the learned Counsel for the appellant that the mother of the minor defendants 2 and 3 cannot be considered as a natural guardian when the father of the minors is alive cannot be accepted as a universal proposition of law. In view of the facts and circumstances of the present case it is clearly found from the evidence adduced in this case, which is already referred to above, that the father of the minor defendants 2 and 3 was leading a way-ward life and not caring for his minor sons and the other members of the family and that it is on account of such circumstances the first defendant who is the paternal grand mother of the minors, had chosen to settle the suit house in favour of the minors under Ex. A-1 by giving vested remainder rights ignoring her son, who was alive. Even Exs. A-2/ A-3 and A-4, which are already referred to above, clearly reveal that the father of the minors was not conducting himself in the interests of the minors and was leading a way-ward life and that it is on account of such circumstances the mother of the minors chose to file a petition in the District Court at Guntur requesting the Court to appoint her as guardian of the minors for selling the property. Therefore it is clearly established from such evidence that the father of the minors though alive was not caring for his minor sons and not looking after their interests. Under such circumstances, the mother of the minors is to be considered as natural guardian of her minor sons and act as such guardian. As such, the execution of Ex. A-2 agreement cannot be considered as invalid on the ground that the father of the minors is alive, and that the mother cannot, therefore, be considered as natural guardian. Such view is clearly expressed by the Supreme Court in the decision reported in *Jijabai Vithalrao Gajre v. Pathankhan and Ors.*, : [1971]2SCR1 , wherein it is observed' that where a father is alive but had fallen out with the mother of the minor girl and was living separately for several years without taking any interest in the affairs of the minor who was in the keeping and care of the mother, the father should be treated as if non-existent and therefore the mother could be considered as natural guardian of the minor's person as well as the property and had power to bind the minor by granting lease of her property-In the Division Bench decision of this Court reported in *B. Ramender Reddy v.*

Sathyanarayana Reddy, 1986(1) ALT 240, which is sought to be relied upon by the learned Counsel for the appellant, it is observed that the right of the mother of the minor to act as guardian during the life time of the father comes into play when the father was disabled physically or mentally or abandoned or neglected his duty and that under such circumstances only the mother could act as natural guardian of the minors even when the father is alive as the law presumes as if the father was non-existent as far as the minor children are concerned. In the present case, as the father had distanced himself from his minor sons and was not looking after their interests and was leading a way-ward life and not caring for the family, the mother was entitled to act as natural guardian of her minor sons and as such Ex. A-2 agreement executed by her cannot be invalidated on the ground that the father was alive.

14. The next contention of the learned Counsel for the appellant is that even if the proposed alienation is said to be for the benefit of the minors such alienation is not valid and not enforceable against the minors inasmuch as the permission of the District Court as contemplated in Section 8(2) of the Hindu Minority and Guardianship Act and that therefore Ex. A-2 cannot be enforced against the minor defendants 2 and 3. He has also tried to rely upon the above-cited decision of B. Ramender Reddy v. Sathyanarayana Reddy, (supra), in support of his contention. On the other hand the learned Counsel for the respondents tries to contend that obtaining of permission from the District Court to sell the property of the minors by their natural guardian is only a legal formality and not the ultimate test regarding the validity of the transaction, that the ultimate test is whether the sale will be for the benefit of the minors and that when once it is proved that the proposed alienation is for the benefit of the minors, such alienation will be valid and enforceable against the minors even if the permission of the District Court is not obtained before alienating the property. It is to be seen as to how far the respective contentions can be accepted.

15. Section 8 of the Hindu Minority and Guardianship Act runs as follows :

'8(1). The natural guardian of a Hindu minor has power, subject to the provisions of this Section, to do all acts which are necessary or reasonable and proper for the

benefit of the minor or for the realisation, protection or the benefit of the minor's estate, but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the Court,

(a) mortgage or charge, or transfer by sale, exchange or otherwise any part of immovable property of the minor, or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

8(3) Any disposal of immovable property by a natural guardian, in contravention of Sub-section (1) or Sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) (5), and (6)xxxxxxxxxxxxxxxxxxxxxxxxxxxx'

Section 8 of the Act contemplates that the natural guardian of a Hindu minor shall not alienate the properties of the minors without the previous permission of the Court and Section 8(3) of the Act provides that any disposal of immovable property by a natural guardian in contravention of Sub-section (1) or Sub-section (2) is voidable at the instance of the minor or any person claiming under him. In the above-cited Division Bench decision of this Court in Ramender Reddy case (supra), the facts in which are similar to the present facts, it is clearly laid down while considering the question of enforceability of agreement of sale executed by the natural guardian of the minors that after the coming into force of the Hindu Minority and Guardianship Act even the natural guardian cannot alienate the property of the minor without the sanction of the Court, and that the guardian cannot bind the minor by a personal covenant. It is further observed in the said decision as follows:

'Hence after the Act came into force any agreement entered into by the guardian without the sanction of the Court cannot be enforced against the minor or his estate and no question of the Court examining the beneficial nature of the transaction and the requisite capacity of the minor to do so would arise and hence

under Sub-section (3) the minor can avoid the contract. Such power is given not only to the minor but also persons claiming under him'. (Emphasis mine)

It is clear from such observations made in the abovesaid Division Bench decision of this Court that the question of the Court examining the beneficial nature of the transaction does not arise when the previous sanction of the District Court is not obtained by the natural guardian of the minors before she executes an agreement of sale on behalf of the minors and that inasmuch as the prior permission of the District Court is not obtained as contemplated under Section 8(2) of the Act, the agreement of sale is not valid and binding on the minors and cannot be enforced against them.

16. The same view was expressed by various other High Courts also regarding the enforceability of the agreement of sale executed by the natural guardian of the minors without obtaining the prior permission of the Court as contemplated in Section 8(2) of the Act. In the decision of the Kerala High Court reported in *Santha v. Cherukutti*, : AIR1972 Ker71 , which is also referred to in the abovesaid *Ramender Reddy* case (supra). It is observed by his Lordship V.R. Krishna Ayyar J. as follows:

'In the present case, however, we are concerned with a specific statute, namely. Section 8 of the [Hindu Minority and Guardianship Act, 1956](#). It is indisputable that no sanction of the Court was taken for the alienation in the present case by the mother acting as the guardian of the minor, and, therefore there is a plain violation of Section 8(2) of the Act. Consequently Section 8(3) is attracted and the disposal of the property even though by natural guardian becomes voidable at the instance of the minor. Should this process of avoidance be effected by a suit to set aside the alienation, or is it enough if the minor repudiated the transaction by his own act. I have considered this question in an unreported decision in S.A. No. 683/69 (Ker.) and the view [1971 Ker.L.T. (SN) 32] expressed by me there, which after all the arguments on both sides, I am not inclined to change, is that when a minor is entitled to avoid a transfer effected by his guardian on the ground of absence of permission of the Court, it becomes a nullity on his unilateral act. He can merely avoid it by his conduct and there is no need to file a suit for avoiding

the transfer'.

17. In the decision reported in *Darbar Singh v. Karminder Singh*, , which is also referred to in *Ramender Reddy* case (supra), it-is observed as follows:

'The provisions of Sub-section (1) of Section 8 of the Act make it expressly clear in unqualified terms that no personal covenant of the guardian shall be binding on the minor. It means only this that when looked from the standpoint that the aforesaid interdiction is added at the fag end of Section 8(1) by way of proviso to the clause that preceded it, a guardian though well within his right to enter into a contract for the benefit of the minor, but the said contract would not be enforceable against the minor even when it was entered for his benefit and would be voidable at his instance'

18. In the Division Bench decision of the Calcutta High Court reported in *Biswanath Charit v. Damodar Patra and Ors.*, : AIR1982 Cal199 , also it is observed as follows:

'We feel no hesitation in agreeing with and accepting the view that it was competent for the natural guardian to enter into and execute an agreement for sale as in the present case for the benefit of the minors and such an agreement will not be void altogether but only voidable at the instance of the minor if it can be shown not for his benefit. But in our view the mere fact .that the agreement is not void would not by itself render it straightaway specifically enforceable at the instance of the purchaser by the natural guardian. It could have been so enforceable if, as the law stood before, the natural guardian himself could have fulfilled the contract by executing the conveyance. But that power has since been made subject to the previous permission of the Court. Complying with a decree for specific performance as made in the present case would constitute contravention on the part of the natural guardian of Sub-section (2) of Section 8 of the Hindu Minority and Guardianship Act, and it is settled principle that no Court should compel a person to contravene the law'.

Their Lordships posed a question for themselves as to what happens to an agreement executed by the natural guardian of the minors when such an

agreement is within the competence of such natural guardian and is found to be for the benefit of the minors and whether the agreement even in such cases would not be enforceable in law. Their Lords then answered such question by observing as follows:

'In our view the legal position is that such an agreement is enforceable but only upon a previous permission being obtained from the Court. Where the natural guardian in exercise of his powers under Sub-section (1) of Section 8 of the said Act enters into such an agreement for the benefit of the minor he by necessary implication enjoins himself to take the necessary permission from the Court and then execute the conveyance which would not contravene in any manner Sub-section (2) thereof'.

19. In the commentary on 'Principles of Hindu Law' by Mulla 1990 edition at page 866 it is observed by the learned commentator, while referring to the limitation of the powers of natural guardian to alienate the properties of the minors by executing an agreement of sale as contemplated under Section 8(2) of the Hindu Minority and Guardianship Act as follows:

'The effect of this Sub-section read with Section 5 of the Act is to supersede the law relating to the powers of a natural guardian in the matter of disposal of the immovable property of the minor hitherto applied in the case of Hindu Minors. It is now laid down in express and explicit terms that the natural guardian cannot without the previous permission of the Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor nor can he without such previous sanction lease any part of such property for any term exceeding five years or for term extending more than one year beyond the date on which the minor attains majority. Application for the sanction of the Court cannot be made by an intending purchaser or other transferee, only the natural guardian would have to apply for sanction. Even in respect of an agreement by a natural guardian which is within his or her competence and for the benefit of the minor, the legal position is that such an agreement is enforceable only upon a previous permission being obtained from the Court'.

It is further observed by the learned commentator at page 866, while referring to the provisions of Section (3) of the Act:

'This Sub-section is a corollary to the limitations enacted in Sub-section (2). Any dealing by a natural guardian with the immovable property of the minor, in contravention of the rule laid down in Sub-section (2) is not binding on the minor. Any transfer prohibited by this Sub-section can be avoided by the minor and it is not incumbent on the minor to file a suit simply for the purpose of avoiding the same'.

20. It is clear from such view expressed by the various High Courts including this Court in the above-cited decision in Ramender Reddy case (*supra*) that when the permission of the District Court as contemplated under Section 8(2) of the Hindu Minority and Guardianship Act is not obtained, the agreement of sale executed by the natural guardian of the minors cannot be enforced against the minors even if it is to be said that such an agreement is found to be for the benefit of the minors and that the question of considering the beneficial nature of the transaction does not arise when the validity and binding nature of such agreement is to be determined. In the present case, even though Ex. A-2 agreement is found to be for the benefit of the minors such agreement cannot be enforced against the minor defendants 2 and 3 inasmuch as the condition precedent of obtaining the permission from the District Court by the natural guardian of the minors is not fulfilled. Further, the second defendant on attaining majority had chosen to contest the suit by filing separate written statement of his own specifically avoiding the agreement of sale executed by his mother and contending that it is not valid and binding upon him and he does not choose to accept such alienation. It is now a well-established proposition of law that the minor can avoid such transaction by expressing his view and by his conduct without having the necessity of filing a suit for avoiding such alienation. Therefore Ex, A-2 agreement of sale cannot be said to be enforceable against the defendants 2 and 3 as the prior permission of the District Court was not obtained and as such the plaintiff cannot be said to be entitled for the relief of specific performance as granted by the lower Court.

21. The learned Counsel for the respondent plaintiff has however tried to reply upon the decision of the Supreme Court reported *Amirtham Kudumban v. Samam Kudumban*, AIR 1991 SC 1256, in support of his contention that when once the agreement of sale is found to be for the benefit of the minors such agreement will be enforceable against the minors even when the prior permission of the District Court is not obtained and that such permission of the District Court is only a legal formality and not the ultimate test to decide the binding nature and validity of such an agreement of sale. But a perusal of the said decision clearly shows that such a view is not expressed by their Lordship in that decision and that the decision is not of any assistance for such contention of the learned Counsel for the respondent. The question that specifically arose for consideration in that decision, as pointed out by their Lordships themselves in para 4 of the Judgment, is as follows:

'Whether a transferee from a minor after he attained majority, can file a suit to set aside the alienation made by the minor's guardian or the said right is one to be exercised only by the minor.'

Their Lordships answered the said question by observing that the transfer of the property made by the guardian was a voidable transaction and it was therefore open to the minor to challenge it and seek recovery of possession and that such right of the minor is a right or interest in which he himself or any person claiming under him may enforce by instituting a suit. In para 9 of the judgment it is further observed by their Lordships that the effect of Section 8(2) is that any disposal of the immovable property by a natural guardian otherwise than for the benefit of the minor or without obtaining the previous permission of the Court is voidable, that a person entitled to avoid such a sale is either the minor or any person claiming under him and that therefore either the minor or his legal representative in the event of his death or his successor in interest claiming under him by reason of transfer *intervivos* must bring action within the period prescribed for such a suit. Therefore in the above-cited decision it is not held that when once agreement of sale is found to be for the benefit of the minors such an agreement is enforceable against the minors even when the permission of the District Court is not obtained. On the other hand it is observed by their Lordship that when the permission of the District Court is not obtained the transaction is voidable and it will be open to the

minor to avoid such transaction. Therefore, the abovesaid decision cannot be said to be any assistance for the learned Counsel for the plaintiff. In view of all such circumstances it is held that Ex. A-2 agreement of sale though found to be for the benefit of the minors, cannot be enforced against the defendants 2 and 3 as the prior permission of the District Court was not obtained by the natural guardian who executed such agreement on their behalf. The plaintiff is therefore not entitled for the reliefs of specific performance of Ex. A-2 agreement of sale.

22. Point No. 2 : The suit O.S. No. 9/86 was filed by the plaintiffs therein, who were the defendants in O.S. No. 191/83 against the defendant therein who is the plaintiff in O.S. No. 191 /83 seeking the relief of recovery of arrears of rent from him contending that he occupied the southern portion of the suit house as their tenant agreeing to pay the rent, that he subsequently defaulted in paying such rent and that therefore the suit was filed for recovery of such rent from him. On the other hand the contention of the defendant in O.S. No. 9 / 86 is that he never took possession of the southern portion of the building as tenant of the plaintiffs in that suit and on the other hand they executed Ex. A-2 agreement of sale agreeing to sell the property to him, that they have also received advance of Rs. 7,500/- from him on the date of agreement and agreed to execute the registered sale deeds in course of time, that at the time of the execution of the said agreement of sale the suit house was in the occupation of some tenants, that subsequently the southern portion of the building was vacated by one of the tenants and he was permitted by the plaintiffs in O.S. No. 9/86 to occupy the house in view of the suit agreement and also in view of the payment of the advance amount of Rs. 7,500/- to them and that therefore he cannot be considered as their tenant and he cannot be directed to pay rent as prayed for in the suit. The lower Court on the basis of the evidence adduced in the two suits, came to the conclusion that the defendant in O.S. No. 9/86 never occupied the suit house as tenant that he occupied it only in view of the earlier agreement of sale executed in his favour and that therefore he cannot be directed to pay any arrears of rent to the plaintiffs in the suit. Such finding of the lower Court is rightly based on the evidence adduced in the suit which clearly shows that the plaintiff was never considered as a tenant in the southern portion of the suit house and there is also no material at all to show that he became such a tenant and agreed to pay the rent. As a matter of fact the plaintiffs in O.S. No.

9/86, who are the defendants in O.S. No. 191/83, did not examine any witnesses on their side. In the absence of any such evidence on their behalf and in view of the evidence adduced in the lower Court, the defendant in O.S. 9/86 cannot be considered as a tenant of the suit house and as such the plaintiffs in that suit are not entitled to recovery any rent from him as rightly held by the lower Court.

23. Appeal SuitNo.1788 of 1989-In view of the abovesaid findings A.S. No. 1788 of 1989 is allowed and the decree and Judgment of the lower Court in O.S. No. 191/83 are set a side and the said suit filed for the relief of specific performance of agreement is dismissed. In view of the facts and circumstances of the case each party is directed to bear his or her own costs in this appeal as well as in the suit.

24. Tr. Appeal Suit No. 677 of 1993-In view of the above findings, the Tr. Appeal Suit No. 677 of 1993 is dismissed with costs of the respondent.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com