

Surta Singh Vs. Pritam Singh

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Court : Punjab and Haryana

Decided On : Nov-25-1982

Reported in : AIR1983P& H114

Judge : S.S. Sandhawalia, C.J.,; Prem Chand Jain and; S.P. Goyal, JJ.

Acts : [Hindu Minority and Guardianship Act, 1956](#) - Sections 2, 8, 8(1) and 8(2); Indian Limitation Act, 1961 - Schedule - Article 60; Guardianship and Wards Act, 1890 - Sections 29; Limitation Act, 1908 - Schedule - Article 44; Indian Limitation Act, 1963 - Schedule - Article 60; Indian Contract Act - Sections 2; [Code of Civil Procedure \(CPC\), 1908](#) - Order 32, Rule 7

Appeal No. : Second Appeal No. 1479 of 1970

Appellant : Surta Singh

Respondent : Pritam Singh

Advocate for Def. : Mr. D. V. Sehgal

Judgement :

S.S. Sandhawalia, C.J.

1. Whether a transfer of immovable property by a natural guardian in contravention of Section 8 (1) and (2) of the [Hindu Minority and Guardianship Act, 1956](#) can be challenged by way of a suit by the minor only within the prescribed period of three

years from attaining majority under Art. 60 of the Indian Limitation Act, 1961 is the significant question necessitating these two references to the Full Bench. Equally at issue is the correctness of the view of the Division Bench in *Pran Nath v. Bal Kishan*, AIR 1959 Punj 313 holding unreservedly to this effect.

2. The issue aforesaid arises from facts within a narrow compass and it suffices to advert to those in R. S. A. No. 1479/1970. Pritam Singh plaintiff-respondent had instituted the suit on 7th May, 1965 for possession of half share of 129 kanals 10 Marlas of land on the ground that his mother Smt. Tej Kaur, without any right or authority and without the permission of the Court, had sold the suit land on 22nd of May, 1959 in favour of the defendant during his majority. It was further averred that the said (sale of) land was not for his benefit nor in his interest and therefore, void and further that he was 20 years of age at the time of filing the suit. The suit was contested by the defendant-vendees who inter alia pointedly raised the issue of limitation. The trial Court held under issues Nos. 2 and 5 that the plaintiff was above the age 21 years on the date of the presentation of the suit and the same having, therefore, not been brought within three years, of his attaining majority, it was beyond the period of limitation prescribed under Art. 60 of the Limitation Act. As a necessary consequence the suit was dismissed. On appeal, the learned Additional District Judge, Amritsar, affirmed the findings of the trial Court that the plaintiff-respondent was above 21 years of age at the time of the filing of the suit. However, he took the view that the sale by the mother of the plaintiff as his natural guardian in contravention of Section 8(2) of the Hindu Majority and Guardianship Act (hereinafter called the Act) was wholly void and did not bind the minor nor conferred any authority or legal right in the vendee. Consequently he held that Article 60 of the Limitation Act was not attracted and the suit could be brought within 12 years and was, therefore, within time. The appeal was allowed and the suit of the plaintiff-respondent decreed.

3. This regular second appeal came up for hearing before my learned brother S. P. Goyal, J., sitting singly before whom the view of the learned Additional District Judge was challenged as being in direct contravention of the Division Bench in *Pran Nath's case* (AIR 1959 Punj 313)(supra) which in turn had been followed in *Sukhdev Singh v. Jangir Singh*, 1976 Rev LR 101. The correctness of the

aforesaid judgment was challenged on behalf of the plaintiff-respondent and noticing some conflict of precedent on the point the matter was referred for consideration by a larger Bench.

4. To clear the decks for a pointed analysis of the core question it is apt to notice at the very outset that herein we are not called upon to pronounce on the ancillary question of the possession of a quondam minor as a defendant when the transaction by his guardian is sought to be enforced against him. That different consideration would apply in such a situation appears to be plain in principle and equally on precedent to which detailed reference is unnecessary. The sole question herein is whether the quondam minor having himself instituted the suit to avoid the transfer made on his behalf by his natural guardian (as in the present case) and further to seek possession of the immovable property in the hands of the vendees, would attract the application of Article 60 of the Limitation Act and the time prescribed there by.

5. Because of some cleavage of judicial opinion the issue herein calls for an examination first in the context of its legislative and presidential history. It is common ground that before the enactment of the Hindu Minority and Guardianship Act in 1956, the Guardianship and Wards Act of 1890 held the field and was equally applicable to the Hindu minors as well. Even after the latter enactment the former Act still holds sway and as would appear hereinafter the Hindu Minority and Guardianship Act is in a way supplemental to the earlier statute. Because of some tenuous arguments raised to the effect that the latter enactment was intended to make a radical change in the existing law it seems apt to juxtapose the relevant provisions of the two statutes :--

GUARDIANS & WARDS ACT, 1890 S. 28 POWERS OF TESTAMENTARY GUARDIAN : Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immovable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property

specified in the order in manner permitted by the order HINDU MINORITY AND GUARDIANSHIP ACT, 1956 S. 8(1) POWER OF NATURAL GUARDIAN : (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 benefit of the minor's estate, but the guardian can in no case bind the minor by a personal covenant.

S. 29, LIMITATION OF POWERS OR GUARDIAN OF PROPERTY APPOINTED OR DECLARED BY THE COURT :-- Where a person other than a Collector, or than a guardian appointed by will or other instrument has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court :-- (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of his ward, or (b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor. (2) The natural guardian shall not, without the previous permission of the Court : (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the 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.

S. 30 VOIDABILITY OF TRANSFERS MADE IN CONTRAVENTION OF SECTION 28 OR SECTION 29 :-- A disposal of immovable property by a guardian in contravention of either of the two last foregoing section is voidable at the instance of any other person affected thereby. 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) The Guardians and Wards Act, 1890, shall apply to and in respect of an application for obtaining the permission of the Court under sub-section (2) in all respects as if it were an application for obtaining for permission of the Court under S. 29 of that Act, and in particular-- (a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of Section 4A thereof, (b) the Court shall observe the procedure and have the

powers specified in sub-sections (2), (3) and (4) of Section 31 of that Act, and (c) *
* * *'

6. The question that arises at the very threshold is as to what was the intent of the legislature in enacting Section 8 of the Hindu Minority and Guardianship Act (hereinafter referred to as the 1956 Act), in the context of the general law applicable to minors under the Guardians and Wards Act, 1890 (hereinafter referred to as the 1890 Act). Was it to make any radical change in the existing law or was the intent to bring the restrictions on the powers of the natural guardian of the Hindu minor in conformity with those on the guardian under the 1890 Act? It would appear that both because of the language of the statute, the legislative history of the provisions and the declared objects and reasons for the bill that the intent was clearly the latter one of bringing the law applicable to the natural guardians of the Hindu minors at par with that in the 1890 Act.

7. As is well known the 1956 Act was only a limb of the larger exercise of codifying completely the Hindu law in the early fifties. Though no comprehensive Hindu Code ultimately came to be enacted, specific branches of Hindu law like succession, marriage and the law applicable to minors were codified. The 1956 Act was, therefore, but another instalment of the larger exercise of codification dealing with the law relating to Minority and Guardianship. Clause (7) of the Bill introduced in 1953 is the corresponding provision of Section 8 as now enacted. That the language thereof was virtually lifted en bloc from the relevant provisions of 1890 Act seems to be plain. However, the notes and clauses pertaining to this provision leave little or no manner of doubt in this context and is in the following terms :--

'The exercise restrictions on the powers of the natural guardian of a Hindu minor have been re-cast more or less on the lines of similar restrictions in the Guardians and Wards Act, 1890.'

It is manifest from the above that the declared intent and object of the enactment of Section 8 of the 1956 Act was to equate the legal position of the natural guardian of a Hindu minor with that of a guardian under the 1890 Act.

8. However, the aforesaid results flows not merely from the legislative history and the Statement of Objects and Reasons but even more strongly from the plain language of Section 8 of the 1956 Act and from the earlier juxtaposition of the two statutes. It is manifest that Clauses (a) and (b) of Section 29 of the 1890 Act are in pari materia with Clauses (a) and (b) of sub-section (2) of Section 8 of the 1956 Act. Similarly, Section 30 of 1890 Act is identical in terms (except for a marginal inconsequential change) with Section 8(3) of the 1956 Act. The language of these provisions bear such (similarity) as to leave no manner of doubt that the framers merely lifted the relevant provisions from the earlier 1890 Act to place them in Section 8 of the 1956 Act. It seems to be plain that on the narrow point of the violability of the disposal of immovable property by a guardian without the previous permission of the Court, the legal position under the two statutes was designedly made identical. This is further buttressed by the fact that Section 2 of the 1956 Act in terms says that the provisions of the said Act were not to supplant the earlier law but merely to supplement it. Particular reference in this context may also be made to sub-section (5) of Section 8 of the 1956 Act. This expressly lays down that for obtaining the permission of the Court for a transfer of immovable property Section 29 of the Guardian and Wards Act, 1890 would be applicable. Further proceedings with regard to such an application shall be deemed to be proceedings under the 1890 Act within the meaning of Section 4A thereof and the procedure to be followed will again be that provided by Section 31 of the earlier Act. That the two statutes have to be viewed as complementary is evidenced from the following observations of the Division Bench in *Captain Rattan Amol Singh v. Smt. Kamaljit Kaur*, (1960) 62 Pun LR 578 : (AIR 1961 Punj 51) :--

'In my opinion the Court must construe the provisions of the Guardians and Wards Act and of the Hindu Minority and Guardianship Act together because they constitute parts of a single scheme or of the same legislative plan, their provisions must, therefore, be harmonised and read together, so that the real and true purpose and equity of the basic principles underlying the subject-matter of the legislative scheme or plan are effectively carried out. The Hindu Minority and Guardianship Act having been enacted to amend and codify certain parts of the law relating to minority and guardianship among Hindu, it is incumbent on the Courts to give proper and due effect to the provisions of Section 13 of this

enactment.'

It must, therefore, be held that in the context of a transfer of immovable property without the previous permission of the Court, the legal position of a certificated guardian and that of the natural guardian of a Hindu minor is identical as also the legal consequences flowing therefrom. This is so by virtue of Section 29 and 30 of the 1890 Act and Sections 8 (2) and (3) of the 1956 Act.

9. Once that is so, it has only to be recalled that right from 1890 it was settled law that a minor seeking to avoid a transfer of immovable property by his certificated guardian, without the previous permission of the Court had to do so within 3 years of his attaining majority under Article 44 of the Limitation Act of 1908 which is in part *materia* with Clause (a) of Article 60 of the Indian Limitation Act, 1963. Indeed, counsel for the parties were agreed that at least prior to 1956 it was settled law without any discordant note that the minor binding a suit to impeach the transaction of a certificated guardian had to do so within the prescribed period of limitation from the date of his attaining majority. Firmly relying on these premises, Mr. J. R. Mittal's contention for the appellant was that Section 8 of 1956 Act merely reiterated the earlier position categorically because sub-sections (2) and (3) thereof are in *pari materia* with Sections 29 and 30 of the 1890 Act. Counsel, therefore, contended that the long line of unbroken precedent under Sections 29 and 30 of the 1890 Act was *mutatis mutandis* applicable and binding in the context of Section 8 of the 1956 Act.

10. There appears to be patent merit in the aforesaid stand. In a vain attempt to avoid the applicability of the massive weight of precedent against him, Mr. D. V. Sehgal, learned counsel for the respondent was pushed into taken the untenable stand that State 8 of 1956 Act was designed to bring a radical change from the existing law under the 1890 Act. It was first sought to be argued that Section 8 deals with the natural guardian of a Hindu minor whereas the 1890 Act pertains to a certificated guardian. This, however, plainly is a distinction without a difference in the context of the plain intention of the legislature to bring the restriction on the power of a natural guardian of a Hindu minor at par with the similar restriction in the 1890 Act. Learned counsel could indeed point to nothing whatsoever which

was indicative of any legislative intent to make a change in the law as it stood under the 1890 Act. As I have already shown above far from there being intent to vary the law the identity of language in the 1956 Act leaves no manner of doubt that the same was merely declaratory and designed to equate the legal position of a natural guardian of a Hindu minor with that of a guardian under the 1890 Act in the specific context of a transfer of immovable property without the permission of the Court.

11. Once it is so held, it is plain that there is such massive precedent of all the High Courts (indeed without a single judgment being cited to the contrary before us) that a transfer of immovable property by a certificated guardian under the 1890 Act without the sanction of the Court could be avoided by the minor after attaining majority only within the period of limitation prescribed by Article 44 of the earlier Limitation Act. Indeed the authorities in support of this view are so overwhelming and the varied reasons given therefor are so well elaborated in erudite judgments that it seems to be wasteful now to attempt an examination on first principles. It would perhaps suffice to mention that the earliest considered judgment on the point which was brought to our notice in *Sinaya Pillai v. Munisami Ayyan*, (1899) ILR 22 Mad 289, which received affirmance by the Full Bench presided over by Chief Justice Leech in *Mir Ghulam Hussain Sahib v. Ayesha Bibi*, AIR 1941 Mad 481 and which silenced all discordant notes in that High Court by overruling all judgments to the contrary. It was held therein as under :--

'.. As I have already observed, the transaction is voidable and not void and operates as a valid transfer unless set aside at the instance of the minor or minors concerned within the period allowed by the law of limitation. The decision of *Ramesam and Cornish, JJ.*, not only runs directly contrary to unambiguous words of the statute, it ignores three decisions of this Court which were binding upon the learned Judges, namely, *Sinaya Pillai v. Munisami Ayyan*, (1899) ILR 22 Mad 289; *Periakaruppan Chetty v., Kandasami Chetty*, 1933 Mad WN 791 and *Sivanmalai Goundan v. Arunachala Goundan*, (1938) 2 Mad LJ 428 : (AIR 1938 Mad 822). I fail to understand the reference made to a sale which is 'prima facie valid', because the statute leaves no doubt that a transfer made by a lawful guardian without sanction of the Court is valid until it is set aside.'

12. The aforesaid view is in accord with that prevailing in the Calcutta High Court in Kanok Devi v. Srihari Goswami, AIR 1919 Cal 404. No judgment of that Court taking any discordant view could be cited. The Bombay High Court in the analogous context of the alienation by the natural guardian of a Hindu minor has taken as identical view in Fakirappa Limanna Patil v. Lumanna Mahadu Dhamnekar, AIR 1920 Bom 1(FB) and Gangadhar Balkrishan v. Dattatraya Baliram, AIR 1953 Bom 424.

13. It seems unnecessary to multiply authorities or to quote extensively therefrom. It suffices to mention that the identical view has been expressed by the Division Benches in Ram Charitter Misir v. Suraj Teli, AIR 1932 All 108 and Jagdamba Prasad Lalla v. Anadi Nath Roy, AIR 1938 Pat 337.

14. Without this Court as well the aforesaid view has been consistently followed without exception. Sir Shadi Lal, C. J., speaking for the Bench in Labha Mal v. Malak Ram, AIR 1925 Lah 619(2) enunciated the rule in the following terms :--

'.. If, on the other hand, the sale is made by a natural guardian, who goes beyond the scope of his authority, the transaction cannot be regarded as a nullity and will bind the minor unless he succeeds in impeaching it within the period prescribed by law.

There is ample authority for the view that an unauthorised alienation by a guardian recognised by law is voidable and not void, vide Luxmava Huchappa v. Rachappa, (1918) 42 Bom 626 : (AIR 1918 Bom 180); Fakirappa Limanna Patil v. Lumanna Bin Mahadu Dhamnekar, (1920) ILR 44 Bom 742 : (AIR 1920 Bom 1) and Brojendra Chandra Sarma v. Prosunna Kumar Dhar, (1920) 24 Cal WN 1016 : (AIR 1920 Cal 776). The learned counsel for the plaintiffs places his reliance upon a judgment of the Allahabad High Court in Bachan Singh v. Kamta, Pershad, (1910) ILR 32 All 392, but with all the deference to the learned Judges I am unable to concur in their exposition of the law.

There can be no doubt that a suit by quondam minor to set aside an alienation of his property by his guardian is governed by Article 44, and that, if he cannot establish his right to possession without first setting aside the alienation the suit for

possession is also governed by the Article. Indeed, it has been expressly ruled by the Bombay High Court that, if the equity of redemption is sold by the minor's guardian to the mortgagee, the minor, on attaining majority, cannot claim redemption without first setting aside the said within the period prescribed by Article 44, vide *Fakirappa Limanna Patil v. Lumanna Bin Mahadu Dhamnekar*, (1920) ILR 44 Bom 742 : (AIR 1920 Bom 1). The rule laid down by the Bombay High Court proceeds upon the principles enunciated by their Lordships of the Privy Council in *Malkarjun v. Narhari*, (1901) ILR 25 Bom 337, and I have no hesitation in holding that the suit brought by the plaintiffs is governed, not by Article 148 but by Art. 44.'

This was unreservedly followed by the Division Bench in *Data Ram v. Ragan Nath*, (1929) 116 Ind Cas 893. Whilst observing that this view has been consistently held in the Punjab Chief Court and the Lahore High Court. In *Prem Nath v. Bal Kishan*, AIR 1959 Punj 313, the Division Bench after considering the matter exhaustively and advertent to a mass of case law has concluded as follows :--

'(a) If, however, a sale is made by a natural guardian who goes beyond the scope of his authority, or if it is made by a certificated guardian without the permission of the Court, the transaction is merely voidable at the instance of the minor and will bind him till he succeeds in impeaching it;

(b) that a suit by a quondam minor to set aside an alienation of his property by his guardian is governed by Article 44 of the First Schedule of the Indian Limitation Act;

(c) that if a quondam minor brings a suit for possession of the property alienated by his guardian or for redemption of a mortgage of a property effected by his guardian, the suit will also be governed by Article 44 of the First Schedule of the Indian Limitation Act and not any Article 148 of the Indian Limitation Act;

(d) that the proposition of law that a plaintiff need not sue to set aside a transfer to which he was not a party may well apply to a case of a reversioner impugning an alienation by a Hindu widow, but cannot possibly apply to the case of a minor on whose behalf an alienation has been made by his guardian and who is far all

intents and purposes regarded as a party to the transfer.'

In *Sukhdev Singh v. Jangir Singh*, 1976 Rev LR 101, R. N. Mittal, J., applied the identical considerations under Section 8 of the 1956 Act with the following observations :--

'..... Even if it is assumed that the sale was not for the benefit of the minor, it was voidable under sub-section (3) of Section 8. In case the transaction is voidable, it is, the first instance, to be avoided by the minor or the quondam minor and thereafter he can claim the possession thereof. In case the alienation is void, he need not get a declaration that the transaction is void, but can institute a suit for possession straightway. In the former case Article 60 is applicable and in the latter, Article 64. In the present case, the alienation was by a natural guardian and, therefore, it was voidable at the instance of Sukhdev Singh. He, in the first instance, has to get the sale set aside and then he can claim possession. Thus Article 60 will be applicable to this suit.'

15. It would be manifest that at least within the jurisdiction a consistent view in favour of the appellant has been taken in the Chief Court of Punjab, the predecessor High Court of Lahore and this Court. Indeed no contrary view right from the enforcement of the 1890 Act could be cited before us barring the passing observations in the single Bench judgment in *Kulbir Inder Singh v. Vikram Singh*, ILR (1972) 1 Punj and Har 395, to which detailed reference is made hereafter. It would thus follow that the consistent stream of precedent in this Court is also sanctified by the rule of stare decisis as well.

16. From the aforesaid conspectus of precedent it would follow that without a hint of any meaningful dissent the massive weight of precedent is that to impeach a transfer of immovable property by the certificated guardian without the permission of a Court, the minor must sue within the prescribed period of three years after attaining majority. Once that is so a fortiori it follows that the position of a Hindu minor assailing a similar transaction of his natural guardian is no different and identical considerations would be applicable to this case under Section 8(3) of the 1956 Act.

17. Now apart from the unbroken line of precedent the legal position would appear to be the same both on principle and the language of the statute. It deserves highlighting that before the enactment of the 1956 Act the natural guardian of a Hindu minor was clearly entitled to transfer the immovable property of the minor for legal necessity or for his patent benefit. If these conditions were satisfied no taint of invalidity attached to such a transfer and no permission of the Court was necessary. At best such a transfer could be avoided by the minor on his attaining majority if he was clearly able to establish that the same was not for legal necessity or for his benefit or was unconscionable. Therefore such transfers by the natural guardian of a Hindu minor prior to 1956 could not even remotely be dubbed as either void or as a nullity. With this background pointed attention is called to the language of sub-section (3) of Section 29 and 30. This in terms states that such a disposal of immovable property by the natural guardian is voidable at the instance of the minor. The Legislature has advisedly used this terminology and cannot be ascribed ignorance of the sharp legal distinction between a transfer, that is, void and one that is merely voidable at the instance of one of the parties. Therefore where the legislature has itself termed the transaction as voidable it cannot by a process of judicial interpretation be treated as void or a nullity which can be conveniently ignored by any party thereto. It is well to recall herein the definition in Section 2(i) of the Indian Contract Act :--

'2(i). An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.'

The essence of a voidable contract has been authoritatively enunciated in Anson's celebrated work on the law of Contract as under :--

'A voidable contract, however, is a contract which one of the parties may rescind or affirm at his option. If he chooses to affirm the contract, or if he fails to exercise his right to rescind within a reasonable time so that the position of the parties has in the meantime, become altered, he may find himself bound by it; otherwise he is entitled to repudiate his liability. Nevertheless the contract is not a nullity from the beginning. Until it is rescinded, it is valid and binding.' Again in this particular context a contract voidable at the instance of the minor the rule is enunciated in

the following terms:--

'Where an infant acquires an interest in a permanent property to which obligations attach, or enters into a contract involving continuous rights and duties, benefits and liabilities, and takes some benefit under the contract, he will be bound, unless he expressly disclaims the contract during infancy or within a reasonable time of attaining his majority.'

It is, therefore, well-settled that a transfer of immovable property by the natural guardian of a Hindu minor far from being void or being a nullity is in fact one which fully binds the other party. The minor can always avail the benefit thereof and after ratifying or accepting the same enforce the contract. Such a transaction is perfectly valid until duly avoided by the minor. Not only that precedent is unanimous that he can avoid the same only by restoration of any benefits received under such a transfer and if he does not choose to do so, the Court would refuse to avoid such a transfer. In *Sri Chandra Prabhuji Jain Temple v. Harikrishna*, AIR 1973 SC 2564, their Lordships have unequivocally observed as follows (at p. 2571) :--

'..... The High Courts in this country have taken the view, and we think rightly that as condition for setting aside a disposal of immovable property made in contravention of Section 28 or Section 29 which is voidable under Section 30, it is just that there must be restitution of the benefits received (see *Pershotam Das v. Nazir Hussain*, AIR 1920 Oudh 53(2); *Peria Karuppan Chetty v. Kandasamy Chetty*, 1933 Mad WN 791 and *Abbas Husein v. Kiran Shashi Devi*, AIR 1942 Nag 12).'

On principle and the language of the statute as well it must be concluded that a minor-plaintiff seeking to avoid the transaction (and consequently claiming possession) by his natural guardian under Section 8(3) must necessarily seek the setting aside of the transfer of such property which would in terms attract the applicability of Article 60 of the Limitation Act.

18. In fairness to the learned counsel of the respondents it must be categorically observed that their alleged stand that under Section 8(3) a minor does not

impeach or seek the setting aside of the transfer but merely claims to be not bound thereby seems to be patently untenable. It must be remembered that the transfer sought to be avoided is no other than one made expressly in the name of the minor himself by its guardian. In the eye of law the transfer is by the minor as the principal though the agency of his guardian. This can be pointedly put in terms of art to say that the minor in such a transfer is co nomine a party to the said transfer. Once a person is co nomine a party to a transaction which is merely voidable then it cannot lie in his mouth to say that it is a nullity or is non est which he can conveniently ignore at his bidding. This distinction between a person who is co nomine a party to a contract and seeks to assail the same as against a person who was in no way a party to the transaction is well recognised. Reference in this connection may be made to the Full Bench in *Sankaranaryanna Pillai v. Kandasamia Pillai*, AIR 1956 Mad 670, wherein after discussion of the case law it was observed as follows :--

'The principle deducible from this case is that where the transaction is with regard to the minor, it should be deemed as if he were co nomine a party.'

and it was concluded as under :--

'There is no doubt whereas that a transaction entered into by a guardian relating to the minor's properties is not void and if the minor does not sue to set it aside within three years of his attaining majority it becomes valid under Article 44, Limitation Act. In such a case the minor is deemed to be a party to the transaction.'

The aforesaid view was unreservedly followed by the Division Bench in *Beyyathumma v. Moidin Haji*, AIR 1959 Ker 125, and *Validialingam, J.*, speaking for the Bench concluded as under :--

'Applying the principle laid down by the decisions referred to above it follows that the suit transactions entered into by the second defendant who was the legal guardian of the plaintiffs and the third defendant are only voidable and not void. Being only voidable transactions, the reasoning of the lower Court that they have to be set aside is correct. It further follows that the suit so far as the appellant is concerned, is barred by limitation.'

(That is by Art. 44 of the Indian Limitation Act, 1908).

This view that the real contracting party is the minor himself and not merely his guardian has the seal of approval by the Privy Council as well. In *Srikakulam Subrahmanyam v. Kurra Subha Rao*, AIR 1948 PC 95, their Lordships were examining the question as to who was the real controversy in a contract for sale by the mother guardian on behalf of her minor son. It was held categorically as under :--

'The position of a guardian under the Hindu Law was considered by their Lordship's Board in (1856) 6 Moo Ind App 393 and the following passage is to be found at page 412 : 'They contract that the acts of the Ranee cannot be reasonably viewed otherwise than as acts done on behalf of another, whatever description she gave to himself, or others gave to her.' 'Thus the act of the mother and guardian in entering into the contract of sale in the present case was an act done on behalf of the minor appellant' 'Having regard to all the circumstances their Lordships are of opinion that the respondent is the person who most aptly answers the description of 'the transferor' in the sense in which these words are used in S. 53A.'

Again, it seems otherwise wholly untenable that a valid transfer of immovable property by a formal registered deed which would pass the legal title to the vendee and has been executed in the name of the minor who thus is co nominee a party thereto can be later bypassed by his mere unilateral act. If it were so, wherein would it be established whether the permission of the Court was not taken, or if so taken, was tainted with invalidity? Wherein would it be determined, whether the minor, by his subsequent conduct after attaining majority has approbated or affirmed the transaction and thereafter is choosing to go back thereon? How it repudiating the transfer, he has rendered full restitution to the other party without which it has been authoritatively held that he cannot be allowed to withdrawn from the transaction. All this seems to render it elementary that not only is it mandatory but equally desirable that the minor, on attaining majority, could expressly impeach the transaction of his guardian, if he seeks possession of the property, as a plaintiff.

19. In view of the above, the evasive stance by a minor plaintiff that he is not bound by the transaction, when suing for possession, is *stricto sensu* nothing but an impeachment and a claim for setting aside of a transfer made expressly on his behalf and to which he is co nomine a party. Once that is so, it would clearly bring the matter within the four corners of Art. 60 of the Limitation Act, 1963.

20. Again on a construction of Art. 60 of the Limitation Act of 1963 (analogous to Article 44 of the Indian Limitation Act, 1908), I am inclined to the view that this would apply independently to a suit for possession by a minor in consequence of setting aside to transfer of property made by his guardian. This reads as under :--

'Description of suit. Period of limitation. Time from which period begins to run.

60. To set aside a transfer of property made by the guardian of a ward--

(a) by the ward who has attained majority: (b) by the ward's legal representative--
Three years. When the ward attains majority.

(i) when the ward dies within three years from the date of attaining majority: Three years. When the ward attains majority.

(ii) when the ward dies before attaining majority. Three years. when the ward diss.'

A close analysis of the language aforequoted would indicate that in specific terms it now applies to suits by a minor who has attained majority and even further by his legal representatives when he dies either after attaining majority or from the death of the minor. The broad spectrum of the nature of the suit is the setting aside of the transfer of immovable property made by the guardian. Consequently a suit for possession by avoiding the transfer by the guardian in violation of S. 8(2) is in essence nothing more than seeking a setting aside of the transfer and as a consequential relief to claim possession. It goes without saying that as long as the transaction by the guardian retains its validity, the relief of possession cannot possibly be granted. It would be tautologous to say that the possession of the property which was specifically the matter of the transfer is claimed but the validity of the deed of the same transfer is not being assailed or sought to be set aside. This is the more so because such a deed of transfer is one to which the quondam

minor is co nomine a party. Consequently the specific provisions of Article 60 pertaining to the transfer of a property made by the guardian of a ward are particularly attracted. Therefore in this context to apply the general provisions of Art. 60(4) would be violating the basic principle that the special excludes the general.

21. In fairness to the learned counsel for the respondent, one must notice his somewhat ingenious contention that by merely filing the suit the minor plaintiff implicitly elects to avoid the earlier transfer by the guardian and must be construed as suing for possession alone. In my view this appears to be nothing else but legal heir-splitting. It is settled beyond cavil that the transfer by the natural guardian of the immovable property of the minor without permission of the Court is valid until the same is got set aside at the instance of the minor. To repeat such a transaction is neither void nor a nullity which can just be ignored. That being so claiming possession of the property which had passed to the vendees under the deed is nothing else but impeaching, assailing and avoiding the said deed executed by the guardian on behalf of the minor. So constricted a construction of Art. 60 so as to hold that such a suit would not involve within its ambit the setting aside of the transfer of immovable property by the guardian would in my view be so hypertechnical as to render the provisions of the said Article virtually otiose. In this context a succinct analysis of the true nature of the suit by R. N. Mittal, J., in Sukhdev Singh's case (1976 Rev LR 101)(supra) deserves recalling. Therein it was rightly held that the twin relief in essence is that setting aside of the transfer by the guardian and the consequent claim in possession of the transferred property. The latter relief cannot accrue without the former. It must therefore be held that a suit for possession in this context by a quondam minor as plaintiff is nothing more than a claim for setting aside the transfer earlier entered into on behalf of the minor by his guardian and as a consequential relief seeking possession of the property covered thereby to which Art. 60 would be pristinely attracted dehors any other consideration.

22. In the end one must repel Mr. Sehgal's stand on behalf of the respondent that the suit of the quondam minor herein was identical with that of a reversioner challenging an alienation by a Hindu widow without legal necessity or other valid

grounds. Basic reliance herein was placed on the observations of the Privy Council in *Bijoy Gopal Mukerji v. Krishna Mahishi Debi*, (1907) ILR 34 Cal 329.

23. It is obvious that the aforesaid judgment is plainly distinguishable. That the statutory legal position of the quondam minor under S. 8(3) of the 1956 Act cannot be identical with the peculiar legal incidents attaching to the rights of the reversioners in impeaching transactions with regard to a Hindu widow's estate is too elementary to need elaboration. Again as pointed out earlier the quondam minor is *eo nomine* a party or is deemed to be so to the earlier transfer made on his behalf by his natural guardian. Admittedly a reversioner would not even remotely be a party to the transaction by the Hindu widow and at the time of making such a transfer may have not the least right would accrue only upon the death of the Hindu widow and for the specific rules of the Hindu widow and for the specific rules of the Hindu Law governing the situation. It was in such a context that their Lordships in *Bijoy Gopal Mukerji's* case had said that in fact there was nothing either to set aside or cancel as a condition precedent to the right to action of the reversionary heir. In the case of the challenge by the quondam minor the position is diametrically opposite because he essentially seeks the setting aside or cancellation of the transfer by a registered deed made on his behalf by the guardian as a condition precedent for claiming the consequential relief of possession etc., of the property governed by the deed. Now apart from principle there is high authority for holding that *Bijoy Gopal Mukerji's* case has no applicability to the cases of a quondam minor. The Full Bench in *Fakirappa Limanna Patil's* case (AIR 1920 Bom 1) in terms referred to the same before holding that a transfer of immovable property by a mother as a natural guardian has to be set aside before recovery of possession and such a suit is governed by Art. 44 of the Limitation Act. Again *Gajendragadkar, J.*, speaking for the Division Bench in *Gangadhar Balkrishna's* case (AIR 1953 Bom 424)(*supra*) has expressly held that *Bijoy Gopal Mukerji's* case (1907 ILR 34 Cal 329)(PC) had no application in this context. The Division Bench in *Pran Nath v. Bal Krishan*, AIR 1959 Punj 313, following the aforesaid view has observed as follows :--

'The facts in *Bijoy Gopal Mukerji's* case were entirely distinguished from those of the present one. The sale there was by a widow representing her husband's

estate, and it is obvious that until her death there was no one who had a vested interest, nor was there an obligation on anyone to take proceedings until the revision fell. In the present case the sale by a guardian of the minors and the guardian represented the minor's estate and had power to manage it for the benefit of the minors. What would be true about a reversioners' suit in which he seeks to challenge the alienation by a Hindu widow cannot possibly be true about because in the later case it is obligatory upon the minor to challenge the alienation within the narrower period of limitation prescribed by Art. 44 of the Indian Limitation Act.' It must, therefore, be concluded that the observations in Bijoy Gopal Mukerji's case in the peculiar context of the claim of a Hindu reversioner have little or no relevance in the present one. Indeed the Privy Council either by way of quondam minors has held to the contrary.

24. In *Gnanasambanda Pandara Sannadhi v. Velu Pandaram*, (1900) ILR 23 Mad 271(PC), the observations which directly cover the point are as follows :--

'Chockalinga attained majority in 1888 and had by Article 44 of the Act three years for suing to set aside the sale by his guardian. He did not do so and S. 28 of the Limitation Act his right became extinguished.'

Again in an analogous situation where a decree for possession was sought without seeking to set aside the sale, the Privy Council in *Rani Janki Kunwar v. Raja Ajit Singh*, (1886-87) 14 Ind App 148, has held as under :--

'Then the Judicial Commissioner deals with the case in a different way. He says the suit is essentially a suit for the possession of immovable property, and as such falls within the twelve years' limitation. Now he is clearly wrong there. It was not a suit for the possession of immovable property in the sense to which this limitation of twelve years is applicable, The immovable property could not have not recovered until the deed of sale had been set aside, and it was necessary to bring a suit to set aside the deed upon payment of what had been advanced, namely, the Rs. 1,25,000/- . Therefore there has been on the part of the lower Courts a misapprehension of the law of limitation in this case. Their Lordships are clearly of opinion that the suit falls within Art. 91 of the Act XV of 1877, and is therefore barred.'

Again in *Malkarjun v. Narhari*, (1901) ILR 25 Bom 337, whilst dealing with the challenge to judicial sale riddled with material irregularities Lord Hobhouse observed as under :--

'It is obvious that the expression 'set aside a sale' is not attended by any such difficulty, because a sale, valid until set aside, can be legally and literally set aside; and anybody who desires relief inconsistent. That brings us to the last point in this rather tangled controversy, viz., what is the period allowed for setting a sale aside ?'

'What is the justification for refusing to construe Article 12(a) according to its obvious meaning whenever a suitor goes on to pray for that relief which is the object, perhaps the only object, of setting aside the sale? The Lordships hold that both the letter and the spirit of the Limitation Act require that this suit, when looked on as a suit to set aside the sale, should fail within the prohibition of the Article.'

25. In *Mata Din v. Ahmad Ali*, (1912) ILR 34 All 213, their Lordships of the Privy Council whilst examining the transaction by a wholly unauthorised guardian of a Muslim, it was observed as under :--

'Article 44 prescribes a period of three years within which a ward, who has attained majority, may set aside a sale made by his guardian, the time running from the date of the ward's majority. This provision has no application to the present case, for the sale here was effected, not by a guardian, but by a wholly unauthorised person.'

26. The natural and direct corollary of the above is that if the sale was by a guardian then Art. 44 would be ipso facto attracted. It is thus patent that the authoritative view of the Privy Council far from in any way aiding the respondent is in fact directly contrary to his stand.

27. Inevitably one must now advert to two discordant notes against the main stream of precedents and which find mention in the reference order. In *Kulhir Inder Singh v. Vikram Singh*, ILR (1972) 1 Punj and Har 395, H. R. Sodhi, J., sitting singly had considered a somewhat analogous question in the context of the

court-fee payable. However, there is no gainsaying the fact that the observations in the said cease directly assist the stand of the respondent. This judgment, however suffers from the major infirmity of not noticing the earlier decision of the Division Bench in Pran Nath's case (AIR 1959 Punj 313)(supra) which was binding on learned single Judge. Reliance was placed on the observations in Bijoy Gopal Mukerji's case (1907) ILR 34 Cal 329(PC)(supra) which I have already shown, is not attracted to the situation. A view contrary to the Full Bench in Sankaranarayana Pillai v. Kandasamji Pillai, AIR 1956 Mad 670, was taken by the learned single Judge which, as already discussed above, seems to cover the point directly and is worthy of acceptance. The corresponding provisions of 1890 Act, and long line of precedents thereunder do not seem to have been adequately brought to the notice of the Court. For the detailed reasons recorded above, with respect it appears that the view taken therein is not tenable and the same is overruled.

28. For similar reasons I would with respect record my decision from the view expressed by the learned single Judge in Santha v. Cherukutty, AIR 1972 Ker 71. It calls for pointed notice that at the very outset it was observed that the question therein was riddled with difficulties and conflicting precedents. The facts have been delineated with some brevity wherefrom it seems to appear that the suit was brought by the plaintiff-alienee against the execution proceedings taken up on behalf of the minors. It would thus appear that in the suit the minor was in the position of a defendant, and that altogether different considerations would apply in such a situation has been made plain at the very outset because in defence a plea of repudiation may be allowed to be raised at any time. In the end the learned Judge himself noticed that the larger question which he had to dispose of the short point arising from the language of Section 8 of the 1956 Act. Herein the matter appears to have been treated as one of first impression by the learned Judge and he merely rested himself content with reiterating his earlier view expressed in view contrary to the Full Bench in Sankaranarayana Pillai's case (AIR 1956 Mad 670)(supra) has been taken and reliance was placed on Bijoy Gopal Mukerji's case (1907 ILR 34 Cal 329)(PC)(supra) which as already said would not be applicable, The unbroken line of precedents and the language of analogous provision of Sections 29 and 30 of the 1890 Act seem to have altogether issued

notice. With the greatest respect and for the numerous reasons discussed in the earlier part of this judgment, I find myself wholly unable to subscribe to the view in this case and record my dissent therefrom.

29. To conclude finally, the answer to the question posed at the very outset is rendered in the affirmative. It is held that a quondam minor plaintiff challenging the transfer of an immovable property through his natural guardian in contravention of S. 8 (1) and (2) of the [Hindu Minority and Guardianship Act, 1956](#) and seeking possession of the property can bring the suit only within the prescribed period of three years after attaining majority under Art. 60 of the Indian Limitation Act, 1963. The view of the Division Bench in *Pran Nath v. Bal Kishan*, AIR 1959 Punj 313, holding to the same effect is hereby affirmed.

30. Applying the above in R. S. A. No. 1479 of 1970 (*Surta Singh v. Pritam Singh*) it inevitably follows that the finding of the appellate Court on Issue No. (8) on the point of limitation has to be reversed, and agreeing with the trial Court it is held that the suit was barred by limitation. This appeal is accordingly allowed with costs and the suits of the plaintiff-respondent is dismissed.

31. In R. S. A. No. 1358 of 1971 (*Anoop Kaur v. Karnail Singh etc.*) the firm stand of the learned counsel for the appellants was that apart from the aforesaid basic legal issue, other points on merits also arise for consideration. We accordingly direct that this appeal be placed before the learned single Judge for a decision on merits in the light of the aforesaid enunciation of the law.

32. I have gone through the judgment prepared by my Lord the Chief Justice but with utmost respect I regret my inability to concur with the same.

33. The point involved is as to whether a suit by a quondam minor for recovery of the possession of his property sold by a natural guardian in contravention of S. 8 (1) and (2) of the [Hindu Minority and Guardianship Act, 1956](#) (hereinafter called the Act) is governed by Art. 60 or 65 of the Limitation Act. Before dealing with the matter on merits, the circumstances and the facts leading to this reference may be noticed.

34. Pritam Singh, respondent, filed the suit giving rise to this appeal for possession of one half share in the land in dispute on the ground that the same had been sold vide sale deed dated May 22, 1959 by his mother, the natural guardian, without permission of the Court and, therefore, not binding on him. The suit was instituted on May 7, 1968 and the defence with which we are concerned in this appeal is that it was barred by time having been filed after three years of the attaining of majority. The trial Court upheld this plea but on appeal the learned Additional District Judge, Amritsar, vide judgment dated August 14, 1970, reversed its judgment and decreed the suit holding that the sale being void, the suit for possession could be brought within 12 years. The view of the learned Additional District Judge has been challenged on the basis of a Division Bench decision in *Pran Nath v. Bal Krishan*, AIR 1959 Punj 313, followed by *S. N. Mittal, J. Sukhdev Singh v. Jangir Singh*, 1976 Rev LR 101. In both these decisions, the view taken was that the sale made by the guardian without permission of the Court was voidable at the instance of the minor and, therefore, he has to sue to get it set aside before claiming possession. Consequently Article 60 of the present Limitation Act (Art. 44 of the earlier Limitation Act) was held applicable to such a suit. A contrary view was taken by Sodhi, J. in *Kulbir Inder Singh v. Vikram Singh*, ILR (1972) 1 Punj & Har 395. A similar view was expressed by V. R. Krishna Iyer, J. (as he then was) in *Sunitha v. Cherukrutty*, AIR 1972 Ker 71, and it was held that transfer of minor's property by his natural guardian without sanction of the Court is voidable at the instance of the minor and he can avoid was an apparent conflict between the said two decisions on the question involved, I referred the matter for decision by a larger Bench. Article 60(formerly Art. 44) provides three years' limitation for a suit by the ward from the date he attains majority to set aside the transfer of property made by his guardian. If this Article governs the suit then there can be no two opinions that the same had to be filed within three years of the attaining of the majority by the plaintiff. The question, however, is as to whether the minor is under any obligation to file the suit to get the sale set aside by the Court before recovering the property sold by his natural guardian without the permission of the Court. If there is no such obligation under the substantive law, this Article obviously would not be attracted and the suit would be governed by Art. 65 of the Act.

35. Before answering this question it may be observed that the Limitation Act neither confers a right nor an obligation to file a suit if none exists under the substantive law and it only provides a period of limitation for filing the suit. This proposition of law was first enunciated by the Privy Council in *Hurrinath Chatterji v. Mohunt Mothoor Mohun Goswami*, (1893) 20 Ind App 183, and it was observed, 'the intention of the law of limitation is, not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right. The purpose of the 2nd Schedule in each of the Acts is only to prescribe the period of limitation for the suit. The prescribed periods are to be applied to suits founded on the existing law and Article 141 cannot be construed as altering the law respecting the effect of a decree. Again, the Division Bench of the Madras High Court in *C. T. N. Narayanan Chettiar v. V. S. V. Lakshmanan Chettiar*, AIR 1915 Mad 1196, held that the Limitation Act merely prescribed within what period the suit must be brought and cannot be construed as of itself creating an obligation to sue where none exists. As this proposition is undisputed and never a view to the contrary has been expressed it would be useless to burden this judgment with any more precedents on this point.

36. So, we have to proceed on the premises that Art. 60 of the Limitation Act does not impose by itself by obligation on quondam minor to file a suit to set aside the transfer of property made by the guardian if there is none under the substantive law by which he is governed. The substantive law governing the minor in this respect is contained in Section 8 of the [Hindu Minority and Guardianship Act, 1956](#). Sub-section (2) of S. 8 provides that the natural guardian shall not within 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. Whereas sub-section (3) provides that any disposal of the immovable property by the natural guardian in contravention of sub-section (2) is voidable at the instance of the minor or a person claiming under him. The question is, does this provision requires a minor who wants to avoid the alienation made by his guardian in contravention of sub-section (2) to get it set aside from the Court by filing a suit. The answer both on precedent and principle has to be in the negative.

37. Prior to the enforcement of the [Hindu Minority and Guardianship Act, 1956](#), the powers of the guardian to deal with the property of the Hindu minor were regulated by the personal law if he was natural guardian and by the Guardian and Wards Act if he was a guardian appointed by the Court. Under the personal law, the natural guardian could mortgage sell or otherwise dispose of the immovable property of the minor provided the alienation was for the benefit of the minor or his estate. The law on the subject was enunciated in the following classic passage by the Privy Council in Hanooman Persaud v. Mussumat Babooee, (1856) 6 Moo Ind App 393 :--

'The power of the manager for an infant heir to charge an estate not his own, is, under the Hindu Law, a limited and qualified power. It can only be executed rightly in a case of need or for the benefit of the estate--The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded.'

The alienation made by a natural guardian thus was neither void nor voidable at the volition of the minor. He could only avoid it by getting it set aside by the Court on the proof that neither there was any need for the alienation nor it was for the benefit of the estate. Consequently, if the minor wanted to recover the property back on attaining the majority, he had to file a suit for setting aside the alienation and it was only then that he could recover back the property. Such a suit obviously was governed by the provisions of Art. 44(now Art. 60) of the Limitation Act and it had to be instituted within three years of the attaining of the majority. On the other hand, if the sale made by the natural guardian was without consideration or by way of gift or it was made by de facto guardian, the alienation being beyond the power of the guardian and the minor being not bound thereby, he was under no obligation to get it set aside from the Court and his suit to recover the property was governed by Art. 144(now Article 65) and now Art. 44 of the then prevailing Limitation Act of 1908. Although these proposition are undisputed still a reference may profitably be made to two Privy Council decisions in Mata Don v. Abad Ali, (1912) ILR 34 All 213 and Luchmeswar Singh v. Chairman of the Darbhanga Municipality, (1891) ILR 18 Cal 99.

38. As regards the alienation by a certificated guardian under the Guardians and Wards Act S. 29 provides that he could not do so without the previous permission of the Court and under Section 30 any disposal of the immovable property made without sanction is voidable at the instance of the minor or any other person affected thereby. The provisions of Section 8 (2) and (3) of the Act are *pari materia* with those of the Guardians and Wards Act. From a bare perusal of the provisions of the statute it is apparent that the natural guardian after the enforcement of the Act is debarred from alienating the property of the minor without the prior sanction of the Court. The Legislature had purposely used the word, 'shall' in sub-section (2) of S. 8 of make this provision mandatory. However, in sub-section (3), the alienation made in contravention of the provisions of sub-section (2) has been made voidable at the instance of the minor or any other person claiming under him. The use of the term voidable does not necessarily mean that the alienation is voidable in the sense that it is binding on the minor unless it is set aside. The minor, however, may choose to ratify the alienation though it is not binding on him and it is only to that extent that it is voidable. The term voidable has obviously been used to convey the latter sense in sub-section (3) because by virtue of the provisions of sub-section (2) the guardian is absolutely barred from making any alienation without the prior sanction of the Court. The alienation made by the guardian without the permission of the Court would be against the mandatory provisions of law and, therefore, bring not binding on the minor, he would not be required to get it set aside by the Court. Still the alienation would be voidable in the sense that the minor on attaining majority may choose to ratify it, may be it was for his benefit or for any other reason. This distinction in the use of the term voidable was succinctly brought by a Division Bench of the Patna High Court in *Kailash Chandra Pradhan v. Rajani Kanta Pande*, AIR 1945 Pat 298 in the following terms :--

'An alienation by a *de facto* guardian of a Hindu minor, if for necessity, is binding on the minor. But it does not follow that an alienation by a *de facto* quadroon, not supported by necessity, is voidable in the sense that it is binding on the minor until it is set aside. If the alienation is not for the benefit of the minor, it is not binding on the minor. The minor however may choose to ratify it though it is not binding on him and it is only to that extent that it is voidable. A suit to set aside an alienation

made by the de facto guardian of a Hindu minor is therefore governed by Art. 144 and not by Art. 44.'

The alienation made by the natural guardian without permission of the Court is voidable at the volition of the minor. This volition could be exercised by any act which has in unequivocal terms the effect of communicating to the alienee that the minor has repudiated the act of his guardian and is not bound by the same. It is well settled that whenever the contract is voidable at the instance of any party, he is not required to avoid the contract to go to the Court and get it set aside. The moment the volition is exercised, the alienation becomes ineffective and void qua the minor. If that is so and the alienation becomes ineffective and non est the moment the discretion is exercised by the minor nothing remains to be done by the Court to set it aside. The filing of the suit for the recovery of the property is well known mode of exercising volition by a minor and by doing so, the minor has effectively exercised the volition and the alienation becomes ineffective and enforcement against him. Where is then the question of setting aside the alienation by Court This matter was dealt with great clarity by Leach, C. J., who spoke for the Full Bench of Five Judges in *C. R. Ramaswami Ayyangar (minor) v. C. S. Rangachariar*, AIR 1940 Mad 113 :

'xx xx xx xx The other transactions of defendant 1, whether the plaintiff is made a party thereto or not, stand on a different footing. He is not bound under the substantive law by which he is governed, to sue for declaration or cancellation in respect of any of them. The legal position has been correctly explained in (1891) ILR 14 Mad 26 at p. 28 in the following words which were taken from an unreported decision of this Court :

'If a person not having authority to execute a deed, or having such authority under certain circumstances which did not exist, executes a deed, it is not necessary for persons who are not bound by it, to sue to set it aside, for it cannot be used against them. They may treat it as non-existent and sue for their right as if it did not exist. The same principle has been distinctly laid down by the Privy Council in (1907) ILR 34 Cal 329 at p. 333, where their Lordships point out the jural basis underlying such transactions. In that case the reversioner sued for a declaration

that a lease granted by the widow of the last male owner was not binding on him and for khas possession. It was objected that the omission to set aside the lease by a suit instituted within the time limited by Art. 91, Limitation Act, was fatal to the suit. The following observations which are equally applicable to a father or manager of a joint Hindu family are apposite :

A Hindu widow is not a tenant for life, but is owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death. But she may alienate it subject to certain conditions being complied with. Her alienation is not therefore absolutely void, but it is prima facie voidable at the election of the reversionary heir. He may think fit to affirm it or he may at his pleasure treat it as nullity without the intervention of any Court, and he shows his election to do the latter the commencing an action to recover possession of the property. There is in fact, nothing for the Court either to set aside or cancel as a condition precedent to the right of action of the reversionary heir. It is true that the appellants prayed by their plaint a declaration that the ijara was inoperative as against them, as leading up to their prayed for delivery to them of khas possession. But it was not necessary for them to do so, and they might have merely claimed possession, leaving it to the defendants to plead and (if they could) prove the circumstances which they relied on for showing that the ijara or any derivative dealing with the property were not in fact voidable but were binding on the reversionary heirs.' In such cases even if the plaint contains a prayer for a declaration or cancellation, there is good reason for holding it to be done for a purely incidental but unnecessary relief.'

39. In *T. P. Patheroermal Chetty v. R. Muniandi Servai*, (1908) 35 Ind App 98, the plaintiff's predecessor collusively executed a benami deed of sale in favour of the defendants' predecessor. Rejecting the plea of limitation of the defence it was held that the sale being benami was inoperative and did not require it to be set aside. Consequently, Art. 144 and not 91 was applicable. In the present case also, the moment the plaintiff repudiated the alienation by filing the suit, it became inoperative and did not require to be set aside. In *Sivanmalai Goundan v. Arunachala Goundan*, AIR 1938 Mad 882, relying on *Trevelyan on Minors*, Edn. 5, page 202 and *Muthukumara Chetty v. Anthony Udayan*, AIR 1915 Mad 296, it was

observed that it is far from correct to say that the minor cannot repudiate transfer except by a suit under Art. 44. The passage relied upon from Trevelyan's book reads as under :--

'A transaction which is voidable at the instance of the minor may be repudiated by any act or omission of the later minor, by which he intends to communicate the repudiation, or which has the effect of repudiating it, for instance, a transfer of land by him avoids a transfer of the same land made by his guardian before he attained the age of majority. It is not necessary that he should bring a suit; but a suit set aside the acts of his guardians during his minority amounts of course of an express repudiation.'

This passage was again relied upon by the Division Bench of the Patna High Court in Jagdamba Prasad Lalla v. Anadi Nath Roy, AIR 1938 Pat 337, to make the following observations :

'The next question is whether the minor has avoided the deed of release. There is some confusion in the minds of the litigants that it is necessary for a minor either to institute a suit on coming of age to avoid the transaction entered into by his guardian on his behalf or that some other guardian or next friend of the minor must institute a suit to avoid the transaction which was entered into by another guardian. The minor can avoid the transaction in a variety of ways, for instance, by dealing with or transferring the very property which has been dealt with by the guardian on his behalf and which transaction he does not choose to ratify. xxx xxx'

A similar view was expressed by S. K. Ghose, J. in Nagendra Nath Ghose v. Mohini Mohan Bose, AIR 1931 Cal 131, and it was held :

'Where immovable property belonging to a minor is sold by his certificated guardian for consideration but without the permission of the District Judge, and the same property is subsequently sold by the certificated guardian but without the permission of the District Judge, the second sale does not purport to transfer a mere right to sue within Section 6, Transfer or Property Act, and it is not necessary for the second vendee expressly to seek to set aside the sale by suit brought within the period prescribed by Article 91. He is entitled to sue for possession of

the property on a declaration that the previous sale is not binding on him and his suit will be governed by Art. 120, and further the second vendee can get the possession of the same on his reimbursing the first vendee.'

In three direct Division Bench cases, two of the Calcutta High Court : (1) Harendra Narain Singh Chowdhry v. T. D. Moran, (1888) ILR 15 Cal 40, (2) Mahamed Arif v. Sareswati Debya, (1891) ILR 18 Cal 259 and one of Allahabad High Court in Abdul Rahman v. Sukhdayal Singh, (1906) ILR 28 All 30, where the question directly came up for consideration, it was held that the sale made by the certificated guardian need not be got set aside by the minor before claiming possession of the property sold.

40. Again, Section 60 of the Indian Contract Act lays down the mode in which the voidable contract is to be rescinded and provides that the rescission may be communicated or the contract be revoked in the same manner and subject to the same rules as applied to the communication or revocation of the proposal. The moment the rescission or revocation is communicated to the party concerned, the contract stands rescinded. No intervention or decree of the Court is thus required to rescind a voidable contract. However, it was urged by the learned counsel for the appellant that by virtue of the provisions of Section 64 and on the principles of equity the Court can refuse to grant relief to the minor unless he has restored the benefit received under the alienation and consequently the minor does not have the absolute right to avoid the alienation. The fallacy in the arguments is quite obvious. The avoidance of the contract or alienation becomes complete the moment the minor has exercised his volition and the Court has no say in the matter. However, the Court can put a condition while granting the relief to the minor to recover the property that he shall not be entitled to enforce his right unless he restores the benefit received under the alienation. This discretion of the Court does not in any way mitigate against the rights of the minor to avoid the transaction and only invests the Court with the jurisdiction to grant to the alienee equitable relief of restoration of the benefits received by him under the revoked contract or alienation. So far as the alienation is concerned, the Court cannot say that the same would be valid and effective in spite of the fact that the minor has chosen to avoid it. The Court is, therefore, not to pass a decree to set aside the

alienation which stands avoided by the filing of the suit to recover the property, the subject matter of the alienation.

41. No decision of the contrary was brought to our notice prior to the decision in *Mir Ghulam Hussain Sahib v. Avesha Bibi*, AIR 1941 Mad 481(FB) and the earlier decisions relied upon either related to the sale by a natural guardian or to the alienation made under such circumstances that the same were binding on the plaintiff unless set aside by the Court. Earliest case referred to in this regard is of *Rani Janki Kunwar v. Raja Ajit Singh*, (1886-87) 14 Ind App 148, in which sale deed was sought to be challenged by the heirs of the vendor on the ground of mental incompetence, unconscionable bargain and undue influence. The impugned sale was obviously binding on the plaintiffs and they had to pray for setting it aside. Any observations made in this case consequently have absolutely no bearing on the present question. In the other Privy Council case, in *Malikarjun v. Narhari* (1901) ILR 25 Bom 337, the sale was made by the executing Court serving a notice on a wrong person taking him as the legal representative of the judgment-debtor. It was held that the sale was not a nullity and required to be set aside by the legal representatives. It passes my comprehension as to how any observation made on the question of limitation in this case can have any bearing on the present case. Again, in the 3rd Privy Council case, in *Mata Din v. Ahmad Ali*, (1912) ILR 34 All 213, the sale of the property of the minor was made by an unauthorised person and it was held that Article 44 was not applicable. This case rather supports the view which I have expressed above. The learned counsel, however, wanted me to draw an inference from this decision that if the sale was made by an authorised person, Art. 44 would be attracted. There cannot possibly be any dispute with this proposition because if the sale is by a natural guardian it has got to be set aside. The last Privy Council decision relied upon was that of *Gnanasambanda Pandara Sannadhi v. Velu Pandaram*, (1900) ILR 23 Mad 271(PC). But that too is wholly inapplicable to the present case. There the sale of the right to the office of the Manager was sold by the mother of the minor. The sale being by the natural guardian was obviously binding on the minor and required to be set aside by the Court within the prescribed period of limitation. The decisions in *Fakirappa Limanna Patil v. Lumanna Mahadu Dhamnekar*, AIR 1920 Bom 1(FB), *Gurditta Mal v. Firm of Basanta Mal Panna Lal*, AIR 1925 Lah 619(1); *Data*

Ram v. Raghu Nath, (1929) 116 Ind Cas 893 and Beeyyathumma v. Moidin Haji, AIR 1959 Ker 215, relate to the sale by the natural guardian and obviously have no relevancy at all. The case in Gangadhar Balkrishna v. Dattatraya Baliram, AIR 1953 Bom 425, relates to a compromise made by the guardian in violation of the provisions of O. 32, R. 7, Civil Procedure Code and, therefore, has no direct bearing. Reliance in this case was placed on a Full Bench decision in Fakirappa Limanna Patil's case (AIR 1920 Bom 1)(supra) which related to the sale by the natural guardian. The compromise being in contravention of the law would not be required to be set aside and to that extent it is difficult to subscribe to the view propounded in this case. In Ram Charitter Misir v. Suraj Teli, AIR 1932 All 108, the sale was made by the guardian with the permission of the Court and the same was sought to be challenged on the ground of fraud. The sale being binding on the minor, having been made with the permission of the Court it was rightly held that Art. 44 would apply. The decision of the Patna High Court in Jagdamba Prasad Lalla's case (AIR 1938 Pat 337)(supra) rather runs counter to the contention of the appellant and has already been quoted above in extenso. The Full Bench decision in Sankaranarayanna Pillai v. Kandasamia Pillai, AIR 1956 Mad 670 and Sri Kakulam Subrahmanyam v. Kurra Subha Rao, AIR 1948 PC 95, were only relied upon to show that the minor is eo nomine a party which is indisputable proposition.

42. The only decisions cited by the learned counsel for the appellant which have a bearing on the question of limitation are : (1) Kanok Dasi v. Srihari Goswami, AIR 1919 Cal 404; (2) Mir Ghulam Hussain Sahib's case (AIR 1941 Mad 481)(FB); Pran Nath's case (AIR 1959 Punj 313) and Sukhdev Singh's case (1976 Rev LR 101)(supra). In Kanok Dasi's case (supra) no reasons whatsoever were given for the view that where the minor does not within three years after the attaining of the majority take action for refuting the sale made by his certificated guardian, his right to set aside and recover the possession of the property is barred by the provisions of Art. 44 and Section 28 of the Limitation Act. That apart, the two earlier Division Bench cases of the Calcutta High Court referred to above were never noticed by the learned Judge which rather run counter to the view expressed in this case.

43. In Mir Ghulam Hussain Sahib's case (AIR 1941 Mad 481)(supra), Leach, C. J. who had expressed a contrary view in the earlier Full Bench of the Five Judges in

C. R. Ramaswami Ayyangar's case (AIR 1940 Mad 113)(supra) without giving any reasons and relying on the three earlier Division Bench cases held that the alienation made by the certificated guardian being voidable operates as the valid transfer unless set aside at the instance of the minor within the period allowed by S. 44. The three Division Bench decisions relied upon were, (1) Sinaya Pillai v. Munisami Ayyar, (1899) ILR 22 Mad 289, (2) Peria Karuppan Chetty v. Kandasamy Chetty, 1933 Mad WN 791 and (3) Sivanmali Goundan's case (AIR 1938 Mad 822)(supra). None of these decisions however, supports the view expressed by the Full Bench. In Sinaya Pillai's case (supra) it was never held that the minor was required to file a suit to get the alienation set aside made by the certificated guardian without the sanction of the Court. On the other hand, the following observations made in that decision clearly show that the minor is entitled to avoid the alienation at his own volition :

'The minor defendant, through his guardian ad litem, desires to avoid the mortgage. He is entitled to do so, but only on condition that he shall restore any benefit which he has received thereunder to the person from whom it was received.'

Similarly in Sivanmalai Goundan's case (AIR 1938 Mad 822)(supra), it was never held that the minor was required to file a suit to avoid the alienation made by the certificated guardian without the permission of the Court. Instead as already quoted above, it was specifically held that the alienation could be repudiated by the minor without filing a suit. In Peria Karuppan Chetty's case (1933 Mad WN 791)(supra) also all that was said was that the sale made by the certificated guardian without the permission of the Court was not void and was only voidable. The question as to in what manner it could be repudiated by the minor was never debated or considered by the Bench. None of the three decisions, therefore, could be relied upon as precedents to hold that the minor was bound to file the suit under Section 44 to avoid alienation made by the certificated guardian under S. 44. No doubt, in all the three cases it was held that such an alienation was voidable and not void. It was perhaps for this reason that the Full Bench relied upon these decisions to further hold that the transaction being voidable had to be set aside through a suit by the minor. But in view of the provisions of the statute

and a large number of decisions of the various High Courts including that of the Madras High Court noticed above, the view expressed, if I may say with greatest respect to the learned Judges of the Full Bench, is not the correct law.

44. Though the alienation in Pran Nath's case (AIR 1959 Punj 313)(supra) was made by the certificated guardian without the permission of the Court but for holding that the suit by the minor of recovering the possession of the property would be governed by Article 44 of the Limitation Act, reliance was placed on cases in which the alienation had been made by the natural guardian of the minor. Most of these cases have already been discussed above and none of them supports the view that even in the case of alienation made by the certificated guardian without the sanction of the Court, the suit of the minor to recover the possession of the property would be governed by Art. 44 of the Limitation Act. As a matter of fact, distinction between the sale by a natural guardian and by certificated guardian without the permission of the Court which has been noticed in detail above was never brought to the notice and its significance was not considered by the Bench at all. The decision in Sukhdev Singh's case (1976 Rev LR 101)(supra) need not be discussed as it does not contain any independent reasoning and was rendered following the rule laid down by the Division Bench in Pran Nath's case (supra). Consequently, I am of the considered view that both on precedent as well as the provisions of the statute, the view expressed by Sodhi, J. in Kulbir Singh's case (ILR (1972) Ker 71)(supra) is the correct view and the suit by a quondam minor for possession of his property sold by the natural guardian in contravention of S. 8(2) of the Act would be governed by Article 65 and not 60 of the Limitation Act. So this appeal has to merit and is liable to be dismissed.

45. I have the privilege of perusing the detailed and lucid judgments recorded by my Lord the Chief Justice and brother Goyal, J. With great deference to the views expressed by Goyal, J., I agree with my Lord the Chief Justice.

ORDER OF THE COURT

46. In accordance with the majority view, the answer to the question posed at the very outset is rendered in the affirmative. It is held that a quondam minor plaintiff challenging the transfer of an immovable property through his natural guardian in

contravention of S. 8 (1) and (2) of the [Hindu Minority and Guardianship Act, 1956](#) and seeking possession of the property, can bring the suit only within the prescribed period of three years after attaining majority under Art. 60 of the Indian Limitation Act, 1963. The view of the Division Bench in *Pran Nath v. Bal Kishan*, AIR 1959 Punj 313, holding to the same effect, is hereby affirmed.

47. As a necessary consequence, R. S. A. No. 1479 of 1970(*Surta Singh v. Pritam Singh*) is allowed with costs and the suit of the plaintiff-respondent is dismissed.

48. R. S. A. No. 1358 of 1971(*Anoop Kaur v. Karnail Singh etc.*), in which other points also arise for consideration would now be placed before the learned single Judge for decision on merits, in the light of the aforesaid enunciation of the law.

49. Order accordingly.

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