

Ramadas Menon Vs. Sreedevi

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Court : Kerala

Decided On : Nov-24-2003

Reported in : AIR2004Ker126; 2004(1)KLT323

Judge : Jawahar Lal Gupta, C.J.,; S. Sankarasubban and; K. Padmanabhan Nair, JJ.

Acts : [Hindu Minority and Guardianship Act, 1956](#) - Sections 8(3)

Appeal No. : A.S. No. 451 of 1991

Appellant : Ramadas Menon

Respondent : Sreedevi

Advocate for Def. : A.P. Chandrasekharan,; P. Shrihari and; B. Krishmani

Advocate for Pet/Ap. : N. Viswanatha Iyer, Adv.

Judgement :

ORDER

S. Sankarasubban, J.

1. This appeal has been referred by a Division Bench with regard to the interpretation of Section 8(3) of the [Hindu Minority and Guardianship Act, 1956](#) (hereinafter referred to as 'the Act'). Relevant portions of Section 8 of the Act are

as follows:

'8. Powers 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.

(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.

(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'.

2. Question raised is whether alienation of immovable property by natural guardian without obtaining permission of the court is void or voidable. The appeal arises from O.S. No. 493 of 1988 of the Principal Sub Court, Thrissur. The suit was filed for partition of the plaint schedule property into two equal shares and give possession of one share to the plaintiff with mesne profits. According to the plaintiff, the plaint schedule property belonged to her father Cherodath Achutha Menon. After his death, the property devolved on the plaintiff as well as her mother. At that time, the plaintiff was a minor. According to the plaintiff, the plaint schedule property was sold by sale deed No. 1704/79 at the time when the plaintiff was a minor. The sale deed was executed by the plaintiff's mother in favour of the defendant, who is none other than the brother of the mother. The plaintiff states that the sale of the property was without getting the consent of the court and without any legal necessity.

3. The defendant filed a written statement denying the contention of the plaintiff and contended that the sale deed is valid. The court below raised relevant issues. The two issues relevant for our purpose are issue Nos. 1 and 5. The first issue is: 'Is not the sale deed No. 1704 of 1979 void as regards the plaintiff's share in the plaint schedule property is concerned for want of courts sanction under the Hindu Minority and Guardianship Act? and the other issue, 'Is the suit barred by limitation?'

4. Question that has to be considered is whether the plaintiff should have challenged the sale deed. The plaint shows that the prayer is only made for partition without a prayer for setting aside the sale deed. The Court below held that it is not necessary to challenge the sale deed, 'since the sale is void. To arrive at this conclusion, the court below relied on the decision in Santhoshkumar v. Varghese, 1987 (2) KLT 27 and other decisions of this Court. So far as the question of limitation is concerned, it took the view that since it was not necessary to challenge the sale deed, Article 60A of the Limitation Act is not applicable and hence, the suit is not barred by limitation. The suit, was decreed. It is against the above judgment and decree that the defendant has come in appeal.

5. The learned Judge referred the matter to the Division Bench as an important question regarding the interpretation of Section 8(3) of the Act was involved. When the matter came up before the Division Bench, of which one of us (Sankarasubban, J.) was a member, it was found that there was divergence of opinion. Thus, the issue was referred to the Full Bench. Accordingly, the matter has come before this Bench.

6. Section 8(3) of the Act was considered by a Division Bench of this Court in Kunhiraman v. Vanaja, 1997 (2) KLT 5, Balakrishnan, J. (as he then was) speaking for the Bench, held as follows:

'In the face of Section 8(1) of the Act, we feel that there is no scope for tracing the power of the guardian to any existing rule of Hindu Law. Thus, a transaction in violation of Section 8(2) of the Act has necessarily to be treated as a transaction in violation of a statute and consequently void. We do not think that Section 8(3) of the Act in any manner whittles down the scope or operation of Section 8(2) of the

Act. Section 8(3) of the Act only clarifies that the person who is entitled to treat the transaction as void is only the minor or any person claiming under him. According to us, Section 8(3) only indicates that the guardian who had sold his own interest along with that of the minor without the consent of the court or any other alien or who was sui juris, would not be in a position to turn round and contend that the sale effected by him of his own interest or share is also void or invalid. The object of Section 8(3) of the Act, according to us, is not to whittle down the scope of Section 8(2) of the Act but only to clarify that the right to treat the transaction as void is available only to the minor whose property is sold by the natural guardian without permission of the court or to a person who is claiming under that minor. Thus, understood, Section 8(3) cannot be relied on to hold that a transaction in contravention of the mandate of Section 8(2) of the Act, is only voidable and not void'.

The Division Bench relied on the decision in *Santha v. Cherukutty*, 1972 KLT 1051, wherein Krishna Iyer, J. (as he then was) held that a quondam minor could merely avoid a transaction without sanction under Section 8(2) of the Act by his conduct and there was no need for him to file a suit for avoiding the transfer. The Division Bench referred to the decision of Paripoornan, J. reported in *Chathu Chettiar v. Kanaran*, 1983 KLT 888. In the above decision, it was held by the learned Judge as follows: 'As to whether an alienation by the natural guardian without the previous permission of the Court is void ab initio, or is only voidable, seems to be a matter on which there is 'sharp cleavage of judicial opinion'. It may be necessary, in an appropriate case, to consider the matter in greater detail and it may have to be considered by a larger Bench'. This question came up for consideration before another Division Bench in *Gopalakrishnan Nair v. Karthiyayani Nangeli Amma*, 2000 (1) KLT 59 and the Bench, followed the decision in *Kunhiraman v. Vanaja*, 1997 (2) KLT 5, mentioned supra.

7. When the present matter came before the Division Bench, it was contended that the decision of the earlier Division Bench requires reconsideration. In the decision in *Madhukar Viswanath Munje v. Madhao and Ors.*, (2001) 10 SCC 460, the Supreme Court held that the question whether the transaction is void or voidable deserves to be considered before a Larger Bench. In paragraph 3, it was observed

as follows: 'In our opinion, important questions arise in the present case and it would be more appropriate that this case is decided by a larger Bench'.

8. It is seen that the reference was answered in the decision reported in *Madhukar Viswanath v. Madhao and Ors.* (1999) 9 SCC 4456. The Supreme Court took the view that it was not necessary to decide the question in the particular facts of the case. Subsequently, the Supreme Court in another decision reported in *Viswambhar and Ors. v. Laxminarayan*, (2001) 6 SCC 163, considered Section 8 of the Act and held as follows:

'The question is, in such circumstances, are the alienations void or voidable? In Section 8(2) of the [Hindu Minority and Guardianship Act, 1956](#), it is laid down, inter alia, that the natural guardian shall not, without previous permission of the court, transfer by sale any part of the immovable property of the minor. In Sub-section (3) of the said section, it is specifically provided that any disposal of immovable property by a natural guardian, in contravention of Sub-section (2) is voidable at the instance of the minor or any person claiming under him. There is therefore, little scope for doubt that the alienations made by Laxmibai which are under challenge in the suit were voidable at the instance of the plaintiffs and the plaintiffs were required to get the alienations set aside if they wanted to avoid the transfers and regain the properties from the purchasers'.

In view of the above decision, it is now clear that the alienations have to be challenged and without setting aside the alienation, no relief can be obtained.

9. In the above view of the matter, we hold that there should be a prayer to set aside the alienation effected by the natural guardian without the court's sanction. The Plaintiff cannot merely ignore the sale deed.

10. In this case; the trial court has held that it is not necessary to challenge the sale deed. That finding cannot be sustained in view of the decision of the Supreme Court quoted supra. Learned counsel appearing for the respondent, Sri. A.P. Chandrasekharan then submitted that he has raised other contentions in the suit including the contention that there was fraud in the alienation of the property and hence, the suit is not barred by limitation. Sri. Viswanatha Iyer, learned counsel for

the appellant denied this contention. Whatever that may be, we are of the view that the other questions in this case are to be decided by the Division Bench. Hence, we send back the case to the Division Bench for appropriate disposal.

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