Dhanasekaran Vs. Manoranjithammal and Others

Dhanasekaran Vs. Manoranjithammal and Others

SooperKanoon Citation : sooperkanoon.com/777234

Court : Chennai

Decided On : Sep-06-1991

Reported in : AIR1992Mad214; (1992)IIMLJ116

Judge : Venkataswami and; Abdul Hadi, JJ.

Acts : Hindu Minority and Guardianship Act, 1956 - Sections 6, 8, 9, 11 and 12; Hindu Succession Act, 1956 - Sections 6 and 220; Wealth Tax Act, 1957 - Sections 4

Appeal No. : Appeal No. 1198 of 1979

Appellant : Dhanasekaran

Respondent : Manoranjithammal and Others

Advocate for Def. : V.R. Gopalan, Adv.

Advocate for Pet/Ap. : M.N.Padmanabhan, Adv.

Judgement :
ORDER

Abdul Hadi, J.

1. This appeal has been posted before us on being referred to by Bellie, J., since the view he is taking on the question involved in the appeal is in conflict with the

view taken by Ratnam, J., in his decision reported in Pattayi Padayachi v. Subbaraya Padayachi : (1980)2MLJ296 .

2. This appeal is by the plaintiff against the dismissal of his suit O.S. No. 296 of 1975 on the file of Sub Court, Cuddalore praying for setting aside the sale under Ex. B.4 dated 2-8-1961, effected by his mother when he was a minor, in so far as his 3/4th share therein is concerned and for partition and separate possession of the said share. The question to be answered is whether the said sale is hit by S. 8 of The Hindu Minority and Guardianship Act, 1956 since admittedly the plaintiff's mother did not obtain the previous permission from the Court as contemplated in the said Section, and consequently whether the plaintiff could avoid the said sale with reference to his above said 3/4th share. The contention of the learned Counsel for the plaintiff Mr. M.N. Padmanabhan is that S. 8 operates and the plaintiff could avoid the sale. On the other hand, the contention of the learned Counsel for the defendants 3 to 10 (respondents 2 to 9 herein) who are the legal representatives of the deceased 2nd defendant, the vendee under the above said sale deed Mr. V. R. Gopalan, is that the said property being the joint family property, the said Section is not attracted that consequently the above said permission from the Court is not called for and that the said sale having been effected for legal necessity of the family, should be upheld as valid as the Court below has done.

3. The 1st defendant (1st respondent review) is the plaintiff's mother and under the said sale, she sold not only the above said 3/4th share belonging to the plaintiff on his behalf, she also sold her own 1/4th share therein. She remained ex parte both in the Court below and in this Court.

4. Admittedly, the above said property was a joint family property of the family of one Rajamanickam Padayachi, his son, the plaintiff and his wife, the 1st defendant, till his death in 1960, after the coming into force of the Hindu Succession Act of 1956, leaving behind his said widow the 1st defendant and his son, the plaintiff. There is also no dispute that pursuant to Section 6 proviso and Explanation therein read with Sec. 8 of the said Act, a notional partition between Raja-aniokam Padayachi and his son, the plaintiff had taken place immediately

before the death of Rajamanickam Padayachi that the plaintiff thereby got half share in the suit property by survivorship and in the remaining half share of Rajamanickam Padayachi, his two heirs, viz., the 1st defendant and plaintiff got 1/4th share each by inheritance and that in all the plaintiff got 3/4th share and the 1st defendant got the remaining 1/4th share. Bellie, J., in his referring judgment has come to the conclusion that the above said undivided 3/4th share was the joint family property of the family of the plaintiff and his mother, after the death of the plaintiff's father, that consequently S. 8 of the Hindu Minority and Guardianship Act is not attracted and that though she is not a coparcener and consequently not the kartha of the family, she can alienate the said 3/4th share as de facto guardian of her minor son for the legal necessity of the minor or for the benefit of the estate of the minor, since she is, in the absence of the father, the natural guardian of the person and the private property of the minor. For coming to this conclusion Bellie, J. has held that S. 11 of the Hindu Minority and Guardianship Act, which says that after the commencement of the said Act, no person shall be entitled to dispose of the property of a Hindu Minor merely on the ground of his being the de facto guardian of the minor is not applicable to an undivided interest of a minor in the joint family property. But, in this regard, (as also pointed out by Bellie, J.) Ratnam, J., has held that the above said S. 11 will apply even to such minors interest in the joint family property. Therefore, according to Ratnam, J., de facto guardianship is totally abolished, whatever be the nature of the property whether separate property or joint family property of the minor and when the minor's mother sells such interest of the minor in the joint family property, the said sale is void abiniko because the mother has no competency at all to sell such interest of the minor, she being a total trespasser, further Ratnam, J., while interpreting S. 12 of the Hindu Minority and Guardianship Act, which says that where a minor has undivided interest in the joint family property and theproperty is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest) has held that the expression 'adult member' used in S. 12 would refer only to an adult male member and not an adult female member. Beilie, J., does not also share this view of Ratnam, J., and holds that the expression 'adult member' would refer to both male and female and the term 'management' referred to therein does not mean management as kartha, but

management in general.

5. In view of these differing views, on reference by Beilie, J., the matter has been placed before us. Before going into the question whether Section 8 of the Hindu Minority and Guardianship Act would apply to the sale of the above said 3/4th share which belonged to the plaintiff, we have to see what is the character of the said 3/4th share in the hands of the plaintiff, in the light of the facts narrated above. If it is joint family property, the uniform opinion as laid down in Subramaniam v. K. Gounder, : AIR1972 Mad377 , and other decisions is that Section 8 will not operate since it is only with reference to separate property of minors at will. So, it has to be seen whether the above said 3/4th share of the plaintiff is the joint family property or the separate property of the plaintiff when the above said sale was effected.

5-A. As already stated, the above said 3/4th share is composed of 1/2 share which came to the plaintiff on the abovesaid notional partition between himself and his father immediately prior to the death of the father, by survivorship. The other 1/4th share was inherited by him from his father on his death out of the above said remaining 1/2 share, which was got by his father pursuant to the above said notional partition.

6. So far as this 1/4th share is concerned, the learned counsel for the plaintiff Mr. M. N. Padmanabhan cited before us, as he did before Beilie, J., also, two Supreme Court decisions, viz., W. T. Commissioner, Kanpur v. Chander Sen, : [1986]161ITR370(SC) and Yudhishter v. Ashok Kumar, : [1987]1SCR516 , in support of his contention that it came to the plaintiff as his separate property. In the above referred to : [1986]161ITR370(SC) , there was a partition of joint family business between the father and his only son. Thereafter they continued the business in the name of a partnership firm. The son formed a joint family with his own sons. The father died and amounts standing to the credit of the deceased father in the account of the firm devolved on his son. The Wealth Tax Authorities, while assessing the wealth tax in respect of the assessee, viz., the joint family (which is called Hindu Undivided Family under the Wealth Tax Act) of the son and his own sons, included the amount in computing the net wealth under the said Act.

In that context, the Supreme Court held that the said son inherited the above said amount standing to the credit of his deceased father in the accounts of the firm, as an individual and not as kartha of his joint family with his own sons and that hence it could not be included in computing the said assessee's net wealth under the abovesaid Act. In this context, the Supreme Court observed that though under the old Hindu Law the said son would inherit the abovesaid amount standing to the credit of the deceased father as kartha of his own family with his own sons, the Hindu Succession Act, 1956 has modified the rule of succession by virtue of S. 8 thereof read with the preamble and S. 4 of the said Act. Therefore, it observed as follows:--

'It would be difficult to hold today that the property which devolved on a Hindu under S. 8 of the Hindu Succession Act would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in Class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated.'

In the above referred to : [1987]1SCR516 , the same principle was enunciated thus:--

'Normally therefore whenever the father gets a property from whatever source from the grandfather or from any other source, be it separate property or not, his son shouldhave a share in that and it will become part or the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by S. 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by S. 8, he does not take it as kartha of his own undivided family but takes it in his individual capacity..... This Court observed in theaforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and was unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law, 12 Edn. page 919.'

The above referred to overruled decision of Gujarat High Court is Commr. of Income-tax, Gujarat-I v. Dr. Babubhai Mansukh-bhai : [1977]108ITR417(Guj) . The above referred to decisions, which were approved are Commr. of Wealth-tax, A.P. 11 v. Mukund-girji, 1983 Tax LR 1370; Addl. Commr. of Income-tax, Madras v. P. L. Karuppan Chettiar, : [1978]114ITR523(Mad) (FB), and Shrivallabhdas Modani v. Commr. of tncome-tax, 1983 Tax LR 559.

6-A. But, Bellie, J. in his referring judgment, distinguished these two Supreme Court judgments and also the above referred to : [1978]114ITR523(Mad) (FB), by saying that in those cases 'in respect of a separate property devolved on the father under S. 8 of the Hindu Succession Act it was held that the property cannot be the property of a Hindu joint family of the father vis-a-vis the son ..... but, in the instant case, no separateproperty was inherited.....' No doubt inthe above said Supreme Court and Madras decision, separate property was inherited. But we not see any difference in the present case also, With respect we hold that Bellie, J., is not correct in this regard. In view of the above said notional partition immediately preceding the death of plaintiff's father, the abovesaid 1/2 share that was got by the plaintiff's father on such partition was also his separateproperty. (In that alone the plaintiff inherited half, that is, the abovesaid 1/4th share in the entirety.) It is settled law that property obtained as his share on partition by a coparcener who has no male issue, is his separate property. (Vide S. 230(6) of Mulla's Hindu Law). In the present case, the only male issue of the plaintiff's father being the plaintiff and the notional partition having taken place between him and his father, the property obtained by the plaintiff's father on such partition would only be his separate property. In Mayne's Hindu Law 12th Edition at page 541 also it has been observed relying on Padmaja v. Jaisoorya, 1959 Andh LT 67, following Kalianji Ranchhod v. Bezonji Hasarwanji, (1908) ILR 32 Bom 512, that where a father divided the family property between him and his sons, the share obtained by him was self-acquired property, which he could bequeath to his wife. In the above referred to : [1978]114ITR523(Mad) (FB) also, the property in question was the property inherited from his divided father and it was held that the son 'K' who so inherited, got the property as his separate property and not that of the joint family consisting of himself, his wife, sons and daughters. The only difference is in the above referred to : [1978]114ITR523(Mad) (FB), there was a natural partition or

division, but in the present case, the partition is a notional one. But that will not make any difference. No doubt, the learned counsel for respondent argued that the legal fiction employed in Explanation 1 to S. 6 of the Hindu Succession Act, 1956 is only to fix the quantum of the share of the deceased coparcener and not to fix the character of the property in the hands of his heirs who inherit from the quantum so fixed. In this connection he cited State of Maharashtra v. Narayan Rao, : [1987]163ITR31(SC) . But, the said decision only says : 'A legal fiction should no doubt ordinarily be carried to its logical end to carry out the purposes for which it is enacted, but it cannot be carried beyond that.' In the said Supreme Court decision, on facts, it was held that the abovesaid legal fiction could not be carried to the extent of holding that the female heir under S. 8 of the Hindu Succession Act read with S. 6 of the said Act,could be treated as having ceased to be a member of the family. It was so held because otherwise it would amount to carrying the legal fiction beyond the permissible limit. But, the present case is different. The legal fiction, being the above said notional partition, what is deducible as a consequence from it, is that the property got on such a notional partition by the plaintiff's father or the plaintiff as the case may be, is oniy his separate property, in view of the fact that if the partition was a natural one, the same result would follow.

6B. So, in the final analysis, so long as S. 8 of the Hindu Succession Aet, 1956 operates, the result should be the same in view of the above said observations of the Supreme Court. Therefore, the above said 1/4th share got by the plaintiff from his father's above said 1/2 share, by way of inheritance under S. 8 of the above said Act is only his separate property.

7. Now, regarding the character of the other 1/2 share, which the plaintiff got from his father on the above said notional partition, the learned Counsel for the appellant also cited D. S. Agalawe v. P. M. Agalawe, : [1988]2SCR1077 where it has been held as follows (at p. 849 of AIR) :

'The joint family property does not cease to be joint family property when it passes to the hands of a sole surviving coparcener. If a son is born to the sole surviving coparcener, the said properties become the joint family properties in his hands and

in the hands of his son. The only difference between the right of a manager of a joint Hindu family over the joint family properties where there are two or more coparceners and the right of a sole surviving coparcener in respect of the joint family properties is that while the former can alienate the joint family properties only for legal necessity or for family benefit, the latter is entitled to dispose of the coparcenary property as if it were his separate property as long as he remains a sole surviving copareener and he may sell or mortgage the coparcenary property even though there is no legal necessity or family benefit or may even make a gift oi the coparcenary property. If a son is subsequently born to or adopted by the solesurviving coparcener or a new coparcener is inducted into the family on an adoption made by a widow of a deceased coparcener, an alienation made by the sole surviving coparcener before the birth of a new coparcener or the induction of a coparcener by adoption into the family, whether by way of sale, mortgage or gift would however stand, for the coparcener who is born or adopted after the alienation cannot object to alienations made before he was begotten or adopted.'

In the present case, admittedly, the plaintiff is sole surviving coparcener on the death of his father, and the other member of his joint family is his mother, the 1st defendant. The contention of the learned Counsel for the appellant is that, since the above said 1/2 share, in the hands of the sole surviving coparcener, the plaintiff, is to bo treated as if it were his separate property according to the Supreme Court decision, here also S. 8 of the Hindu Minority and Guardianship Act would operate and the above said sale effected by the 1st defendant-mother on behalf of the minor plaintiff could be avoided by the minor plaintiff on the mere ground that the prior permission from the Court was not obtained. We also hold so, since the above said 1/2 share has to be treated as if it were the plaintiff's separate property. In this regard also we differ from Bellie, J.

8. No doubt the learned Counsel for the respondents sought to contend that the said haif share, though not 'coparcenary property', is the 'joint family property' in the hands of the plaintiff. We are unable to understand this contention. He no doubt began to explain the above said contention by saying that the term 'Hindu joint family' is wider in concept than the term 'Hindu coparcenary' and cited G. Buddanna v. I.-T. Commissioner, Mysore : [1966]60ITR293(SC) and Sitabai v.

Ramchandra, : [1970]2SCR1 . On this proposition of law, no doubt, there can be no two opinions. In other words, the term 'Hindu joint family' is certainly wider in connotation that the term 'Hindu coparcenary', since the former includes female members of the family, viz., widows andunmarried daughters and even male members who are beyond 3 degrees from the common ancestor, while the latter is restricted only to those male members who got right by birth in the property of the family. But there is no difference between the 'joint family property' and 'coparcenary property'. In fact, Mulla's Hindu Law 15th Edition, Section 220 at page 287 says that the term 'joint family property' is synonymous with 'coparcenary property'. In the said Section, the learned author divides the properties under Hindu Law only into two classes, viz., (1) joint family property and (2) separate property, and finally also states that the term 'joint family property' is synonymous with 'coparcenary property'. So, we are unable to accept the above said contention of the learned Counsel for the respondents.

9. The learned Counsel for the respondents also relied on Gangoji Rao v. H. K. Channappa, : AIR1983 Kant222 , Girdhar Singh v. Anand Singh, , Sunamani Dei v. Babaji Das, : AIR1974 Ori184 and In Re Krishnakant, : AIR1961 Guj68 . These decisions are cited on the footing that the above said 3/4th share of the plaintiff was joint family property in his hands. But, in the view we have taken, viz., that the above said 1/4th share of the plaintiff is his separate property and his other 1/2 share is to be treated as his separate property, these decisions may have no application to the case in hand. Nevertheless, since arguments were advanced on the footing of these decisions, we shall touch upon them also (assuming that the above said 3/4th share in the hands of the plaintiff was joint family property simpliciter).

10. In the above referred to : AIR1983 Kant222 it has been held that when the mother manages the family property of the minor son, Section 11 of the Hindu Minority and Guardianship Act, 1956 is not attracted and that, therefore, she can validly alienate it for family necessity or benefit, without obtaining permission of the Court under S. 8 of the said Act. The said decision further observes that the fact that the mother can also manage the family property is evident from S. 12 referring to the family property being inthe management of 'an adult member of the family'

and not 'adult male member of the family'. But according to us, this decision does not lay down the correct law. Seclion 12 no doubt runs as follows (at p. 224 of AIR):)-

'12. Guardian not to be appointed for minor's undivided interest in joint family property -- where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.'

11. A Bench of this Court held in Ven-katakrishna Reddy v. Amarababu : (1971)2MLJ466 as follows:--

'Neither the father nor the mother can, as the minor's natural guardian, alienate such an undivided interest of the minor..... it hasbeen consistently held that in respect of such undivided interest of a coparcener neither the natural guardian nor the guardian appointed under the Guardians and Wards Act had any power to sell that interest even for necessity or for benefit. The distinction that obtained under the general Hindu Law between the separate property of a minor and his undivided coparcenary interest is kept up also under the provisions of the Hindu Minority and Guardianship Act of 1956. Section 6 of that Act which defines a natural guardian excludes minor's undivided interest in a joint family property from the operation of that section and Section 12 imposes a prohibition against the appointment of a guardian by a Court other than the High Court in respect of an undivided interest of a minor in a joint family property when such joint family property is in the management of an adult member of the family. Therefore, it is not possible to hold that the fourth defendant as the natural guardian of the_ minor sons is authorised to sell the undivided interest of the minors as such in the join family propertieseither under the general Hindu Law or under the provisions of this Act.'

(Emphasis is ours)

The learned Judges in the said decision also observed as follows:--

'On this aspect some light is thrown by the wording in Section 12 of the Hindu Minority and Guardianship Act. That section says that where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest. The adult member of the family may be either male or female. If there is no adult member of the family in management then the prohibition contained in Section 12 will not apply. But if there is an adult member in management of the joint family property, then the Court is prohibited from appointing a guardian for the minor's undivided interest in the joint family property. The section does not say that the adult member could only be a male member. If in case where there is no adult male member and all the members of the family are minors, a guardian can be appointed by the Court with reference to the entire joint family property.'

(Emphasis is ours)

12. So, in S. 12, adult member would include both male and female and in this respect, with due respect, we observe that the decision of Ratnam, J. in the above referred to : (1980)2MLJ296 holding that the term 'adult member' in S. 12 contemplates only the case of the male member of a family, is not correct. Further, the above said : (1971)2MLJ466 also pointed out thus: --

'Cases have also held that the management of the joint family and its affairs can be taken up not only by an adult male member of the family but also by a female member of the family like the mother. When this adult mother is in actual management of the joint family properties including the undivided interest of its minor members, Section 12 prohibits a guardian being appointed in such a case as there is an adult member in management of the property. It is true amother cannot be a coparcener in a joint family but it cannot be denied that she is a member of the joint family.'

Therefore, the management spoken to in S. 12 need not necessarily be management as kartha, but would include even the management otherwise.

13. We may also point out one other aspect. Section 12 of the Hindu Minority and Guardianship Act, as Mayne's Hindu, (12th Edition -- Page 507) says, statutorily recognises the principle which was laid down consistently by several High Courts that under the Guardians and Wards Act of 1890, no guardian can be appointed, of minor's undivided interest in the joint family properties, where the property is under the management of an adult. Yet, it has been held even under the Guardians and Wards Act, a guardian can be appointed in cases where the minor is the sole surviving coparcener [vide Rakhmabai v. Sitabai, : AIR1952 Bom160]. In Mayne's Hindu Law, 12th edition at page 508 it is stated thus:--

'It is also well recognised by the Courts that a guardian can be appointed in cases where the minor is the sole surviving coparcener.'

Therefore, the case of the interest of the sole surviving coparcener in the joint family property is treated as if it were a separate property. Therefore, we think that Section 8 of the Hindu Minority and Guardianship Act would also cover the case of such an interest.

14. Further, we hold with due respect that both the learned Judge who has decided the above referred to : AIR1983 Kant222 and (sic) Bellie, J. in his referring judgment are not correct when they hold that S. 11 of the Hindu Minority and Guardianship Act is not attracted in the case of minor's interest in the joint family property. We think Ratnam, J. is correct in this regard. This aspect is dealt with below in more detail.

15. The above referred to : AIR1983 Kant222 follows the view taken in the above said and : AIR1961 Guj68 . But, in the view we havetaken, we hold that those decisions do not lay down the correct law.

16. We may now further elucidate the differing views taken by Ratnam, J. and Bellic, J., on their respective interpretation of S. 11 of the Hindu Minority and Guardianship Act. Section 11 runs as follows:--

'11. De facto guardian not to deal with minor's property.-- After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a

Hindu minor merely on the ground of his or her being the de facto guardian of the minor.'

According to Ratnam, J., the property of a Hindu minor referred to in S. 11 will include all his properties including his undivided interest in the joint family property and consequently he held that the sale by the de facto guardian of the minor's interest in the joint family property was void ab initio. In coming to the said conclusion the learned Judge reasoned out as follows:--

'While Sections 6, 9 and 12 take care to exclude the undivided interest of a minor in the family properties from the scope of the property guardianship of a natural guardian viz., the father or the mother, Section 11 does not contain any such restriction with reference to the property of a Hindu minor. In the absence of any distinction between the separate property of a Hindu minor and the undivided interest of a Hindu minor in the joint family property, the provision in Section 11 must be held to apply equally to both the categories of properties. Otherwise, the object behind Section 11 of preventing the de facto guardians from dealing with the property of a Hindu minor would be totally frustrated inasmuch as a de facto guardian, while being prevented from dealing with the separate property of a Hindu minor under Section 11, would be at liberty to deal freely with the undivided interest of a Hindu minor in the family property. Having regard to the object with which Section 11 has been enacted, it is difficult to place any such restriction on the word 'property' used in that section. In addition, such a construction is fortified bythe decision in Ranganatha Gounder v. Kuppuswami Naidu, : (1976)2MLJ128 .'

But, Bellie, J.'s view in the referring judgment is that the minor's properly referred to in S. 11 excludes his undivided interest in the joint family property and, therefore, S. 11 does not abrogate the right of the de facto guardian in respect of the minor's undivided interest in the joint family property. For reaching this conclusion, the reasoning of Bellie, J., is expressed as follows:--

'When in Section 6 wherein for the first time 'Minor's property' occurs the minor's undivided interest in the joint family property is excluded, in the subsequent sections whenever 'minor's property' occurs it must be taken to exclude the undivided interest in the joint family property unless it is expressly stated that

minor's property includes or does not exclude the undivided interest in the joint family property. In Sections 8 and 11 there is no such exclusion, whereas in Section 9 there is specific exclusion.'

But, the reasoning of Bellie, J., for holding that minor's property referred to in S. 11 excludes his undivided interest in the joint family property, does not appeal to us. We think that in view of what is stated in S. 8, there is an implied exclusion of minor's interest in the joint family property from it. In other words, the very contents of S. 8 suggest, though not expressly, that the said section does not operate in the case of minor's undivided interest in the joint family property. We are also in agreement with the view expressed in the above referred to : AIR1972 Mad377 thus:--

'When Section 8 deals with the minor's estate or the immovable property of the minor, it could not have been the intention of the Legislature that those expressions were intended to apply to the undivided interest of the minor in the joint family property, for it is not possible to postulate or predicate what share the minor has and what item of property is the minor's property. On the other hand, the expressions 'minor's estate' and 'immovable property of the minor' occurring in Section 8 can apply only to definite propertiesof the minor and not to a fluctuating interest of the minor in the undivided Hindu family..... Thus, there is intrinsic evidence inS. 8 itself to justify the conclusion that the minor's undivided interest in the joint family property is not contemplated in S. 8.'

But, while reading S. 11, we do not get the impression that it cannot operate with reference to minor's interest in the joint family property. Further, S. 6 mentions who are natural gardians for the minor's property other than his interest in the joint family. Whileso, when the succeeding S. 8 deals with powers of a natural guardian, it is but natural to imply -- when there is nothing to indicate contra in that section -- that the said powers are that of natural guardian of minor's property other than his interest in the joint family property. So we hold that S. 11 will apply to all properties of a minor, including the minor's interest in the joint family property.

17. But, this view of ours by itself cannot settle the other question whether the sale by a de facto guardian of minor's property in the joint family property is void ab initio or voidable. In this connection, we also find an unreported decision dated 13-2-1973 in C.R.P. No. 831 of 1969 (Subbalakshmi v. Sengolatha Koundar) of a Division Bench of this Court, wherein we find the following observations :

'Section 11 of the Hindu Minority and Guardianship Act is relied on for the petitioner to contend that a de facto guardian would not be entitled to dispose of or deal with the property of Hindu minor. But that is not a complete statement of the law. That section itself proceeds to say that she is not so entitled merely on the ground of her being a de facto guardian of the minor. If the intention of the section is that in no case the transaction of a de facto guardian is to be valid, it could have easily said so. Having regard to the language employed in S. 11, we are of the view that the entitlement of the de facto guardian to deal with or dispose of a property of a Hindu minor will not spring merely from the fact of a person being a de facto guardian. That is to say, there may becircumstances, as for instance, that there is no other person left alive to look after the minor, or the interest of the legal guardian is adverse to that of the minor. In such cases, the de facto guardian is not acting as such merely by reason of that fact, but due to the existence of other circumstances which make it necessary for her to act as a de facto guardian. We are of the view, therefore, that S. 11 does not render the sale void.'

We are in agreement with the view expressed by the above said Division Bench. Therefore, we do not think that the above said S. 11 does not render the sale by a de facto guardian, of his minor's interest in the joint family, void. But, the said section renders the said sale voidable only. Therefore, we also observe, with due respect, that the above said decision of Ratnam, J., in this regard, is not correct.

18. But, as already stated, all the above said discussions right from paragraph 10 above proceed on the assumption that the above said 3/4th share of the plaintiff was joint family property simpliciter. On the other hand, we have already held that out of the above said 3/4th share, the above said 1/4th share is plaintiff's separate property and his other 1/2 share is to be treated as his separate property on the facts of this case. Therefore, in respect of both the above said 1/4th and 1/2 share

belonging to the minor, the said S. 8 of the Hindu Minority and Guardianship Act would operate and the permission contemplated therein having not been obtained, the said sale under Ex.B.4 in so far as the plaintiff's above said 1/2+ 1/4 = 3/4 share is concerned, has to be necessarily set aside since no prior permission from the Court was obtained under S. 8 of the Hindu Minority and Guardianship Act.

19. In the result, the appeal is allowed, the judgment and decree of the Court below are set aside and the suit is decreed as prayed for. However, in the circumstances of the case, no costs throughout.

20. Appeal allowed.