

(2019) 10 CHH CK 0130

Chhattisgarh High Court

Case No: Second Appeal No. 307 Of 2005

Keshavram And Ors

APPELLANT

Vs

Kubercharan And Ors

RESPONDENT

Date of Decision: Oct. 18, 2019

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 145
- Hindu Minority And Guardianship Act, 1956 - Section 8(1), 8(2), 8(3)
- Code Of Civil Procedure 1908 - Section 96

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Vineet Kumar Pandey, Manoj Kumar Jaiswal, Sanjeev Kumar Agrawal

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. This appeal preferred by the appellants / defendants was admitted for hearing on the following substantial question of law: -

Whether sale executed by Khirobai on behalf of his minor son Banshidhar dated 18-1-1966 does not transfer title to purchaser?

[For the sake of convenience, parties will hereinafter be referred as per their status shown in the suit before the trial Court.]

2. The suit property was originally held by one Narayan. He died leaving behind his widow Hiramati and daughter Khirobai. Banshidhar is son of

Khirobai and the suit property was inherited by him (Banshidhar). During the minority of Banshidhar, Khirobai being his natural guardian, executed a

sale deed dated 18-1-1966 (Ex.P-1) alienating the suit property in favour of the plaintiffs. It is the case of the plaintiffs that Satyanand was uncle of

Khirobai and in 1973-74, he got his name mutated in the revenue records and in the proceeding initiated under Section 145 of the Code of Criminal

Procedure, 1973 being Case No.77/75, order was passed on 3-11- 1976 in which possession of Satyanand was found and revision preferred by

plaintiff No.1 was dismissed which necessitated the filing of suit for possession based on title stating inter alia that the plaintiffs have purchased the

suit land from Banshidhar through his natural guardian mother, as such, they are entitled for recovery of possession of the suit land as well as for

damages.

3. In the said suit, the defendants took up a plea that they are in possession since long after death of Satyanand and in the proceeding under Section

145 of the Code of Criminal Procedure, 1973, possession of Satyanand - predecessor-in-title of the defendants was found by the learned Sub-

Divisional Magistrate as well as by the revisional Court, as such, the plaintiffs have no right and title over the suit land and Khirobai had no right and

title to execute Ex.P-1 in favour of the plaintiffs, that too without leave of the competent Court under Section 8(3) of the Hindu Minority and

Guardianship Act, 1956 (for short, 'the Act of 1956'). The defendants also took the alternative plea that they are in possession of the suit land for a

very long time, as such, they have perfected their title by way of adverse possession.

4. The trial Court upon appreciation of oral and documentary evidence on record, decreed the suit of the plaintiffs holding that the sale deed executed

by Khirobai as natural guardian in favour of the plaintiffs without permission of the Court under Section 8(3) of the Act of 1956 is not void and further

held that Hiramati - widow of Narayan, had full title over the suit land after death of Narayan which was challenged by the appellants / defendants in

appeal under Section 96 of the Code of Civil Procedure, 1908. After three rounds of remand by the first appellate Court ultimately, in First Appeal

No.23-A/1992, on 17-2-2005, the first appellate Court finally, confirmed the judgment & decree of the trial Court and dismissed the appeal.

Questioning that judgment & decree, the instant second appeal has been preferred in which substantial question of law has been framed which has

been set-out in the opening paragraph of this judgment.

5. Mr. Vineet Kumar Pandey, learned counsel appearing for the appellants herein / defendants, would vehemently submit that since Banshidhar was minor at the time when the sale deed Ex.P-1 dated 18-1-1966 was executed by his natural guardian (mother) Khirobai, the said sale deed has not conferred any title to the purchasers / plaintiffs which is void ab initio, therefore, the two Courts below have committed serious illegality in holding that the plaintiffs have acquired title on purchase from Khirobai - natural guardian of Banshidhar, as such, judgments & decrees of both the Courts below deserve to be set-aside by granting the second appeal and by answering the substantial question of law in favour of the defendants.

6. Mr. Manoj Kumar Jaiswal, learned counsel appearing for the plaintiffs / respondents No.1 & 2 herein, would submit that though Banshidhar's natural guardian (mother) Khirobai executed the sale deed dated 18-1-1966 without permission of the Court under Section 8(3) of the Act of 1956, but Banshidhar who attained majority in 1977-78 (approximately) did not either repudiate or avoid the sale deed within the period of limitation as prescribed under Article 60(a) of the Limitation Act, 1963, therefore, now the said transaction has become final and the defendants are bound by the said sale deed executed by Khirobai in favour of the plaintiffs, as such, the second appeal deserves to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

8. Admittedly, the suit property was earlier held by Narayan and thereafter, as both the Courts have held, it was inherited by Hiramati and ultimately, it was succeeded by Banshidhar - grandson of Hiramati and finally, the suit land was sold by Banshidhar through his natural guardian (mother) Khirobai vide Ex.P-1 dated 18-1-1966 in favour of the plaintiffs. According to the plaintiffs, in the proceeding under Section 145 of the CrPC, it was declared that since the defendants are in possession and their revision was dismissed, that led to the institution of suit. Both the Courts below have negatived the title of the defendants which they claimed over the suit property by way of inheritance, as fathers of Satyanand and Narayan, both were brothers.

9. Now, the substantial question which has been formulated in this second appeal is, whether the alienation made by Khirobai acting as natural guardian of Banshidhar confers title to the plaintiffs / purchasers?

10. In order to assail the title of the purchaser / plaintiffs vide Ex.P-1, reliance has been placed on Section 8(3) of the Act of 1956 contending that any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2) would be void ab initio and that will not confer any title in favour of the purchaser / plaintiffs of the said immovable property.

11. In order to consider the plea, it would be appropriate to notice the provisions contained in sub-sections (1), (2) and (3) of Section 8 of the Act of 1956 which read 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.

12. A careful perusal of the aforesaid provision would show that Section 8(2) of the Act of 1956 clearly provides in express and explicit terms that the natural guardian cannot, without the previous permission of the court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor or 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. Sub-section (3) of Section 8 of the Act of 1956 provides that any alienation 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.

13. In the matter of Amirtham Kudumbah v. Sarnam Kudumban AIR 1991 SC 1256, the Supreme Court has held that the transfer made by the father / natural guardian during his son's minority was voidable at the instance of his son who was the real owner, and any person purchasing such property from the natural guardian obtained only a defeasible title. It was further held that the minor retained a right in the property to defeat existing adverse claims, and such right is an assignable right. Considering the effect of sub-section (3) of Section 8 of the Act of 1956, it was observed as under holding that the minor or his successor-in-interest claiming under him by reason of transfer inter vivos, must bring action within the period prescribed for such a suit, i.e. three years from the date on which the minor died or attained majority, as the case may be: -

9. The effect of this sub-section is that any disposal of immovable property by a natural guardian otherwise than for the benefit of the minor or without obtaining the previous permission of the Court is voidable. A person entitled to avoid such a sale is either the minor or any person claiming under him. This means that either the minor, or his legal representative in the event of his death, or his successor-in-interest claiming under him by reason of transfer inter vivos, must bring action within the period prescribed for such a suit, i.e. three years from the date on which the minor died or attained majority, as the case may be. In the present case, the suit was brought, as found by the Courts below, within three years after the minor attained majority.

14. Similarly, the Supreme Court in the matter of Vishwambhar and others v. Laxminarayana (Dead) through L.Rs. and another AIR 2001 SC 2607 held that sale made by guardian without prior permission of Court is voidable under Section 8(3) of the Act of 1956, it is not void ab initio and suit has to be filed for recovery of possession from the purchaser and he has to claim for setting aside the sale deed. Their Lordships considered the question

whether such an alienation is void or voidable and held that the alienation so made would be voidable at the instance of minor and the person claiming under him.

15. Following the principle of law enunciated in *Vishwambhar* (supra), Their Lordships of the Supreme Court in the matter of *Nangali Amma Bhavani*

Amma v. Gopalkrishnan Nair (2004) 8 SCC 785 have held that transaction entered into in violation of Section 8(2) of the Act of 1956 is only voidable

at the instance of minor and not void in view of express language of Section 8(3). It was further held that holding such transaction to be void would

deprive the minor of the right to affirm or ratify such transaction on attaining majority and therefore to avoid such a transaction, a suit must be filed by

a minor within the period prescribed under Article 60 of the Limitation Act, 1963.

16. Finally and recently, in the matter of *Murugan and others v. Kesava Gounder (Dead) Through LRs and others* 2019 SCC OnLine SC 27, 0the

Supreme Court has held that the alienations, which were voidable, at the instance of minor or on his behalf were required to be set aside before relief

for possession can be claimed by the plaintiffs. Their Lordships further held that suit filed on behalf of the plaintiffs without seeking prayer for setting

aside the sale deeds was, thus, not properly framed and could not have been decreed.

17. Reverting to the facts of the present case, it is quite vivid that in the instant case the suit property held by minor Banshidhar was alienated by his

natural guardian (mother) Khirobai in favour of the plaintiffs vide Ex.P-1 dated 18-1-1966 without permission of the Court, so it was naturally voidable

at the instance of minor Banshidhar or any person claiming under him by virtue of the provisions contained in sub-section (3) of Section 8 of the Act of

1956 as interpreted by Their Lordships of the Supreme Court in the aforesaid judgments (supra), but, admittedly, Banshidhar became major in the year

1978. Immediately after attaining the age of majority and within three years from the date of attaining the age of majority, under Article 60(a) of the

Limitation Act, 1963 which provides limitation of three years when the ward attains majority to set aside the transfer of property made by his / her

guardian, Banshidhar was required to file suit for avoiding the transaction in question (Ex.P-1). Admittedly, no such suit was brought by Banshidhar

for repudiating the alienation so made or for setting aside the sale deed Ex.P-1 executed in favour of the plaintiffs.

18. The question would be, whether on the basis of voidable sale deed under Section 8(3) of the Act of 1956 by which the plaintiffs have purchased the suit property, title would confer to them, as admittedly, it was neither repudiated nor avoided, nor it was ratified or affirmed by Banshidhar, within the period of limitation as prescribed under Article 60(a) of the Limitation Act, 1963?

19. The question so posed for consideration is no longer res integra and has been authoritatively adjudicated by Their Lordships of the Supreme Court in the matter of G. Annamalai Pillai v. District Revenue Officer and others (1993) 2 SCC 402 in which while considering Section 8(2)(b) & (3) of the

Act of 1956 it has been held that voidable lease of immovable property executed by guardian of minor-owner is voidable by the minor on attaining majority and the effect would be lease would become void from its inception and no statutory rights would accrue in favour of the lessee. In paragraph

5 of the report, it has been observed as under: -

5. We have heard learned counsel for the parties. We have been taken through the orders of the Revenue authorities, judgment of the learned Single Judge and of the Division Bench of the High Court in writ appeal. The Division Bench of the High Court, in a lucid judgment, answered the question -

posed by us in the beginning - in the affirmative and against the appellant-Annamalai Pillai on the following reasoning:

We have already seen that clause (3) of Section 8 of the Hindu Minority and Guardianship Act, 1956, specifically makes the transaction voidable.

The lease executed by the guardian in this case is prohibited and in that sense it was without any authority. On the legal efficacy and the distinction

between valid, void and voidable agreements, we find the following passage in Salmond on Jurisprudence, Twelfth Edition at page 341:

'... A valid agreement is one which is fully operative in accordance with the intent of the parties. A void agreement is one which entirely fails to receive legal recognition or sanction, the declared will of the parties being wholly destitute of legal efficacy. A voidable agreement stands midway between these two cases. It is not a nullity, but its operation is conditional and not absolute. By reason of some defect in its origin it is liable to be

destroyed or cancelled at the option of one of the parties to it. On the exercise of this power the agreement not only ceases to have any efficacy, but

is deemed to have been void ad initio. The avoidance of it relates back to the making of it. The hypothetical or contingent efficacy which has hitherto

been attributed to it wholly disappears, as if it had never existed. In other words, a voidable agreement is one which is void or valid at the election of

one of the parties to it.' This distinction has also been judicially noticed in the Privy Council judgment reported in *Satgur Prasad v. Harnarain Das AIR*

1932 PC 89 : 59 IA 147 and in the Division Bench judgment in *S.N.R. Sundara Rao and Sons, Madurai v. CIT AIR 1957 Mad 45.1* The Division

Bench held, following the Privy Council judgment as follows:-

'When a person, who is entitled to dissent from the alienation, does so, his dissent is in relation to the transaction as such and not merely to the

possession of the alienee on the date of such dissent.

The effect of the evidence is, therefore, to get rid of the transaction with the result that in law it is as if the transaction had never taken place.' We

have, therefore, no doubt that when the fifth respondent avoided the lease executed by his father, the fourth respondent, the lease became void from

its inception and no statutory rights, could, therefore, accrue in favour of the appellant herein.

20. In *Murugan (supra)*, the principle of law rendered in *G. Annamalai Pillai (supra)* was noticed and it has clearly been held that it was imperative to

claim for the repudiation of sale deed on behalf of minor and it was necessary for the person claiming through minor to bring an action within a period

of three years as prescribed under Article 60(a) of the Limitation Act, 1963 and if that has not been repudiated, the question of voidable sale deed

becoming void does not arise. Their Lordships of the Supreme Court in *Murugan (supra)* observed as under:-

36. Learned counsel for the appellants relying on the above decision contends that sale by Balaraman when has been avoided by release deed it

became void from the very beginning. There can be no quarrel to the proposition laid down in *G. Annamalai Pillai v. District Revenue Officer (supra)*.

In the present case there having been no repudiation of sale deed on behalf of minor, the question of voidable sale deed becoming void does not arise.

37. We are, thus, of the considered opinion that in the present case it was necessary for the person claiming through minor to bring an action within a period of three years from the date of the death of the minor to get sale deed executed by Balaraman set aside. We, thus, conclude that the sale deeds executed by Balaraman were not repudiated or avoided within the period of limitation as prescribed by law. Issue No.3 is answered accordingly.

21. Reverting to the facts of the case in hand in light of the legal analysis made herein-above and following the principles of law laid down by Their Lordships of the Supreme Court in this behalf, it is quite vivid that though Khirobai - natural guardian of Banshidhar alienated the suit property held by Banshidhar during his minority without prior permission of the Court under Section 8(2) of the Act of 1956 making the transaction voidable under Section 8(3) of the Act at the instance of minor Banshidhar, but said Banshidhar became major in the year 1978, however, he (Banshidhar) did not file suit for setting aside or avoiding the sale deed Ex.P-1 within three years from the date of attaining the age of majority as mandated under Article 60(a) of the Limitation Act, 1963, as such, Banshidhar has not avoided or repudiated the said sale deed within the period of limitation prescribed for avoiding the sale deed and therefore the sale deed (Ex.P-1) is binding on the defendants / appellants herein.

22. In view of the aforesaid legal analysis, both the Courts below are absolutely justified in granting decree in favour of the plaintiffs which is neither perverse nor contrary to record. The substantial question of law is answered in favour of the plaintiffs and against the defendants. Consequently, the appeal is dismissed. No order as to cost(s).

23. Decree be drawn-up accordingly.