(1980) 11 AHC CK 0027

Allahabad High Court

Case No: Second Appeal No. 3028 of 1971

Janardan Prasad and Another		APPELLANT
	Vs	
Girja Prasad Seth		RESPONDENT

Date of Decision: Nov. 26, 1980

Acts Referred:

- Contract Act, 1872 - Section 186
- Hindu Minority and Guardianship Act, 1956 - Section 11, 8
- Transfer of Property Act, 1882 - Section 122
- Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Section 2, 3(1)

Citation: AIR 1981 All 86 : (1981) AWC 51

Hon'ble Judges: Satish Chandra, C.J; Yashoda Nandan, J

Bench: Division Bench

Advocate: D.C. Sexana, for the Appellant;

Final Decision: Disposed Of

Judgement

Yashoda Nandan, J.

When this plaintiffs" Second Appeal arising out of a suit for recovery of arrears of rent, damages for use and occupation and for ejectment of the defendant-respondent came up for hearing before a learned single Judge, he referred the following question for the opinion of a Division Bench:--

"Whether the giving of a notice of demand u/s 3 (1) (a) of the U. P. (Temporary) Control of Rent and Eviction Act 1947, on behalf of a landlord, who is a Hindu minor (aged over, 5 years) by the mother of the minor amounts to a dealing with the property of a Hindu minor, and whether the giving of such a notice will be a valid notice ?"

Occasion for reference of the above quoted question arose because a learned single Judge of this Court in K. Kumar Vs. Onkar Nath, has held that giving of notice of

demand and filing a suit is not "disposing of or dealing with the property" within the contemplation of Section 11 of Act 32 of 1956. The learned Judge hearing the appeal found himself in disagreement. For a proper appreciation of the controversy involved in resolving the question referred, it is necessary to set out in brief the relevant facts which have given rise to it.

2. The two plaintiff-appellants were minors when the property in dispute was gifted to them by their maternal grandmother. In the deed of gift which was a registered document she mentioned that their mother would manage the property of the donees during their minority. The defendant-respondent is the tenant of the property. A composite notice u/s 3 (1) (a) of the U. P. (Temporary) Control of Rent and Eviction Act (U. P. Act No. III of 1947) and Section 106 of the Transfer of Property Act was served on the defendant by the appellants'' mother. Since the defendant neither paid the rent within the time permitted by law nor delivered possession of the property to the landlords the father of the plaintiffs who was their natural guardian as their next friend instituted the suit giving rise to this appeal. The claim was resisted on various grounds including certain legal pleas, inter alia that the notice served by the mother of the plaintiffs was invalid. The trial court dismissed the suit for ejectment but decreed the claim for arrears of rent in part. The lower appellate court partly allowed the plaintiffs'' appeal and modified the decree for the amount realisable as arrears of rent by decreeing it for a larger sum. It held that since the plaintiffs were over five years of age in view of the provisions of Hindu Minority and Guardianship Act 1956 (hereinafter referred to as the Act), their natural guardian was their father who was alive. It was found that in the absence of any evidence on the record that the plaintiff-appellant had appointed their mother as their agent for the purpose of issuing the notice in view of the provisions of the Act the notice served by her was invalid and the defendant''s tenancy had not been terminated in accordance with law.

3. When the appeal came up for hearing before a learned single Judge, it was argued before him that the act of issuing a notice u/s 3 (1) (a) of U. P. Act No. III of 1947 did not amount to ''disposing of, or dealing with, the property'' of the minors within the meaning of Section 11 of the Act and consequently the courts below had gone wrong in holding that the notice was invalid. Relying on the decision of the Supreme Court in V. Dhanapal Chettiar Vs. Yesodai Ammal, the learned single Judge held that service of a notice u/s 106 of the Transfer of Property Act was not necessary since the suit accommodation was governed by the provisions of a State Rent Control Act and thus assuming that the notice u/s 106 was invalid it would not be a bar to decreeing the claim for ejectment if the case fulfils the requirement of Section 3 of U. P. Act No. III of 1947. According to Section 2 (c) of U. P. Act No. III of 1947 "landlord" means "a person to whom rent is payable by a tenant in respect of any accommodation and includes the agent, attorney, heir, or assignee of such person." The learned single Judge appears to have been of the view that the mother by reason of the fact that she had been appointed guardian of the property of the

minors by the donor could not be considered to be their agent as would appear from the following observations made in the referring order :--

"A minor cannot act on his own. He must act through a guardian, either natural or one appointed through Court. If he cannot act on his own how can he have an, agent, attorney or assignee, to act on his behalf ? His mother cannot be his agent or attorney or assignee for in each case such a person must be appointed as such. It postulates an act by or on behalf of such a person i.e. the minor. Since the minor cannot act on his own and can act only through a guardian, consequently, the guardian must be one who is legally competent to act as guardian."

4. The learned single Judge further appears to have been inclined to take the view that giving of a notice u/s 3 (1) (a) of U. P. Act No. III of 1947 by the mother who was not the appellants'' natural guardian within the meaning of Section 4 (c) of the Act read with Section 5 thereof amounted to dealing with their property for the purposes of Section 11 of the Act and the notice consequently was illegal.

5. The question referred by the learned single Judge has to be considered from two different aspects. In the first place, it has to be examined as to whether the mother of the appellants appointed by the donor as guardian of the property gifted to them by the gift deed could be considered to be their agent for the purposes of Section 2 (c) of U. P. Act No. III of 1947 and was thus competent as ''landlord'' to give a notice u/s 3 (1) (a) of that Act. If the conclusion is that she was a ''landlord'' within the meaning of Section 2 (c) of U. P. Act No. III of 1947 being an agent of the appellants, the next question that would need consideration is as to whether such a notice amount to dealing with the appellants'' property within the meaning of Section 11 of the Act. We shall now proceed to consider the first question.

6. Neither the Hindu Law nor the Act prohibit either a natural or a de facto guardian from acquiring a property for a minor in the absence of there being any onerous consequences as a result of the acquisition on the minor. By means of the gift deed dated 15th Feb., 1956 which was a registered document and is on record, the grand-mother of the appellants had gifted to them two houses. The gift deed provided that not the father but the mother of the minors would act as the guardian for the gifted property. The father of the appellants acting as their natural guardian was clearly entitled to accept the gift since the mere fact that it provided that the mother will act as guardian of the minors for the property gifted cannot be characterised as an onerous term involving any burden on the property or on the minors personally. u/s 122 of the. Transfer of Property Act a gift of existing movable or immovable property made voluntarily and without consideration by the donor can be ''accepted by or on behalf of the donee''. The use of the words ''accepted by or on behalf of the donee'' shows that the donee might be a person unable to express acceptance of a gift being a minor and it may be accepted on his behalf by his natural guardian. Section 122 does not require the acceptance of a gift of movable or immovable property being express and it may be inferred Mt. Anandi

Devi Vs. Mohan Lal and Others . Where a gift deed was delivered by a donor to the donee it has been held by the Privy Council that on delivery of the deed there was acceptance of the transfer within the meaning of the section and the gift became effectual subject to registration as required by Section 123 of the Transfer of Property Act. (See AIR 1927 42 (Privy Council) and Venktasubba Srinivas v. Subha Rama AIR 1928 PC 86). Acceptance has been held proved by this court also in a case under the Hindu Law by the donee''s possession of the gift deed (See Balmukund v. Bhagwan Das ILR(1894) All 185)

7. The registered gift deed was produced by the father of the appellants. It thus can safely be held that the gift was accepted by the minors'' natural guardian with the condition that their mother would act as guardian in respect of the property gifted. No term of the gift deed was repudiated by the father of the appellants. There was in fact acquiescence and ratification of all the terms of the gift deed. It was observed by Kania, C. J. in AIR 1949 218 (Federal Court) that:--

"In my opinion, much of the apparent conflict of views will disappear if a de facto guardian is described as a de facto manager. In law there is nothing like a de facto guardian. There can only be a de facto manager, although the expression ''de facto guardian'' has been used in text books and some judgments of Courts,"

8. By reason of Section 6 of the Act the mother of the minors could not in law be the natural or de jure guardian of the property of the minors and her status would thus merely be of a de facto manager or an agent of the donees. The act of the natural guardian of the minors in accepting the gift together with all the terms contained therein, in our view, amounted to a ratification and recognition of the appointment of the mother of the minors as their de facto manager for the property in suit. In our opinion, this act of the natural guardian amounted to his appointing the mother as the agent of the minors as far as the property gifted is concerned. We have already stated that acting on the basis of the notice issued by the mother it was the father of the minors who had in fact instituted the suit which has resulted in this appeal. It is true as held in Rajalakshmi and Others Vs. Ramachandran and Another, that the mere fact that a person gifts property to a minor does not entitle him to appoint a guardian for the minor in respect of that property but we are of the view that a gift can be accepted on behalf of a minor by a natural guardian containing a condition that of the gifted property the person nominated in the gift deed shall act as a manager. The acceptance of a gift with such a condition in the eye of law would amount to recognition by the natural guardian of the nominated person as the manager or agent of the minor for the purposes of such property.

9. u/s 183 of the Indian Contract Act any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent. The minor himself since he has no consenting mind cannot appoint an agent but surely his natural guardian is capable of doing so and in the instant case, in the circumstances discussed above, we hold that the father of the appellants

while accepting the gift of the disputed property in the eye of law appointed the appellants'' mother as their agent for the purpose of the property and consequently she became in that capacity a ''landlord'' within the meaning of Section 2 (c) of U. P. Act No. III of 1947 and was entitled to serve on the respondent-tenant a notice of demand u/s 3 (1) (a) of that Act.

10. We now move on to the question as to whether the notice served on the defendant u/s 3 (1) (a) of U. P. Act No. III of 1947 under the signature of the mother which was followed up by a suit by the father as next friend of the minors could be characterised as an act of dealing with the property of minors within the meaning of Section 11 of the Act. The question as to under what limitations and to what extent guardians of Hindu minors de jure or de facto were entitled to alienate the property of minors has been the subject-matter of discussion by the ancient commentators of Hindu Law as also of decisions by law courts for more than a century. As far back as in the year 1856 it was held by the Privy Council in Hunoomanpersaud v. Mt. Babooee Munraj Koonweree (1856) 6 IA 393 that a de facto guardian has the same power of alienating the property of his ward as a natural guardian as would appear from the following passage occurring in the judgment as reported,

"Upon the third point, it is to be observed that under the Hindu Law, the right of a bona fide incumbrances who has taken from a de facto Manager a charge on lands created honestly, for the purpose of saving the estate, or for the benefit of the estate, is not (provided the circumstances would support the charge had it emanated from a de facto and de jure manager) affected by the want of union of the de facto, with the de jure title."

11. This opinion of the Judicial Committee formed the foundation for all the decisions of Indian High Courts till the coming into force of the Act. Its interpretation, however, led to a conflict of views on the question as to whether a de facto guardian of a Hindu minor could pass a promissory note in the name of the minor so as to bind his estate and become consideration for a conveyance executed by the de facto guardian. The conflict was set at rest by the Federal Court in the case of AIR 1949 218 (Federal Court) in which a unanimous decision was taken that according to English Law a guardian or manager had no such power and similarly in India also there existed no such authority in a guardian to give a covenant which would be binding on the minor or his estate.

12. It was in this state of this aspect of the Hindu Law as interpreted by authoritative pronouncements that the Act was passed by the Parliament which came into force on the 25th August, 1956. We have to construe the provisions of the Act in the historical background of the existing exposition of the Hindu Law by commentators on the subject and the pronouncements which were till then binding and prevailing. The preamble to the Act discloses that it is "An act to amend and codify certain parts of the law relating to minority and guardianship among Hindus". It does not purport to amend either U. P. Act No. III of 1947, the CPC or any other enactment. According

to Section 4 (c) read with Section 6(a) of the Act the natural guardian of a Hindu minor, in respect of his person and property in the case of a boy is the father, provided that the custody of a minor who has not completed the age of five years is to be ordinarily with the mother. According to the finding recorded, on the date of the suit none of the appellants was less than five years of age and consequently their natural guardian for the purpose of the Act was, it has to be conceded, their father. Section 5 of the Act enacts that "Save as otherwise expressly provided in the Act, any text, rule or interpretation of Hindu Law on any custom or usage as part of that law in force immediately before the commencement of the Act shall cease to have effect with respect to any matter for which provision is made in the Act." This makes it clear that apart from matters provided for by the Act itself even Hindu Law continues to remain intact for all other purposes. The relevant part of Section 8 of the Act runs 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 realization, protection or benefit of the minor''s estate; but the guardian can in no cast 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.

(4) ... .."

Section 11 of the Act on which reliance has been placed as interdicting service of a notice u/s 3 (1) (a) of U. P. Act No. III of 1947 by the mother of the appellants is in the following terms:--

"11. De facto guardian not to deal with minor''s property.--After the commencement of this Act, no persons 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."

If issuing a notice u/s 3 (1) (a) of U. P. Act No. III of 1947 can be considered to be an act by the mother of the appellants, assuming she was a de facto guardian of her sons amounting to disposal of, or dealing with, the property of her minor sons the

notice was clearly bad. A close analysis of Section 8 of the Act, however, discloses that a mere notice of demand cannot be characterised either as an act of disposal of the minors'' property or as one dealing with their property. The scope of Section 11 must be considered in the light of Section 8 of the Act which provides intrinsic evidence in support of the conclusion we are drawing. Sub-section (3) makes disposal of immovable property of a minor by a natural guardian in contravention of Sub-sections (1) and (2) of Section 8 voidable at the instance of minors etc. Sub-section (2) enumerates specific transactions which are considered disposal of immovable property, viz. mortgaging, charging or transferring by sale, gift, exchange or otherwise. Creation of leases of immovable 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 is also disposal of property and cannot be effected without the Court''s previous permission. Though Sub-section (2) is confined in its application to immovable property, Sub-section (1) is not. It may be further noticed that in the circumstances set out in Sub-section (1) the natural guardian of a minor is empowered, by it not only to dispose of a minor''s property without the Courts permission if the disposal is not of the nature contemplated by Sub-section (2) but also to deal otherwise with the minor''s movable or immovable property. To take a concrete case if a natural guardian creates a lease of a minor''s property to last for a period of less than five years he may do so without the sanction of the Court but it must satisfy the requirements of Sub-section (1). Acts of the nature mentioned above amounts to disposal of the minor''s property both within the meaning of Section 8 as also Section 11 of the Act. Section 8 (1) also empowers the natural guardian of a minor to do all acts which are necessary or reasonable and proper for the benefit of the minor for the realization, protection or benefit of the minor''s estate. If the natural guardian realizes rent due to a minor and appropriates it, it may be assumed he has dealt with the minor''s property but by merely issuing a notice to the tenant requiring him to pay rent in arrears he cannot be said to be dealing with the minor''s property. The demand has no direct effect on the minor''s property at all and the guardian can be said at best to be dealing with the tenant. The extended meaning attempted to be given to the word "deal" by the learned single Judge, is, in our opinion, not justified taking into account the context in which the word occurs and the historical background of the law existing which was amended and codified by the Act. The word "deal" according to Webster''s New Twentieth Century Dictionary inter alia means "to traffic; to trade; to do business with or in" and in our view it is in this sense that the expression has been used in Section 11 of the Act.

13. As noticed earlier, the Act beyond amending and codifying certain parts of the law relating to minority and guardianship among Hindus does not purport to affect either any State or Central enactments. The CPC by Order 32, Rule 4 (1) thereof specifically authorises even filing of a suit on behalf of a minor through a next friend and the right is not confined to a natural guardian. This fact had been taken note of

in the case of K. Kumar Vs. Onkar Nath, . The Patna High Court also in Girdhari Lohar and Others Vs. Anand Lohar and Another, has held that institution of a suit by a next friend who is not a natural guardian is not prohibited by Section 11 of the Act. Order 32 of the CPC or Section 3 (1) (a) of U. P. Act No. III of 1947 cannot be held to be in such conflict with the requirement of the provisions of the Act that they can be held to have been impliedly repealed. U. P. Act No. III of 1947 and the CPC apply to Hindus as well as non-Hindus and we see no justification for interpreting Section 11 of the Act in a manner which would render a notice issued u/s 3 (1) (a) by an agent of a Hindu minor illegal or a suit by a next friend other than the natural guardian invalid but have different legal consequences in the case of non-Hindu minors.

14. The question as to whether the notice by the mother of the plaintiffs u/s 3 (1) (a) of U. P. Act No. III of 1947 was invalid on account of Section 11 of the Act may be considered from another point of view also. A de facto guardian is a self appointed inter-meddler with the minor''s property. In this sense the plaintiffs'' mother was not a de facto guardian of her sons at all. Assuming that the issuing of a notice u/s 3 (1) (a) of U. P. Act No. III of 1947 amounts to an act of dealing with the minor''s property, the notice under consideration not having been issued by a de facto guardian did not attract Section 11 of the Act. For reasons detailed out in an earlier part of the judgment, we have held that the mother''s position on the acceptance of the gift of the suit property became that of an agent for the management of the gifted houses appointed or in any event recognised and sanctioned as such by their natural guardian. An agent need not according to Section 186 of the Indian Contract Act be appointed in any express manner. There is nothing in Section 11 that could render a notice issued u/s 3 (1) (a) by an agent of the owner of the demised premises illegal.

15. For the reasons given, our answer unreservedly to the question referred is that,

"In the circumstances of the case, giving of a notice of demand u/s 3 (1) (a) of U. P. Act III of 1947 on behalf of the landlord, who was a Hindu minor (aged over five years) by his mother did not amount to dealing with his property within the meaning of Section 11 of the Act and the notice was valid."

16. Our opinion shall be laid before the learned single Judge for deciding the other questions, if any, raised in the appeal and disposing it of.