(1988) 08 CAL CK 0020

Calcutta High Court

Case No: C.R. No. 2976-83 of 1983

Narendra Nath Hazra and Others		APPELLANT
	Vs	
Mahapada Samanta and Others		RESPONDENT

Date of Decision: Aug. 10, 1988

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 2, Order 32 Rule 1, Order 32 Rule 2, Order 32 Rule 3, Order 38 Rule 1
- Guardians and Wards Act, 1890 - Section 27
- Hindu Minority and Guardianship Act, 1956 - Section 1, 11, 12, 2, 2(1)
- Limitation Act, 1963 - Section 6
- West Bengal Land Reforms Act, 1955 - Section 3, 5, 8

Citation: 93 CWN 415

Hon'ble Judges: Bhagabati Prasad Banerjee, J

Bench: Single Bench

Advocate: S.N. Mukherjee, Bhaskar Ghosh and Bimal Kumar Chatterjee, for the Appellant;R.P. Bagchi and Tarun Chatterjee, for the Respondent

Judgement

Bhagabati Prasad Banerjee, J.

This revisional application was at the instance of the pre-emptee/Petitioner who was a stranger purchaser of the property in question for which the Opposite parties herein had filed an application for pre-emption and is against the Order No.22 dated 23rd September, 1983 passed by the learned Munsif, Arambag, in Misc. case No. 61 of 1981, whereby the learned Munsif rejected an application u/s 151 of the CPC filed by the pre-emptee/petitioner on the ground that one of the applicants for pre-emption, namely, the opposite party No. 4 herein was a minor and, as such, the said application for pre-emption should be rejected. The learned Munsif rejected the said application u/s. 151 of the CPC simply observing that "this applicant"s contention appears to be flimsy and

therefore not acceptable". The facts of the case are briefly as follows :

The opposite parties herein filed an application u/s. 8 of the West Bengal Land Reforms Act 1955 (hereinafter referred to as the said Act") for exercising their right to purchase as contiguous tenants in respect of.33 acres of land in Mouza Serampore appearing to R. S. Khatian No. 366. The disputed land originally belonged to one Sri Gour Hari Ghosh who sold the same to the pre-emptee/petitioner in the year 1980 by Deed No. 4869 which was registered on 29.7.81 for a consideration of Rs.7,000/-. The opposite parties being adjoining owner of the land made an application u/s. 8 of the said Act for purchase of the said property after depositing the requisite money. One of the four brothers (applicants), namely, opposite party No. 4 herein was admittedly a" minor on the date of making the said application. After service of notice upon the petitioner, the petitioner appeared before the learned Munsif and filed an application u/s. 151 of the CPC for dismissal of the said application u/s. 8 on the ground and in view of the provisions of section 11 of the Hindu Minority and Guardianship Act 1956 (hereinafter referred to as "the Act") read with section 5 of the Act, the said application for pre-emption was not maintainable inasmuch as Section 11 of the Act provides that after the commencement of the Act no person shall be entitled to dispose of or deal with the property of a Hindu minor merely on the ground of his/her being the defacto guardian of the minor and that as Section 11 of the Act puts an embargo to deal with the property of the minor, the application for pre-emption by the minor represented by the next friend elder brother, Mahapada Samanta, opposite party No. 1 herein, was not maintainable. The Opposite Parties opposed the said application u/s. 151 of CPC contending that the said appliction u/s. 8 was maintainable as per the provisions of Order 38 rule 1 of the Civil Procedure Code.

2. Mr. Saktinath Mukherjee, learned Advocate appearing for the petitioner, contended that section 11 of the Act brings about a material change in the law relating to defacto guardian or defacto manager of a Hindu Minor"s estate for which no person has the right or authority to do any act as the defacto guardian of such minor. It was submitted that in view of the provisions of Section 5 of the Act, the Act gives over-riding effect to the provisions of this Act in respect of matters dealt with in the Act and it seeks to repeal all existing law, in the matters dealt with in it, whether in the shape of enactment or otherwise which may be inconsistent with it. It was submitted that the provisions of Section 11 of the Act take away the authority of any person to deal with or dispose of any property of a Hindu minor on the ground of his being a defacto guardian of such minor. Mr. Mukherjee next contended that as because Section 11 of the Act puts an embargo in this behalf, a property cannot be purchased by the minor through its defacto guardian. It was further submitted by Mr. Mukherjee that the application for pre-emption u/s. 8 of the Land Reforms Act has to be dealt with in accordance with the procedure laid down in Section 9 of the said Act which lays down elaborate procedure as to the manner in which notice is to be served, nature of enquiry that may be made and also contains provisions for appeal against the order. Mr. Mukherjee drew my attention not only to Section 9 for also to Section 57 of the said Act which provides for power to compel production of

records and documents and to enforce attendance of witnesses and pointed out that for the purpose of exercising all these powers, provisions of CPC regarding issuing of summons, enforcing attendance and examination of other witnesses, requisitioning published records, issuing commission, enforcing or executing orders or remanding the case etc., were made applicable. In other words, Mr. Mukherjee submitted, the provisions of CPC except what was adopted by the aforesaid two sections have been excluded. Mr. Mukherjee further submitted that the procedure for suits by or against a minor are specifically laid down in Order 32 Rules 1 and 2 of the CPC and submitted that in the absence of any provision in the West Bengal Land Reforms Act adopting the same, provisions of Order 32, Rules 1 and 3 of the CPC would not apply in the case of an application for pre-emption under this Act. Section 11 of the Act provides as follows :

" 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/her being the defacto guardian of the minor".

3. Mr. Mukherjee submitted that the expression "deal with" also means "buying" as well as "selling". The support of this contention, Mr. Mukherjee relied upon a Queens Bench decision in the case of Mecanzie v. Day, reported in (1893)1 Q.B. 289 where Lord Colendge, C. J., held;

" The plain meaning of the word "deal with" unquestionably extends to buying as well as selling."

4. According to Mr. Mukherjee, the word "deal with" in section 11 of the Act should include not only "sale" but also "purchase" for and on behalf of minor. Mr. Mukherjee also submitted that after the coming into force of the Hindu Minority and Guardianship Act, 1956, u/s 1 of the Act, a minor cannot purchase a property and,"as such, the application made by the opposite parties for purchase of the property u/s. 8 of the said Act for and behalf of a minor also is illegal and invalid. In support of his contention, Mr. Mukherjee relied on the decision of the Madras High Court in the case of Bajalakshmi & Ors. v. Minor Ramachandran & Anr., reported in AIR 1967 Mad. 113 wherein it was held that under the Hindu Law, the powers of a defacto guardian or a defacto manager of a Hindu minor"s property to bind the minor"s estate by alienation of immoveable property of the minor in case of necessity or for the benefit of the minor"s estate have been recognised in numerous decisions. Section 11 of the Act now takes away these powers completely after the commencement of the Act which provides that no person shall be entitled to dispose of or deal with the property of a Hindu Minor. Mr. Mukherjee next cited a decision of the Patna High Court in the case of Narain Singh v. Supurna Kaur & Ors., reported in AIR 1968 Pat. 318 wherein it was held "under the provision of Order 32 of the CPC in any legal proceeding a minor can be represented by his/her next friends does not come to represent and, in appropriate cases, where such next friend does not come to represent the minor, the Court can appoint any person to act as the guardian of such minor in that legal proceeding. A next friend can be any person not necessarily any of the guardians

enumerated in Section 4 of the Hindu Minority & Guardianship Act. The powers of a person accepted by the Court either as the next firend or as the guardian of a minor is only limited to that legal proceeding and not beyond that. Where a mother has acted as guardian ad litem of a minor in a previous partition suit and this position was then recognised by the parties, it cannot stop one from raising an objection to the disposal of a minor''s property through the mother.'' In this connection, reference was also made to the judgment of the Delhi High Court in the case of Sunita Sabharwal v. Commissioner of Income Tax, reported in 92 ITR 377 wherein the mother of the petitioner, a minor Hindu, made a declaration u/s. 24 of the Finance Act, 1965 making voluntry disclosure of the income of the minor of Rs.10,000/- (Rupees Ten thousand) under her signature. In that case, applying the principle underlying section 11 of the Hindu Minority & Guardianship Act, it was held by the Delhi High Court as follows :

A sum of Rs. 10,000/- held by the minor was thus being dealt with by the declarant and the filing of the declaration did amount to dealing with the property''.

As such, it was held by the Delhi High Court that the said return filed by the mother was not maintainable in view of the provisions of Section 11 of the Act. Reference was also made to the Division Bench decision of the Mysore High Court in the case of Talari Erappa v. Muthgalappa, reported in AIR 1972 Mysore 31, wherein it was held that, as the law stood, a defacto guardian could transfer minor''s property merely on the ground of his being a defacto guardian. After the coming into force of the Act, in view of Section 11 of the Act, a minor on attaining majority cannot -validate a sale of a defacto guardian by rectification.

5. Mr. Mukherjee submitted that in view of the Mysore High Court''s judgment even after attaining majority a minor cannot rectify the sale which took place during his minority in view of express provisions contained in Section 11 of the Act.

6. Mr. R. P. Bagchi, learned Advocate appearing on behalf of the opposite parties, disputed the proposition of law as sought to be urged by Mr. Mukherjee and contended that the Hindu Minority & Guardianship Act, 1956 had not suppressed the provisions of the Guardians & Wards Act; 1890 and drew by attention to Section 2 of the said Act which provides as follows

'' The provisions of this Act shall be in addition to and not save as hereinafter expressly provided, in derogation of the Guardians and Wards Act 1890 (VIII of 1890)''.

7. Mr. Bagchi also referred to section 27 of the said Act which provides :

"A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own and, subject to provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property."

8. In this connection, Mr. Bagchi also referred to the judgment of the Gujarat High Court in re : Krishna Kanta Maganlal the petitioners, reported in AIR 1961 Guj. 68 wherein it was held as follows :-

" Every statute must be construed within the four corners of the Act. When construing the terms of any provision found in a statute, the court is bound to consider the other parts of the statute which throw light on the intention of the Legislature and serve to show that particular provision has to be construed as it would be alone and apart from the rest of the statute. Every clause of the statute should be construed with reference to the context and other clauses in the statute, so far as possible, to make a consistent enactment of the whole statute. No part of a statute should be construed in isolation for the intention of the law maker is to found not in one part of the statute or another but in the entire enactment and that intention can best be covered by viewing a particular part of the Statute not detached from its context in the statute but in connection with its whole context."

9. Mr. Bagchi also referred to the provision of Section 12 of the Hindu Minority & Guardianship Act wherein it is provided that where a minor has an undivided interest in the 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. Mr. Bagchi pointed out that the scope of Section 12 of the said Act is not only confined to a joint family governed by Mitakshara Law but also applicable to Dayabhaga Law and in support of his contention, he has referred to paragraph 283 of Mulla''s Hindu Law wherein it is stated that it would seem that the powers of a manager under Dayabhaga Law would be the same as those of the manager under Mitakeshar Law. Mr. Bagchi submitted that, in the instant case, the application was made for the benefit of the minor. Mr. Bagchi next refers to the decision of this Court in the case of Mukti Devi v. Manorama Devi, 40 CWN 1211, wherein it was held :

" In connection with the maintainability of the application for and on behalf of a minor u/s 26F of the Bengal Tenancy Act there can be no doubt that if one of the applicants was a minor, the proceedings which have been continued in the court and which terminated with the order of pre-emption were irregular and the court ought to have recorded a finding on this point and it was a duty of the court to appoint a guardian for him under the provisions of Order 32, rule 3, C.P.C."

10. Mr. Bagchi also referred to a decision of the Allahabad High Court in the case of Arun Kumar v. Chandrawati Agarwal & Ors., reported in AIR 1978 All 221 wherein the scope of Section 6 of the Hindu Minority & Guardianship Act was considered and it was held as follows :

" The provisions of Section 6 excludes Hindu minor having a natural guardian as defined by the Act for his. undivided interest in a joint family property. This would, therefore, exclude a natural guardian as understood by the Act, applying for pre-emption in the court to alienate the property of the minor u/s. 8(2) of the Act. The result would be that so long

as the Hindu Law shall apply, a father or a natural guardian can alienate a minor''s interest in copercenary property subject to the well known conditions regarding benefit of the estate, etc."

11. The question of law involved in this case is of first impression. The question is whether an application for pre-emption u/s 8 of the West Bengal Land Reforms Act, 1955 could be filed by a minor in view of the provisions of Section 11 of the Hindu Minority and Guardianship Act 1956. The matter was argued by the Cousels appearing on both sides at length to find out the legal position.

12. Six applicants filed a composite application for premption and one of'' the applicants was admittedly a minor at the time of making of such application. The said minor was represented by his elder brother. Before the application had been taken up for final disposal, a preliminary point ''was taken by the stranger purchaser, namely pre-emptee by filing a petition u/s 151 of the CPC on the ground that the said application was invalid as one of the applicants was minor.

13. Section 8 of the West Bengal Land Reforms Act provides that "If a portion of share of a holding of a raiyat is transferred to any person other than a co-sharer in the holding the bargadar in the holding may, within three months of the date of such transfer, or any co-sharer raiyat of the holding may, within three months of the service of the notice given under sub-section (5) of Section 5 or any raiyat possessing land adjoining such holding, may, within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction, for transfer of the said portion of share of the holding to him, subject to the limit mentioned in section 14M on deposit of the consideration money together with a further sum of ten percent of that amount :

Provided that if the bargadar in the holding, a co-sharer raiyat and raiyat possessing land adjoining, such holding apply for such transfer, the bargadar shall have the prior right to have such portion or share of the holding transferred to him, and in such a case, the deposit made by others shall be refunded to them;

Provided further that where the bargadar does not apply for such transfer and a co-sharer raiyat and a rauyat possessing land adjoining such holding both apply for such transfer, the former shall have the prior right to have such portion or share of the holding transferred to him, and in such a case, the deposit made by the latter shall be refunded to him:

Provided also that as amongst raiyats possessing lands adjoining such holding preference shall be given to the raiyat having the longest common boundary with the land transferred."

14. Section 9 of the said Act provides that on deposit of the money mentioned u/s 9(1), of the said Act, the Munsif shall give notice to the party and if the Munsif finds that the sums have been properly paid and finds that the pre-emptor is entitled to get protection u/s 2(1)

of the said Act, he shall make an order that the portion or the share of holding be transferred to the application for pre-emption and thereupon the share of holding shall vest in the applicant against that order with a provision for appeal before the Additional District Magistrate. The procedure or disposal of the application for pre-emption is laid down in the Act itself and I agree with the view of Mr. Saktinath Mukherjee that while disposing of application for pre-emption, the other provision of the CPC which has not been expressly adopted in the Act, is not applicable. (sic) this case, it was sought to be argued before the learned Munsif that (sic) the facts and circumstanecs of the case, the application would be maintainable on behalf of the minor in view of the provisions of Order 23 rule 2 of the CPC by appointing guardian-ad-litem. As the provision of the CPC does not apply to the proceeding initiated u/s 8 of the West Bengal Land Reforms Act, there is no scope for invoking the provision of Order 32 rule 2 of the CPC in the instant case for the representation of the minor in the proceeding.

15. Section 11 of the Hindu Minority & Guardianship Act is a total prohibition on a defacto guardian of a minor to dispose of or deal with the property of a Hindu minor. The expression ''dispose of or deal with the property of the Hindu minor, cannot be interpreted only to mean to sell and transfer or otherwise parting with and/or encumbering the property of a Hindu minor. In the case of Macenzie v. Dey reported in (1893)1 Q.B. 289, it was held by Lord Coleridge C.J., that ''the plain meaning of the word ''deal'' unquestionably extends to buying as well as selling''. In that view of the matter, in my view, the expression ''deal with'' appearing in section 1 of the Hindu Minority and Guardianship Act also puts an embargo on the right of de facto guardian of the. minor to purchase any property for and on behalf of a minor.

16. In the instant case, the application for pre-emption was filed by the elder brother, who is not the natural guardian of the minor, but can only be said to be a de facto guardian. Mr. Mukherjee submitted that the elder brother at best can be said to be a de facto guardian. The defacto guardian is prohibited by Hindu Minority and Guardianship Act to deal with the property of a minor. Mr, Mukherjee relied on the provision of section 5 of the Hindu Minority & Guardianship Act which provides that ''save as otherwise expressly provided in this Act -

(a) any text, rule or interpretation of Hindu law or any customs or suage as part of that law enforced immediately before the commencement of this act, shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law enforced immediately before the commencement of this act, shall cease to have effect enforced its inconsistence with any of the provisions contained in this Act.''

17. This Section gives over-riding application to the provision of the Act and in fact lays down that in respect of matter dealt with in the Act it seeks to repeal all existing law on the matter dealt with in it whether in the shape of enactment or. otherwise which may be inconsistent with it.

18. Mr. Prasanna Bagchi relied on the provisions of Section 2 of the said Act which provides that this Act is supplementary to the Guardians & Wards Act 1890 or in other words, it was submitted that the provision of the Guardians & Wards Act 1890 was not given a go-by and Mr. Bagchi relied on the provision of Section 27 of the Guardians & Wards Act 1890 in support of his contention that in respect of a Joint property of a minor, he is bound to deal with the property of a minor as a man of ordinary prudence and he may do all acts which are responsible and proper for protection or benefit of the property and that it was submitted by Mr. Bagchi that in the instant case, the application for pre-emption was made for the benefit of the minor and as such the action should be held to be maintainable in view of the Section 27 of the Guardians & Wards Act 1890. In my view the provisions of the Hindu Minority & Guardianship Act and the Guardianship & Wards Act 1890 are complementary, but in case of repugnancy, the provision of the Hindu Minority & Guardianship Act would prevail in view of the provision of Section 2 read with Section 5 of the Hindu Minority & Guardianship Act. Accordingly, J am unable to uphold the contention of Mr. Bagchi that Section 11 of the Hindu Minority 6c Guardianship Act did not override the provision of Section 27 of the Guardians & Wards Act 1890. Mr. Bagchi referred to the provision of Section 12 of the Hindu Minority and Guardianship Act and contended that where a minor has undivided interest in a 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. This provision is only applicable to a minor who is the member of a joint family governed by Mitakshar law and Mr. Bagchi referred to para 283 from Mulla"s book on Hindu Law, wherein it is observed "it would seem that the powers of a manager under Dayabhaga law are the sme as those of managers under Mitakshara law and contended that in view of the provisions of Section 12 read with para 283 of that book, there is no necessaity for appointing guardian for minor"s undivided interest in joint family property either governed by Mitakshar law or Dayabhaga Jaw and as such in view of Section 12 of the said, Act, the application for pre-emption by a minor could not be rejected as creating a bar under-Section 11 of the said Act.

19. in view of the provision of Section 5(a) of the Hindu Minority & Guardianship Act, 1 am unable to rely on the commentaries made in para 283 of that book. Admittedly, the application for pre-emption made on behalf of the minor was governed by Dayabhaga Law and the concept of joint family property under the Mitakshara Law cnnot be introduced in this case. There could be joint property or co-ownership under the Dayabhaga Law but not a joint family property (HUF). Accordingly, I am unable to uphold the contention of Mr. Bagchi in this behalf. 1 also agree with the views expressed by Madras High Court in the case reported in AIR 1967 Madras 113, AIR 1968 Patna page 318 and the decision of the Delhi High Court reported in 93 ITR 377 where the scope of Section 11 of the Hindu Minority and Guardianship Act has been discussed and explained. In my view, it is not necessary to discuss the proposition laid down by the aforesaid decision in the facts and circumstanecs of the case, inasmuch as, in the instant case, the application for pre-emption has been made specificlly under the provision of the

West Bengal Land Reforms Act 1955 which is a complete Code in itself. The case laws cited by Mr. Mukherjee at this point, relates to the applicability of the provision of Section 11 of the said Act under the general law and in case of any suit pending under the general law of the land, Section 11 of the Hindu Minority and Guardianship Act had undoubtedly put an embargo on the right of a de facto guardian to sell or purchase a property for and on behalf of the Hindu minor. In the instant case, Rs.60,000/- has been deposited along with the application for pre-emption for the purpose of exercising their right to purchase the property in view of the protection guaranteed under Section- 8 of the West Bengal Land Reforms Act, so undoubtedly the said sum of Rs.60,000/- includes the part of the money that was on behalf of the minor. So, Section 11 of the Hindu Minority and Guardianship Act read with the principle laid down by Delhi High Court in 92 ITR page 377, it must be held that a part of the said sum of money belonging to the minor to even.

20. Even if the expression ''deal with'' is given a limited meaning to mean to part with the property of the minor. As 1 have already upheld the contention of Mr. Mukherjee that the provision of the CPC would not apply to a proceeding initiated u/s 8 of the West Bengal Land Reforms Act, but it appears that the impugned order under challenge was passed by the learned Munsif on the basis of an application filed by Mr. Mukherjee''s client, namely stranger purchaser u/s 151 of the Code of Civil Procedure. As contended by Mr. Mukherjee it was accepted by me, that the provision of the CPC is not applicable to such a proceeding and as such it must also be held that the application filed by the petitioner before the learned Munsif was also not maintainable, inasmuch as, that was specifically made u/s 131 of the Code of Civil Procedure. If the procedure for disposal of the application is not governed by the Code of Civil Procedure, in that event, it must be held that the said application was not maintainable. But 1 do not propose to dispose of the revision application on this ground. As a very important question has been raised, it is necessary that such question should be decided, so that the parties may know their positions under the law. The right of purchase by co-sharer or contiguous tenant has been expressly conferred by Section 8 of the West Bengal Land Reforms Act 1955. The West Bengal Land Reforms Act 1955 provides "the Act to reform the law relating to land tenure consequent on the vesting of all estates and of certain rights therein and also to consolidate the law relating to land reforms in the State of West Bengal. In order to give the legislative intent namely, land reforms relating to the State of West Bengal, Section 3 of the said Art provided that "the provision of this Act shall have effect notwithstanding anything in any other law or any custom or usage or in any contract expressed or implied inconsistent with the provision of this Act." So, the provision of this Special Act overrides the provision of the general Acts. Even in the absence of any overriding effect, it is also firmly established principle that the provision of the Special statute will override the provision of the general statute. Admittedly, the West Bengal Land Reforms Act is a Special Act dealing with the land reforms and management of land in the State of West Bengal and particularly, in view of the provision of Section 3 of the said Act. the question is whether the provision of the Hindu Minority & Guardianship Act, particularly. Section 11

of the said Act, can be said to put an embargo on the right of a co-sharer or contiguous tenant, the right to purchase specifically conferred by the West Bengal Land Reforms Act, 1955. The right of pre-emption is a statutory right. In this case, the special law imposed a limitation upon the ownership of a property to the extent that it restricts the owners right to sell and compels him to sell the property to the persons entitled to pre-emption under, the statute. In other words, the statutory right or pre-emption though not amounting to an interest in the land, is a right which attaches to the land and which can be enforecd against a purchaser by the person entitled to pre-empt. The minor''s right to pre-empt as provided u/s 8 of the West Bengal Land Reforms Act, cannot be curtailed by the provision of Section 11 of the Hindu Minority & Guardianship Act 1956. If the contention of Mr. Mukherjee is accepted, in that event, the provision of Section 8 of the West Bengal Land Reforms Act so far as the minor''s right of purchase as co-sharer or contiguous tenant, would make it nugatory. In section 8 of the said Act, no embargo has been put on the minor''s co-sharer right or a minor''s contiguous tenant''s right of purchase. In the instant case, it must be held that the application that was filed for pre-emption on behalf of the minor, is admittedly for the benefit of the minor ''and the same was done in exercise of the right conferred by Section 8 of the West Bengal Land Reforms Act. In this connection, it was to be remembered that the right of pre-emption has to be exercised within a period of four months of the date of such transfer by any raiyat possessing land adjoining Such holding before the appropriate authority on deposit of the consideration money together with a further sum of money on that account. There is no scope for extension of limitation period of four months for the purpose of exercising of powers u/s 8 of the said Act. In other words, on no account the said period of limitation of four months could be enlarged. In this connection, reference may be made to Section 6 of the Limitation Act which provides that as a general rule, suits and other proceedings instituted after the lapse of the period of limitation prescribed by the first schedule to the Limitation Act should be barred, but this general rule is subject to the exception that under certain circumstances, particularly in case of a minor, a suit or other proceeding may be instituted after the minor has attained majority or in other words, the Jaw of limitation could not apply during the period when one was a minor and the period of limitation shall start after he has attained majority. So the minor''s right in all other matters'' suits and proceedings has been protected by the legislature, so that the minor could not be left without any remedy. There is no such provision similar to Section 6 of the Limitation Act under the West Bengal Land Reforms Act and Section 6 of the Limitation Act has no application in the instant case. As because this is a special statute confering special right, that right has to be exercised within that period and it cannot be said that minor loses his right u/s 8 of the said Act as because he is a minor. This is not the intention os the legislature and for that purpose, the West Bengal Land Reforms Act has been given an overriding effect. If the contention of Mr. Mukherjee is upheld that a minor has no right of purchase u/s 8 of the West Bengal Land Reforms Act, in that event, in my view, it would be contrary to the intention of the legislature and if such a construction is given, in that event, that would defeat not only the purpose of the Act but would result in an absurd situation. It is a cardinal principle of interpretation that a construction which promotes the remedy Parliament has provided to

cure the particular mischief is known as a purposive construction. Parliament is presumed to intend that in construing an Act the Court, by advancing the remedy which is indicated by the words of the Act and the implication arising from, those words, should aim to further every aspect of the legislative purpose.

21. A purposive construction of an enactment is. one which gives effect to the legislative purpose by -

(a) following literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this code called a purposive and literal construction), or

(b) applying a strained meaning where the literal meaning is not in accorance with the legislative purpose (in the code called a purposive - and - strained construction)

(see para 313 of Statutory Interpretation by Francis Bennion)

" The Court seeks to avoid a construction of an enactment that produces an unworkable and impracticable result, since this is unlikely to have been intended by parliament."

" The Court seeks also to avoid a construction that causes unjustifiable inconvenience to person who are subject to the enactment, since this is unlike to have been intended by parliament."

(see para 321 and 322 of Bannion''s Statutory Interpretation)

22. True, the provision of the Hindu Minority and Guardianship Act, particularly Section 11, is enacted to protect the properties of minor and has put as embargo on the de facto guardian from disposing of and dealing with a property of a Hindu minor. But under the provision of Section 8 of the West Bengal Land Reforms Act, it is a very valuable right which have been conferred upon co-sharer and contiguous tenant by conferring upon them right of purchase in case the property is purchased by a stranger purchaser and in the instant case, if it is held relying on Section 11 of the Hindu Minority & Guardianship Act, the minor cannot exercise such right, but in the instant case, admittedly, the application that was filed for and on behalf of the minor was for the benefit of the minor and Section 8 was enacted to protect the interest of the co-sharer and contiguous tenant. In other words, if the submission of Mr. Mukherjee is accepted, in that event, in order to counter one mischief, a greater mischief has to be caused to a minor by holding that the minor will have no right u/s 8 of the West Bengal Land Reforms Act. It is a cardinal principle of interpretation that "Court seeks to avoid a construction that cures the mischief the enactment was designed to remedy, only at the cost of setting up a disproportionate counter-mischief, since this is unlike to have been intended by Parliament". It is absurd to suppose that the legislature intended that the minor''s valuable right of pre-emption which is beneficial to the minor, should be taken away in the name of protecting the property of the minor. In order to save one minor mischief, a greater mischief would be done to a minor if such construction is put on Section 8 of the West Bengal Land Reforms Act.

Accordingly, I hold that in view of the provision of section 3 of the West Bengal Land Reforms Act, the right of a co-sharer or contiguous tenant, whether a minor or not, is not at all affected by the provisions of section 11 of the Hindu Minority & Guardianship Act. Special Act has created a right which could not be taken away. Ordinarily a right created by any special statute, could not be taken away on the basis of general law in the land, but in the instant case, the West Bengal Land Reforms Act expressly overrides by virtue of section 3 of the Hindu Minority and Guardianship Act.

23. In this connection reference may be made to the decision of the Supreme Court reported in Manick Chand & Anr. v. Ramchandra AIR 1981 SC 519 wherein the Supreme Court held that after the passing of the Minority and Guardianship Act, 1956 the Guardian of a Hindu minor has power to act which are necessary or reasonable and proper for the benefit of the minor or for realisation, protection or the benefit of the minor"s estate. This provision makes it clear that the guardian is entitled to act so as to bind the minor, if it is necessary or reasonable and proper for the benefit of the minor. The power thus conferred by the section is in no way restricted than that was recognised under the Hindu Law. This applies even to a contract for purchase of immoveable property. As it is within the competence of the guardian, the contract is entered into effectively on behalf of the minor and the liability to pay the money is the liability of the minor under the Transfer of Property Act. It cannot be said that in a "contract for purchase of property, the guardian would be binding the minor by his personal covenant. Thus contract entered into by the guardian on behalf of the minor is enforceable. It was further held that it is not disputed in that case that the contract entered into by the guardian was for the benefit of the minor and the Supreme Court also observed that it was a matter, of common knowledge that the price of the immoveable property has been on the rise and there could not be any doubt that the transaction was for the benefit of the minor in that case. The Supreme Court also observed in that case that the position under the Hindu Law is that a guardian has legal competence to enter into a contract on behalf of the minor for necessity or for the benefit of the estate. Accordingly, in the instant case it cannot be disputed that if right of pre-emption is not exercised in that event, that would cause irreparable loss and injury to the interest of the minor. I have indicated earlier that the objects of the Hindu Minority & Guardianship Act is to protect the minor and in my view, the Court will not interpret any provision of a statute and/or in such a manner so as to defeat the beneficial rights of a minor. In the name of protecting the minor the court cnnot take away the beneficial right of a minor on the ground that he is a minor.

24. In this case if the right "of premption is not exercised on behalf of the minor at this stage the said right would be lost for ever and that this is not the intention of the legislature that the minor would be deprived of the benefits of the statute which were designed to protect the interests of the co-sharers and the adjacent owner of a land and building. If the contention- of the petitioner is upheld, in that event, that would be doing mischief to a minor. It cannot be the intention of the legislature to cause mischief to a minor whent the legislature has not put any embargo on the right of the minor to exercise

the right of premption.

25. Before I conclude, I must point out that the learned Munsif had not dealt with the points raised before him and had not given any reason why the application u/s 151 of the CPC filed by the petitioner was rejected. It was the duty of the learned Munsif to disclose reason and grounds for which the application was rejected. As no ground was disclosed, the parties were heard at length and for the reasons given by me, I agree with the conclusion of the learned Munsif and hold that there was no substance to the contention raised in the application filed by the petitioner before the Trial Court. Accordingly, I hold that merely on the ground that the opposite party no. 4 who was one of the applicants, was a minor and his application for pemption should be rejected and I further hold that the minors are under no diability to exercise their right u/s 8 of the West Bengal Land Reforms Act. Excepting this point, 1 make it clear that I have not adjudicated any of the points on the merits of the application filed u/s 8 of the West Bengal Land Reforms Act which shall be disposed of by the learned Munsif in accordance with law. For the reasons above, the revision application fails and accordingly, the same is discharged without any order as to costs.