



A.S.No.183 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B. BALAJI

A.S.No.183 of 2016

and

C.M.P.No.2714 of 2016

1.Puvaneswary Balachandran @ Shantha
2.Iniyaval
3.Sembian

... Appellants

Vs.

1.Vijayalakshmi
2.Siddharth (major)
3.Rajeswari
4.Thirumagal
5.The Collector,
Cuddalore.
6.The Thasildar,
Chidambaram.

... Respondents

*[2nd respondent declared as major and 1st respondent
Vijayalakshmi discharged from guardianship vide
order of Court dated 06.02.2023 in A.S.No.183 of 2016]*



A.S.No.183 of 2016

Prayer : Appeal Suit filed under Section 96 and Order 41 Rule 1 of Code of Civil Procedure against the judgment and decree dated 30.09.2015 in O.S.No.30 of 2011 on the file of the Additional District Court-II, Chidambaram.

For Appellants	:	Mr.R.Srinivas Senior Counsel for M/s.Mythili Srinivas
For R1 and R2	:	Mr.R.Gururaj
R3	:	Died
For R4	:	Mr.M.R.Thangavel
For R5 and R6	:	Mr.T.Sampathkumar Government Advocate (CS)

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

The defendants 2 to 4 in the suit in O.S.No.30 of 2011 on the file of the Additional District Court-II, Chidambaram, are the appellants in the above appeal.



A.S.No.183 of 2016

WEB COPY 2. Brief facts that are necessary for the disposal of the appeal are as follows :

2.1. Respondents 1 and 2 have filed the suit for partition of their 5/12 share in the suit property. The suit property is a house site and building measuring an extent of 4024 sq.ft. in Sengazhaneer Pillaiyar Koil Street, Chidambaram Town, Chidambaram Taluk.

2.2. The Genealogy given by the plaintiff in plaint A-Schedule is admitted. The 1st plaintiff in the suit is the wife of one Ilangovan and the 2nd plaintiff is her minor son. The 1st defendant is the mother of the said Ilangovan. The 2nd defendant is the wife of one Balachandran, who is the son of 1st defendant. The husband of 1st defendant by name Subramanian and one Ganesan are the two sons of one Rathinam Pillai, who is the great grandfather of 2nd plaintiff.

2.3. It is admitted that the suit property is the ancestral property of plaintiffs and defendants and Rathinam Pillai died intestate. It is admitted by both sides that, after the death of Rathinam Pillai, the suit property devolved on his two sons, Subramanian and Ganesan. It is admitted by both



A.S.No.183 of 2016

sides that the brother of Subramanian by name Ganesan and his sons released their share in the suit property in favour of Subramanian, the husband of 1st defendant. Therefore, the suit property in entirety belonged to Subramanian.

2.4.After the death of Subramanian on 06.08.1987, the suit property devolved on his wife, the 1st defendant, two sons Balachandran and Ilangovan and a daughter Thirumagal, who is the 5th defendant. It is admitted that Balachandran died intestate leaving behind his wife Santha (2nd defendant) and his daughter and son, who are defendants 3 and 4 in the suit.

2.5.The plaintiffs 1 and 2 are the wife and minor son of Ilangovan, who died in the year 2011. Since Subramanian, Ilangovan and Balachandran constituted a Hindu joint family, the plaintiffs admit in the plaint 1/3 share to all the three. After the death of Subramanian, his 1/3 share devolved on Rajeswari (1st defendant), Balachandran, Ilangovan and Thirumagal (5th defendant). Therefore, the plaintiffs, being the legal heirs of Ilangovan, claim 5/12 share in the suit property.



A.S.No.183 of 2016

WEB COPY

3.It is the case of appellants/defendants in the written statement that Ilangovan, son of Subramanian, the father of 2nd plaintiff and the husband of 1st plaintiff, along with his minor son (2nd plaintiff), executed a release deed dated 21.01.1999 in respect of their share in favour of Balachandran, the husband of 2nd defendant, for a consideration of Rs.4,80,000/-. It is by virtue of the release deed stated to have been executed by Ilangovan along with his minor son, the appellants contested the suit for partition by stating that the plaintiffs have no right in the suit property after the release deed.

4.During the pendency of the suit, the 1st defendant, namely the mother of Ilangovan and Balachandran, filed a counter claim claiming $\frac{1}{4}$ share in the suit property as the legal heir of her husband and deceased son Balachandran by pleading a release deed by daughter 5th defendant in favour of Balachandran and the release deed executed by Ilangovan and his son.



A.S.No.183 of 2016

WEB COPY

5.The trial Court framed the following issues :

- “1.வழக்கு சொத்தானது வாதி, பிரதிவாதிகளுக்கு சொந்தமான இந்து கூட்டுக் குடும்ப சொத்தா ?
- 2.முதல் வாதியின் கணவர் இளங்கோவன் தனது சகோதரர் பாலசந்திரனுக்கு 21.1.1999 ஒரு விடுதலை பத்திரம் எழுதிக் கொடுத்தாரா ?
- 3.5ம் பிரதிவாதி 24.12.1999ல் தனது சகோதரர் பாலசந்திரனுக்கு ஒரு விடுதலை பத்திரம் எழுதிக் கொடுத்தாரா ?
- 4.2ம் பிரதிவாதியின் கணவருக்கு வழக்கு சொத்து தனித்து உரிமைப்பட்டதா ?
- 5.முதல் பிரதிவாதிக்கு வழக்கு சொத்தில் 1/4 பாகம் உள்ளதா ?
- 6.வழக்கு சொத்தில் உள்ள வீடானது முதல் பிரதிவாதிக்கு தனித்து பாத்தியப்பட்டதா ?
- 7.முதல் வாதியின் கணவர் இளங்கோவனின் பணத்தைக் கொண்டு வழக்கு சொத்தில் வீடு கட்டப்பட்டதா ?
- 8.வாதிகளுக்கு வழக்கு பி.பட்டியல் சொத்தில் 5/12 பாகத்தைப் பொறுத்து முதல்நிலை தீர்ப்பாணை கிடைக்கத்தக்கதா ?
- 9.முதல் பிரதிவாதிக்கு 1/4 பாகத்தைப் பொறுத்து முதல்நிலை தீர்ப்பாணை கிடைக்கத்தக்கதா ?
- 10.வாதிக்கு வேறு என்ன பரிகாரம் கிடைக்கக் கூடியது ?”



A.S.No.183 of 2016

WEB COPY

6.Before the trial Court, the 1st plaintiff examined herself as P.W.1 and marked Exs.A1 to A3. The 1st defendant was examined as D.W.1. The 2nd defendant was examined as D.W.3. The 5th defendant, namely, Thirumagal was examined as D.W.3. On behalf of defendants, Exs.B1 to B14 were marked. A Commissioner was also appointed and his report was marked as Ex.C1 and the plan and photographs were marked as Exs.C2 and C3 respectively.

7.There is no dispute as regards relationship between the parties. On the admission of parties, the trial Court held that the suit property is the joint family property. The trial Court, however, on the issue whether the release deed was executed by Ilangovan in favour of Balachandran on 21.01.1999, held that the release deed is not binding on the minor 2nd plaintiff. Therefore, the trial Court granted a decree in favour of 2nd plaintiff in respect of 20/96 share in the suit property. The counter claim was also allowed by granting a preliminary decree in favour of 1st defendant granting 19/96 share.



A.S.No.183 of 2016

WEB COPY

8. Aggrieved by the judgment and decree of the trial Court granting 20/96 share in favour of 2nd plaintiff and 19/96 share in favour of 1st defendant, the above appeal is preferred by defendants 2, 3 and 4.

9. Learned Senior Counsel appearing for the appellants relied upon the release deed which is marked as Ex.B12 dated 21.01.1999. A copy of Ex.B12 is also marked as Ex.B7. Since execution of Ex.B12 is admitted by the 1st plaintiff herself and the trial Court also has given a finding regarding the genuineness of the document, the learned Senior Counsel appearing for the appellants submitted that the judgment and decree of the trial Court granting 20/96 share in favour of 2nd plaintiff is not valid. Learned Senior Counsel submitted that the release deed as such is not even challenged. In other words, the learned Senior Counsel, pointing out that there is no prayer to set aside the release deed and the minor is *eo nomine* party to the document, contended that the finding of the trial Court as regards 2nd plaintiff's share cannot be sustained.



A.S.No.183 of 2016

WEB COPY

10.Learned counsel appearing for the plaintiffs/respondents 1 and 2 submitted that the consideration referred to in the document under Ex.B12 is not paid and that therefore, the document is not valid and binding on the plaintiffs. Learned counsel appearing for the plaintiffs further submitted that the appellants have not preferred any appeal as against the judgment and decree in the suit in O.S.No.270 of 2012. It is pointed out that the suit in O.S.No.270 of 2012 was filed by the appellants against the plaintiffs as well defendants 1 and 4 for bare injunction. Since the suit in O.S.No.270 of 2012 is dismissed on the basis of findings recorded in the connected suit in O.S.No.30 of 2011, learned counsel submitted that the dismissal of suit in O.S.No.270 of 2012 will operate as *res judicata* to prosecute the present appeal.

11.In the course of arguments, it is admitted by learned Senior Counsel appearing for the appellants that the mother 1st defendant had executed a settlement deed in favour of her daughter 5th defendant and on the basis of the settlement deed, the daughter 5th defendant claims $\frac{1}{4}$ share in



the suit property.

WEB COPY

12.This Court considered the submissions of learned counsel on either side. Having regard to the arguments of learned counsel on either side, this Court has to consider and find answers to the following points :

- i. Whether the release deed under Ex.B12 dated 21.01.1999 is valid and binding on the plaintiffs ?*
- ii. Whether the suit for partition without a prayer to set aside the release deed under Ex.B12 is valid ?*
- iii. Whether the present appeal is barred by the principle of res judicata in view of the fact that the appellants have allowed the judgment and decree in O.S.No.270 of 2012 to become final ?*

Point No.(i) :

13.It is admitted before this Court that the 1st plaintiff has admitted the signature of her husband in Ex.B12. In the course of her evidence, the 1st plaintiff as P.W.1 disputed her signature in the release deed as one of the attesting witnesses. However, the execution of the document Ex.B12 is not in issue. This Court finds no reason to invalidate the document. It is to be noted that there is no reference to the release deed under Ex.B12 in the



A.S.No.183 of 2016

plaint. Learned counsel appearing for the respondents 1 and 2, however, submitted that the consideration under Ex.B12 is not proved in the manner known to law. When the document as such is not disputed and there is no prayer challenging the release deed under Ex.B12, this Court is unable to countenance the argument of the learned counsel appearing for the plaintiffs/respondents 1 and 2. This Court compared the signature of P.W.1 found in Ex.B12. We do not find any variation in the signature. When the document under Ex.B12 is a registered one, this Court cannot ignore the statutory presumption. The 1st plaintiff has not only signed as attesting witness but has also signed before the Registrar as identifying witness. In such circumstances, this Court is unable to accept the argument of learned counsel appearing for the plaintiffs disputing the genuineness of the document. Therefore, ***Point No.(i) is answered in favour of the appellants holding that the release deed under Ex.B12 is valid and proved in the manner known to law.***



WEB COM **Point No.(ii) :**

14. Section 8 of the Hindu Minority and Guardianship Act, 1956,
reads 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 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.



(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular-

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof.

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, "Court" means the city civil court or a district court or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local



A.S.No.183 of 2016

limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.”

15. On the interpretation of Section 8 of the Act, the Hon'ble Supreme Court and this Court, in various judgments including the judgment in the case of ***Murugan and others v. Kesava Gounder (dead) through LRs and others*** reported in ***AIR 2019 SC 2696***, have reiterated the position that any alienation by the minor represented by the guardian is voidable, and the alienation by the guardian is binding on the minor unless it is set aside within a period of three years from the date of attaining majority. The relevant portion of the judgment is extracted below :

“14. This Court time and again has considered the cases of alienation by natural guardian in contravention of Section 8 and Section 8(2) of the 1956 Act. This Court held that sale deed in violation of Section 8(1) and 8(2) is a voidable sale deed. Voidable has been defined in Black's Law Dictionary, Tenth Edition as under:-



WEB COPY



A.S.No.183 of 2016

“Valid until annulled; esp., (of a contract) capable of being affirmed or rejected at the option of one of the parties. This term describes a valid act that may be voided rather than an invalid act that may be ratified.”

15.Salmonds on Jurisprudence, Twelfth Edition has noticed the distinction between Valid, Void and Voidable in following passage:-

“... 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 ab 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.”



WEB COPY



A.S.No.183 of 2016

16. This Court in Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, (2001) 6 SCC 534 had noted the distinction between Void and Voidable. In Paragraph No.22, following has been laid down:-

“22. Thus the expressions “void and voidable” have been the subject-matter of consideration on innumerable occasions by courts. The expression “void” has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable



transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.”

17.In Vishwambhar and Others Vs. Laxminarayan (Dead) Through LRs. and Another, (2001) 6 SCC 163, which was a case of challenge to alienation without Court’s sanction and without legal necessity, this Court held that the alienation by natural guardian was voidable. In the above case, the mother, natural guardian of two minors has executed the sale deed before they attained majority. Minors after attaining majority had filed suit pleading that sale deeds are not binding and operative on the legal rights of plaintiff, and prayed that the said sale deeds be set aside to the extent of their share and the suit for possession of the land be decreed. In the above case, after considering Section 8 this Court held that sale deeds were voidable at the instance of the plaintiff. This Court further held that if the plaintiffs were required to have the sale deeds set aside before making any claim in respect of suit properties sold then a suit without such a prayer was of no avail to the plaintiffs. Following was held in Paragraph No.9:-

“9. The question is, in such circumstances, are the alienations void or



WEB COPY



A.S.No.183 of 2016

voidable? In Section 8(2) of the Hindu Minority and Guardianship Act, 1956, it is laid down, inter alia, that the natural guardian shall not, without previous permission of the court, transfer by sale any part of the immoveable property of the minor. In sub-section (3) of the said section, it is specifically provided that any disposal of immoveable property by a natural guardian, in contravention of sub-section (2) is voidable at the instance of the minor or any person claiming under him. There is, therefore, little scope for doubt that the alienations made by Laxmibai which are under challenge in the suit were voidable at the instance of the plaintiffs and the plaintiffs were required to get the alienations set aside if they wanted to avoid the transfers and regain the properties from the purchasers. As noted earlier in the plaint as it stood before the amendment the prayer for setting aside the sale deeds was not there, such a prayer appears to have been introduced by amendment during hearing of the suit and the trial court considered the amended prayer and decided the suit on that basis. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold, then a suit without such a prayer was of no avail to the plaintiffs. In all probability, realising this difficulty the plaintiffs filed the application for amendment of the plaint seeking to introduce the prayer for setting aside the sale deeds. Unfortunately, the realisation came too late. Concededly, Plaintiff 2 Digamber attained majority on 5-8-1975 and Vishwambhar, Plaintiff 1 attained majority on 20-7-1978. Though the suit was filed on 30-11-1980 the prayer seeking setting aside of the sale deeds was made in December 1985. Article 60 of the Limitation Act prescribes a period of three



WEB COPY



A.S.No.183 of 2016

years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. Therefore, the trial court rightly dismissed the suit filed by Digamber. The judgment of the trial court dismissing the suit was not challenged by him. Even assuming that as the suit filed by one of the plaintiffs was within time the entire suit could not be dismissed on the ground of limitation, in the absence of challenge against the dismissal of the suit filed by Digamber the first appellate court could not have interfered with that part of the decision of the trial court. Regarding the suit filed by Vishwambhar, it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December 1985) by introducing such a prayer by amendment of the plaint the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances, the amendment of the plaint could not come to the rescue of the plaintiff.”

18.*To the same effect is the judgment of this Court in Madhegowda (dead) by LRs. Vs. Ankegowda (dead) by LRs. and Others, (2002) 1 SCC 178, where in Paragraph No. 25,*



following has been held:-

“25.....The minor, on attaining majority, can repudiate the transfer in any manner as and when occasion for it arises. After attaining majority if he/she transfers his/her interest in the property in a lawful manner asserting his/her title to the same that is sufficient to show that the minor has repudiated the transfer made by the “de facto guardian/manager”.

19.This Court further held in Nangali Amma Bhavani Amma Vs. Gopalkrishnan Nair and Others, (2004) 8 SCC 785 that the alienation made in violation of Section 8(2) is voidable, holding it to be void would not only be contrary to the plain words of the statute but would also deprive the minor of the right to affirm or ratify the transaction upon attaining majority. Following was held in Paragraph No.8:-

*“8. In view of the express language used, it is clear that the transaction entered into by the natural guardian in contravention of sub-section (2) was not void but merely voidable at the instance of the minor. To hold that the transaction in violation of Section 8(2) is void would not only be contrary to the plain words of the statute but would also deprive the minor of the right to affirm or ratify the transaction upon attaining majority.....
.....”*



20.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. 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.”

In this case, the alienation by 2nd plaintiff's father under Ex.B12 is not challenged by the minor within the period of limitation on attaining majority. In such circumstances, ***Point No.(ii) is answered in favour of the appellants, holding that the suit for partition without a prayer to set aside the release deed under Ex.B12 is not valid.***

Point No.(iii) :

16.The suit filed by the plaintiffs in O.S.No.30 of 2011 was decreed in favour of 2nd plaintiff by granting a preliminary decree in respect of 20/96 share. The counter claim of 1st defendant was also allowed. Though the appellants have filed a suit for bare injunction in O.S.No.270 of 2012, it is seen that the appellants are not the absolute owners of the property, as the counter claim in favour of 1st defendant is not disputed. Since the 1st



A.S.No.183 of 2016

defendant has also executed a settlement deed in favour of her daughter 5th defendant, the 5th defendant is entitled to $\frac{1}{4}$ share and the benefit of decree in the counter claim should go to the 5th defendant. The suit for injunction was dismissed, while granting a preliminary decree in the partition suit in favour of 2nd plaintiff in respect of 20/96 share. The present appeal is against the preliminary decree granting 20/96 share in favour of 2nd plaintiff. When it is admitted that the appellants are only entitled to $\frac{3}{4}$ share in the suit property, the suit for bare injunction is not maintainable as the appellants are not the absolute owners in respect of the suit property in entirety. In such circumstances, the decree of trial Court dismissing the suit for injunction cannot be faulted. When the judgment and decree in the suit filed by the appellants for injunction is not on the basis of any other findings that would affect the appellants to prosecute the appeal as against the judgment and decree in the partition suit in O.S.No.30 of 2011, no issue that is decided or required to be decided in the suit for bare injunction can be said to be against the appellants to deny the appellants their legitimate share in respect of $\frac{3}{4}$ share in the suit property. Therefore, the contention of the learned counsel appearing for the plaintiffs/respondents 1 and 2 cannot be



A.S.No.183 of 2016

appreciated. Hence, ***Point No.(iii) is answered in favour of the appellants holding that the judgment and decree in O.S.No.270 of 2012 will not operate as res judicata in the present appeal filed by defendants 2 to 4.***

17.In fine, the judgment and decree of the trial Court in O.S.No.30 of 2011 is set aside and the above appeal is allowed. The suit in O.S.No.30 of 2011 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (P.B.B., J.)
19.04.2023

mkn

Internet : Yes

Index : Yes / No

To

1.The II Additional District Judge,
Chidambaram.

2.The Collector,
Cuddalore.

3.The Thasildar,
Chidambaram.

Page 23 of 24



WEB COPY



A.S.No.183 of 2016

S.S. SUNDAR, J.
and
P.B. BALAJI, J.

mkkn

4.The Section Officer,
VR Section, High Court,
Chennai.

| *with a direction to return*
| *the records to the Court below,*
| *forthwith*

A.S.No.183 of 2016

19.04.2023