

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

RSA.No. 885 of 2006 ()

AGAINST THE DECREE AND JUDGMENT IN A.S.NO. 79/2003 of SUB COURT,
NEDUMANGAD DATED 15.10.2005

AGAINST THE DECREE AND JUDGMENT IN O.S.NO. 197/1999 of PRINCIPAL MUNSIF
COURT,NEDUMANGAD DATED 14.01.2003

APPELLANT(S)(PLAINTIFFS IN THE TRIAL COURT & APPELLANTS IN THE COURT
BELOW)

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1. MANIYAN NADAR, S/O.CHELLAN NADAR,
KUZHIVILA PUTHEN VEEDU, KURIYILPURAM, POOZHANADU
OTTASEKHARAMANGALAM, NEYYATTINKARA
THIRUVANANTHAPURAM.
 2. SYAMALA, W/O.MANIYAN NADAR,
DO. DO.

BY ADV. SRI.K.B.PRADEEP

RESPONDENT(S)/(DEFENDANTS IN THE TRIAL COURT & RESPONDENTS IN THE COURT
BELOW:

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1. HARIKUMAR, S/O.KUNJIRAMAN NAIR
N.G.O.HOUSE, NEAR VALSALA NURSING HOME
BAKERY JUNCTION, PALAYAM, THIRUVANANTHAPURAM.
 2. REMANI AMMA, D/O.BHAVANI AMMA,
RESIDING AT MELEKOTHALIKONATHU VEEDU
VEERANAKAVU VILLAGE, NEYYATTINKARA
THIRUVANANTHAPURAM.

R2 BY ADV.SRI.T.R.HARIKUMAR
R1 BY ADV.SRI.G.S.REGHUNATH

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
17.03.2015, ALONG WITH RSA.NO. 626/2009, THE COURT ON 06.04.2015 DELIVERED THE
FOLLOWING:

“C.R.”

A.HARIPRASAD, J.

**R.S.A. Nos.885 of 2006
&
626 of 2009**

Dated this the 6th day of April, 2015

COMMON JUDGMENT

Common substantial questions of law arising in the appeals are the following:

- i. Is a minor, who repudiates an alienation of his property by a defacto guardian, always bound to restore the benefits derived by him?
- ii. Is the minor under all circumstances liable to compensate the purchaser of property, either personally or out of his assets, in the event he succeeds in establishing that the alienation is void?
- iii. What is the liability of the defacto guardian who represented the minor in the document of alienation?
- iv. Is the purchaser entitled to claim title to a property purchased in the name of the minor by utilizing the sale consideration provided by the former?

For the sake of convenience, R.S.A.No.626 of 2009 is taken as the leading case, which is the appeal against O.S.No.338 of 1987. The parties and documents are hereinafter referred to in the rank in the above suit.

2. Facts, in nut shell: O.S.No.338 of 1987 on the file of the Additional Munsiff's Court, Nedumangad is a suit for declaration that Ext.A2 sale deed executed by the 3rd defendant, who is the sister of the quondam minor plaintiff, in favour of defendants 1 and 2 is void and also to allow the plaintiff to recover possession of the plaint schedule property from defendants 1 and 2. The suit was decreed. Against the judgment and decree, the defendants 1 and 2 preferred A.S.No.635 of 1990 before the District Court, Thiruvananthapuram. Learned Additional District Judge after a detailed consideration, dismissed the appeal confirming the judgment and decree of the trial court. Against that judgment and decree, defendants 1 and 2 have come up in R.S.A.No.626 of 2009.

3. After putting the decree in O.S.No.338 of 1987 to execution and also after taking delivery of the property by the plaintiff, defendants 1 and 2 preferred O.S.No.197 of 1999 before the learned Principal Munsiff, Nedumangad. In that suit, the plaintiff in O.S.No.338 of 1987 is the 1st defendant and his sister (3rd defendant in the earlier suit) is the 2nd defendant. This suit is one for recovery of possession of B schedule property in Ext.A2 document impugned in the former suit.

4. Plaintiff filed O.S.No.338 of 1987 challenging Ext.A2 document, executed admittedly during his minority. In the document itself, he is shown as a person aged 15 years at the time of its execution and he was represented by his sister, who was not the natural guardian under the

provisions of the Hindu Minority and Guardianship Act, 1956 (in short, “the Act 1956”). There cannot be any dispute that Ext.A2 executed by the 3rd defendant, acting as guardian of the plaintiff, is void under Section 11 of Act 1956. Therefore, defendants 1 and 2 in the suit were defenceless against the reliefs claimed in the suit, viz., declaration of title of the plaintiff over the property and recovery of possession of the property from defendants 1 and 2. It is an admitted case that the minor plaintiff, in execution of the decree, got possession of the property shown in the plaint schedule in O.S.No.338 of 1987. Thereafter, the defeated defendants filed O.S.No.197 of 1999 seeking reliefs against another property, shown in Ext.A2 document. According to the defendants, (plaintiffs in O.S.No.197 of 1999), the property described as item No.2 in Ext.A2 is the property given as security for safeguarding their interests, in case the minor challenged the transaction a later point of time. The trial court dismissed the suit finding that remedy available to the defendants was only to mitigate loss sustained by them by taking recourse to the indemnity clause in Ext.A2 assignment deed and to proceed against the 3rd defendant for realising compensation. It was also found that by operation of law, the plaintiff cannot claim title to the property shown as item No.2 in Ext.A2 assignment deed. In effect, the defendants not only suffered a set back in the suit filed by the plaintiff for a declaration and recovery of possession, but also lost their suit seeking a claim over item No.2 in Ext.A2 assignment deed.

5. Heard Shri K.B.Pradeep, learned counsel for the appellants (defendants 1 and 2) and Shri G.S.Regghunath, learned counsel for the respondent (plaintiff).

6. At the outset, I shall refer to the terms in Ext.A2 assignment deed executed by the 3rd defendant on her own and also on behalf of her minor brother (plaintiff) in respect of a property, which undisputedly belonged to the minor. It is mentioned in Ext.A2 that mother of the minor and the 3rd defendant had expired and their father had abandoned them. It is specifically mentioned in the document that item No.1 exclusively belonged to the minor and it was assigned to defendants 1 and 2 by the 3rd defendant as defacto guardian of the minor. In the latter part of the document, it is mentioned that the property shown as item No.2 and a house therein exclusively belonged to the 3rd defendant. It is relevant to note that Ext.A2 bears a number 1880 of 1982, SRO, Kattakkada. From Ext.A2, it can be seen that another document bearing No.1879 of 1982 of the same SRO was executed on the same date by the 3rd defendant in favour of the plaintiff in respect of half right over item No.2 in Ext.A2 document. As per the averments in Ext.A2, the consideration received by the 3rd defendant by selling minor's property (item No.1 in Ext.A2) was utilised for assigning half right of the 3rd defendant over item No.2 in Ext.A2 as per document No.1879 of 1982 in favour of the plaintiff. Interestingly, that document was not produced by any of the parties to the suits. As per

the recitals in Ext.A2, a charge was created over item No.2 therein for any possible future claims by the quondam minor in respect of item No.1. It is also relevant to note that when examined, the plaintiff deposed that he never made any claim in respect of item No.2 in Ext.A2 and he insisted on getting back item No.1 in Ext.A2, which was assigned away during his minority without the sanction of law.

7. In these factual settings, the matter will have to be decided. Shri K.B.Pradeep contended on behalf of the appellants (defendants 1 and 2) that the erstwhile minor plaintiff cannot be allowed to unjustly enrich himself by recovering the property sold for valid consideration during his minority and also by allowing him to retain another property, purchased in his name during minority by utilising the sale consideration. Shri K.B.Pradeep further contended that it is not only inequitable, but also in contravention of the provisions in the Indian Contract Act. In reply to this argument, Shri G.S.Reghunath, learned counsel for the plaintiff submitted that the minor at no point of time, staked any claim over item No.2 in Ext.A2. He deposed in the suit clearly expressing his disconnect with item No.2 in Ext.A2. According to the plaintiff, he is not interested in any property transferred by his sister to his name by utilising the sale consideration mentioned in Ext.A2 document. It is also contended that sister was actually acting against his interest at the time when Ext.A2 was executed. Section 8 of the Act 1956 deals with the powers of a natural

guardian of Hindu minor. According to Section 6 of the Act 1956, in the case of a Hindu minor, who is a boy or an unmarried girl, the father and after him, the mother shall be the natural guardians and they can act subject to the restrictions mentioned in the Section. At any rate, 3rd defendant sister cannot be treated as natural guardian of the plaintiff. Section 8 of the Act 1956 has no application to the facts of this case. Section 11 of the Act 1956 says that after 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 or her being the defacto guardian of the minor. 3rd defendant, at the maximum, could have claimed that she was the defacto guardian of the erstwhile minor. Even in that situation, she could not have dealt with the property of the plaintiff during his minority. The Supreme Court in the decisions in **Vishwambhar and others v. Laxminarayan (dead) through Lrs. and another (AIR 2001 SC 2607)** and **Nagappan v. Ammasai Gounder and others ((2004) 13 SCC 480)** has clearly held that a sale effected without taking permission of the court and without any legal necessity is voidable at the instance of the minor and the minor is expected to get the alienation set aside, if he wanted to avoid the transfer and recover property from the purchasers. This is in a typical situation when the alienation was made by a natural guardian in contravention of the provisions in Section 8 of the Act 1956. But, in the case of an alienation made by a defacto guardian, the prohibition in Section

11 of the Act of 1956 is attracted and the transaction becomes void abinitio and *per se* invalid. The Supreme Court in **Madhegowda (dead) by Lrs. v. Ankegowda (dead) by Lrs. and others (AIR 2002 SC 215)** held that the transferee in such a case acquires no interest and the alienation does not require to be set aside by means of a suit. It has been observed that the law in certain terms prohibit any transfer of any part of a minor's estate by a defacto guardian. Question of legal necessity has no relevance in such transfers. Therefore, it is unchallengeable that Ext.A2 is void abinitio. Learned counsel for the appellants (defendants 1 and 2) therefore rightly contended that he limits his claim in these appeals to the disgorging of benefits accrued to the minor from out of Ext.A2 transaction.

8. If that be so, the question arising for consideration is whether the minor can be compelled to disgorge the benefits reaped by him on account of the impugned transaction. Learned counsel for the plaintiff contended that defendants 1 and 2 neither in O.S.No.338 of 1987 nor in O.S.No.197 of 1999, raised a claim against the minor for disgorging the benefits. Instead, they in their suit claimed title in respect of item No.2 in Ext.A2 by operation of law. The plaintiff, during his minority, obtained half right over item No.2 in Ext.A2 as per document No.1879/1982 executed by the 3rd defendant. No legal provision could be shown by the learned counsel for defendants 1 and 2 to support a contention that immediately on upholding the quondam minor's challenge against alienation of his

property, title in respect of a property purchased in the name of the minor by utilizing the sale consideration would vest with the purchaser of minor's property. In otherwords, without taking proper recourse to law, how could defendants 1 and 2 lay a claim over item No.2 in Ext.A2 has not been established. Similarly, in the case of defacto guardian's share in item No.2 in Ext.A2 also, a proper legal proceedings should be initiated by defendants 1 and 2 to claim title. No provision of law could be shown to uphold the contention of the plaintiffs in O.S.No.197 of 1999.

9. According to Shri K.B.Pradeep, Sections 64 and 65 of the Contract Act command the plaintiff to disgorge the benefits derived out of Ext.A2 transaction. Section 64 of the Contract Act deals with the consequences of rescission of a voidable contract. Ext.A2 transaction, executed by a defacto guardian of a Hindu minor, that too without any sanction from a court, is void abinitio. That proposition is now well settled. Therefore, Section 64 of the Contract Act *per se* has no application.

10. Section 65 of the Contract Act reads as follows:

“Obligation of person who has received advantage under void agreement, or contract that becomes void.-When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.”

The relevant question is whether the plaintiff, in the admitted facts and circumstances of this case, is bound to restitute the benefits derived by him on account of Ext.A2 transaction. The precedents on the question of minor's responsibility to restitute the benefits derived from a transaction which was later found to be void are not uniform. It is most relevant to remember that the precedents on any question of law should be applied with utmost regard to the facts and circumstances in each case.

11. The law stated in Section 65 of the Contract Act is one touching the principle of restitution. The Section visualises two contingencies. First one, after a benefit has been received by one party, the agreement is discovered to be void later. Second one, the contract becomes void by subsequent happenings. The Section is intended to prevent unjust enrichment. Privy Council in **Muralidhar Chatterjee v. International Film Co. Ltd. (AIR 1943 PC 34)** held that this Section is not wider in scope than the prevalent English doctrine of restitution. It is further held that the courts in India are, however, governed by the principles in Section 65 of the Contract Act and not by any principle enunciated by the English Courts. If the plaintiff can bring his case within the four corners of this Section, he will be entitled to the remedies, viz., compensation, notwithstanding any principle of the English Law to the contrary. None of the parties to this case has a contention that Ext.A2 assignment deed became void subsequent to the plaintiff's reception of the benefit, viz.,

reception of consideration for sale. Hence the first limb of Section 65 of the Act is not applicable to this case. Similarly, defendants 1 and 2 never raised contentions that they were not aware of minority of the plaintiff at the time of execution of Ext.A2 and it was discovered only subsequent to the transaction. In fact, in Ext.A2 itself, minority of the plaintiff has been clearly spelt out. Therefore, on the settled legal principles, it can only be seen that Ext.A2 is void abinitio. Hence, the second limb of the Section is also not applicable to this case. The expression 'discovered to be void' had been interpreted to mean an agreement though void abinitio, but that was not known to be so by the parties. Sections 32 and 56 of the Contract Act deal with two situations where a contract becomes void subsequent to its execution. Section 32 of the Contract Act deals with enforcement of contracts contingent on an event happening. Such contracts cannot be enforced in law, unless and until that event had happened and if the event becomes impossible, such contracts become void. Section 56 of the Contract Act deals with an agreement to do an impossible act. Second part of Section 56 of the Contract Act speaks about the contracts to do an act which afterwards becoming impossible or unlawful. In that event, the contract becomes void when the act becomes impossible or unlawful. These are some situations wherein the contract becomes void subsequent to its execution. Facts admitted in this case will clearly show that none of these situations exist. Hence in my view, Section 65 of the Contract Act

cannot be applied to this case.

12. In addition to that, the law declared by the Apex Court in **Kuju Collieries Ltd. v. Jharkhand Mines Ltd. and others (AIR 1974 SC 1892)** throws considerable light on the interpretation of Section 65 of the Contract Act. It reads as follows:

“The section makes a distinction between an agreement and a contract. According to Section 2 of the Contract Act an agreement which is enforceable by law is a contract and an agreement which is not enforceable by law is said to be void. Therefore, when the earlier part of the section speaks of an agreement being discovered to be void it means that the agreement is not enforceable and it, therefore, not a contract. It means that it was void. It may be that the parties or one of the parties to the agreement may not have, when they entered into the agreement, known that the agreement was in law not enforceable. They might have come to know later that the agreement was not enforceable. The second part of the section refers to a contract becoming void. That refers to a case where an agreement which was originally enforceable and was, therefore, a contract, becomes void due to subsequent happenings. In both these cases any person who has received any advantage under such agreement or contract is bound to restore such advantage, or to make compensation for it to

the person from whom he received it. But where even at the time when the agreement is entered into both the parties knew that it was not lawful and, therefore, void, there was no contract but only an agreement and it is not a case where it is discovered to be void subsequently. Nor is it a case of the contract becoming void due to subsequent happenings. Therefore, Section 65 of the Contract Act did not apply.”

13. In search of an answer to the question posed, I traced a long line of precedents. In **Mohori Bibee v. Dharmodas Ghose (Vol.XXX ILR Calcutta 539)** the Privy Council held that a contract entered into between a *sui juris* and a minor is void, but no definite answer was given as to whether a minor was bound to restore the benefits derived by him in the transaction. It was observed that Sections 64 and 65 of the Contract Act, being based on there being a contract between competent parties, are inapplicable to a case where there is not, and could not have been, any contract at all. Subsequently the Privy Council in **Nawab Sadiq v. Jai Kishori (55 MLJ 88 (PC))** held in clear terms that a contract entered into between a major and a minor is a nullity. Calcutta High Court in **Hari Mohan v. Dulu Miya (AIR 1935 Calcutta 198)** held that if a person entering into a transaction was not aware of the fact of minority and there was some representation by the minor as to his age with a view to deceive the other party, the right of restitution can be claimed against him. But, in

this case, it is clear from Ext.A2 itself that the plaintiff was shown as a minor aged 15 years. Hence, the principle in that decision is not applicable to this case.

14. Division Bench of the Andhra Pradesh High Court in **Gokeda Lateharao v. Viswanadham Bhimayya (AIR 1956 A.P. 182)** considered in detail about the legal responsibility of a minor, who borrowed money on the basis of promissory notes. The appellant in that case executed two promissory notes during his minority. It was alleged that he made a fraudulent representation to the respondent as to his age and claimed to be a major. When a suit was filed to recover money, the appellant, inter alia, contended that the promissory notes were not supported by consideration and also that they were executed during his minority and hence void. Learned Judges considered the question and summarised the law as follows:

“43. The law may be briefly summarised. A contract entered into with a minor is a nullity for want of legal competency. Except otherwise provided by statute, it is not enforceable and it does not give rise to any rights or liabilities.

44. It is non est. It follows from this legal position that a person, who parted with his goods can trace them into the hands of the quondam minor and recover them back in specie, for he has not lost his title to them. But he cannot seek to

recover their price or damages for, if allowed, he would be indirectly asking for the enforcement of the contract and to recover damages for the breach. Nor can a person who lends money to such a minor, recover it. If allowed to do so, the Court would be enforcing a contract of loan. The English decisions graphically describe this position as “restitution stops where repayment begins”.”

15. It was also observed that by applying the principle of equity, the court could refuse relief to a quondam minor, if he seeks relief on the basis of a void contract and if he derived any benefit by a fraudulent representation. That principle is also not applicable to this case, as there is no contention raised by defendants 1 and 2 that the minor reaped the benefits by extending a fraudulent representation. It was observed in **Gokeda Lateharao's** case (supra) that it is not permissible to invoke other equitable principles, which would tend to make the legal provisions nugatory. Their Lordships following the observations in **Mohori Bibee's** case held that the law in Section 65 of the Contract Act cannot be invoked as it pre-supposes the existence of a contract between persons with legal competency. I am in respectful agreement with the view taken therein.

16. Learned counsel for defendants 1 and 2 relied on a decision of this Court rendered by a learned Single Judge in **Chacko v. Sreeja (1991 (1) KLT 191)** to contend a proposition that a minor is liable to disgorge

benefits obtained through a transaction which he lawfully avoided. In **Chacko's** case, the predominant question was regarding the legal competence of the appointed guardian to challenge an alienation during minority of her ward. In other words, it was contended that only the minor could have avoided the transaction and not a guardian during the minority of the ward. The facts therein would show that mother of the minor got herself appointed through District Court guardian of her daughter on establishing that the minor's father was a drunkard and a spend-thrift. In the meantime, minor's father sold out certain properties belonging to the minor for consideration acting as natural guardian. Subsequent to the appointment of mother as guardian, she challenged the alienations contending that the assignments were made in violation of Section 8(2) of the Act 1956. The first question raised was regarding the competency of the guardian to challenge the alienation during minority of the ward. After considering the law on the point, learned Single Judge held that the guardian is also competent to challenge the alienation made by a natural guardian without fulfilling the conditions under the Act 1956. The transaction was voidable as per Section 8 of the Act 1956. This Court in **Chacko's** case considered the scope of Section 64 of the Contract Act to hold that a minor, who derived any benefit, is bound to restore the benefit to the person from whom it was received. Glaring differences in the facts and the law applicable would make it clear that the ratio in that decision is not

applicable as such to the case in our hand.

17. Learned Directors of the Kerala Judicial Academy on my request pointed out two decisions of this Court touching the subject. **Assiya v. Rajeevan and another (1993 KHC 245)** and **Padinhare Veetil Madhavi v. Pachikaran Veetil Balakrishnan and another (2009 KHC 989)** deal with the legal effect of challenges made by minors against alienations by mothers during their minority. In both these cases, the property involved in dispute belonged to Hindu minors and, therefore, the provision in Section 8 of the Act 1956 was applicable. As mentioned earlier, on account of the binding pronouncements by Apex Court on this subject, it can only be seen that the transactions impugned in both these cases were voidable at the option of the minors. But, the facts in our case deal with a situation where the transaction is void at its inception.

18. Law in Section 33 of the Specific Relief Act, 1963 (in short, “the Act 1963”) may be relevant in this context. It reads as follows:

“Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable.”-(1) On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted, to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require.

(2) Where a defendant successfully resists any suit on the ground-

(a) that the instrument sought to be enforced against him in the suit is voidable, the Court may if the defendant has received any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it;

(b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under Sec.11 of the Indian Contract Act, 1872 (9 of 1872), the Court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.”

For completeness of discussion, I may refer to Section 31 of the Act 1963 too. It deals with cancellation of instruments and when cancellation may be ordered. On a reading of the Section, it is clear that a void or voidable document can be sought to be cancelled. Any person having reasonable apprehension that if a written instrument, which is void or voidable, if left outstanding may cause serious injury, then he may sue to have it adjudged void or voidable. In that event, the court has the discretion so to adjudge and it can even order the instrument to be delivered up and cancelled. The term “adjudge” has been defined in Black's Law Dictionary as (1) adjudicate

(2) to deem or pronounce to be (3) to award judicially. To adjudge a document void or voidable, the court will have to go into that question on the basis of the evidence and law. Section 33 of the Act 1963 empowers the court to direct a party to restore benefit or to compensate the party against whom a relief is granted under Section 31 of the Act 1963. If one reads Section 33(1) of the Act 1963 carefully, one can see expressions like “court may require the party to restore benefit”, “restore benefit so far as may be” etc. All these expressions indicate the vast extent of discretion vested in the court to direct restoration of any benefit earned by a plaintiff, in a case in which the defeated party deserves an equity to be done in his favour.

19. On a reading of Section 33 of the Act 1963 quoted above and the reasons for the change suggested by the Law Commission at the time when the Act 1963 was made, it would be clear that Section 31 of the Act 1963 refers both to void and voidable contracts and Section 33 of the Act 1963 gives the court a power to award compensation on adjudging cancellation of an instrument, which is to be done under Section 31 of Act 1963. A statement that reliefs claimable under the Act 1963 are based on equitable principles and grounds is unchallengeable. Even declaratory claim in a suit, falling under Section 34 of Act 1963, is a discretionary relief. A reading of Section 34 would make it clear that any person entitled to any legal character or to any right as to any property may institute a suit against any person denying or interested to deny his title to such character or right.

In that event the court, in its discretion, may make a declaration to meet the ends of justice. In this case, the plaintiff sought for a declaratory relief that Ext.A2 deed, insofar as his property is concerned, is void abinitio. Without any iota of doubt, it has to be held that the plaintiff is entitled to get the declaration sought for and the only question is whether the court could apply equitable principles and direct the plaintiff to restore benefits derived out of the transaction.

20. Coming back to the law laid down in **Assiya** and **Padinhare Veettil Madhavi's** cases mentioned supra, with due respect, I may mention that in those decisions the nuances or intricacies of Section 65 of the Contract Act were not considered. Further, the legal implication in applying the law in Section 33 of the Act 1963 to a case where the purchaser knowing fully well at the time of purchase that the property belonged to a minor was not considered. In our case, defendants 1 and 2 were fully aware of the fact that item No.1 in Ext.A2 belonged to the quondam minor. Insistence by them for having an indemnity clause in the document and showing another property in the same document as security for meeting the probable future claim by minor are indications of their consciousness about the danger of purchasing property from a minor. Reckoning the visible difference in facts and non-consideration of the legal principles in Section 65 of the Contract Act, I am of the view that the decisions in **Assiya** and **Padinhare Veettil Madhavi's** cases can be easily distinguished. That

apart, the observation in **Padinhare Veettil Madhavi's** case that even if the transaction is void, the minor seeking to set it aside cannot claim interference of a court of law without making restitution is too general a statement which cannot be applied to all situations. This is evident from the phraseology employed in Section 33 of the Act 1963 itself. This is all the more clear if we recollect the law laid down in **Mohori Bibee**, **Kuju Collieries Ltd.** and **Gokeda Lateharao's** cases mentioned above. I am of a definite view that a person, who purchases property with full knowledge that it belonged to a minor and the defacto guardian was incompetent to deal with minor's property by virtue of Section 11 of Act 1956, cannot claim equity in his favour to be worked out against the quondam minor. It may be true that the defacto guardian may be liable to compensate the purchaser as one may find personal covenants binding the defacto guardian and creation of charge on another property for securing the price paid. But creation of charge on minor's assets cannot be made or enforced under all circumstances as a general rule without regard to the facts in each case. The legal questions framed can be answered by summing up the discussion as follows:

A minor, who repudiates an alienation of his property by a defacto guardian, is not bound to restore the benefits derived by him, if the purchaser was aware of the fact of his minority and the minor was not guilty of any fraud, misrepresentation, etc. In such cases, the purchaser cannot

claim any relief against the minor - either personal or against his property. The defacto guardian may be liable personally and out of his properties for dealing with a Hindu minor's property in contravention of Section 11 of the Act 1956 depending on the terms in the document concerned. By no stretch of reasoning, it can be held that the property shown as security in the failed deed of alienation will automatically get transferred to the purchaser the moment the document is declared void. Therefore, the remedy of defendants 1 and 2, if at all is only to proceed against the defacto guardian, viz., the 3rd defendant, subject to the terms in Ext.A2 and the sanction of law. The appeals are devoid of any merit. Hence, they are dismissed.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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