

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 16.03.2016**
Decided on: 23.05.2016

+ **RFA(OS) 134/2014**

MRS. MEERA NARULA Appellant
Through: Mr. Puneet Taneja, Advocate
alongwith Ms. Shaheen, Advocate.
Mr. P.S. Narula, appellant in person.
versus

MRS. G.G. MALVANKAR & ORS. Respondents
Through: Sh. M.L. Bhargava, Advocate for
respondent Nos. 1 to 3

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

HON'BLE MS. JUSTICE DEEPA SHARMA (JUDGMENT)

1. Both the plaintiff (appellant) and defendant Nos.1 to 3 (objectors) challenge the judgment and decree of the learned Single Judge dated 13.08.2014 which held that the agreement to sell dated 20.05.2006 for the sale of Property No. 225, Gulmohar Enclave, New Delhi – 49 along with car garage No.46 and Scooter garage No. 104 (in short the “suit property”) and its addendum dated 08.05.2007 were valid documents. The plaintiff was directed to pay the balance consideration amount of ₹ 65,40,000/- along with interest @ 18% per annum till the date of order and the defendants were directed to execute the sale deed within two months. The plaintiff's appeal challenges the directions to pay the interest on consideration amount.

The defendants' cross-objections under Order 41 Rule 22 of the Code of Civil Procedure (CPC) and challenge the impugned decree in entirety.

2. The brief facts of the case are that late Dr. G.K.J Malvankar, husband of the first defendant (and father of the second and third defendants) was allotted the suit property by the Delhi Development Authority (DDA). He along with the defendants shifted to U.K where he died intestate. The suit property was inherited by the defendants who succeeded to his estate.

3. On the allotment of suit property by DDA to late Dr. G.K.J. Malvankar, its possession was taken by the holder of power of attorney Sh. S.K. Malvankar (fourth defendant in the suit, now deceased and brother of the allottee) on behalf of late Dr. Malvankar. He used to discharge all functions relating to suit property -a fact admitted by the first defendant in her cross examination as DW1).

4. The case of the plaintiff was that the first defendant acting for herself and for the benefit of her daughters (the first two defendants minor at the time) intended to sell the suit property and entered into an agreement to sell dated 11.12.2005 through the fourth defendant her attorney. The total sale consideration was of ₹.68 lakhs and an advance of ₹ 2 lakhs was paid by cheque Nos.718261 and 718262 dated 30.11.2005 and 01.12.2005. In order to arrange the balance sale consideration, the plaintiff's husband sold two of his properties in Jamuna Nagar and Gurgaon. In terms of this agreement, the sale was to be completed by 30.04.2006. The plaintiff came to know that besides the first defendant, her minor daughters (defendants no.2 and

3) too owned the suit property which could not have been sold except with permission of the Court. Thereafter, another agreement, dated 20.05.2006 between the plaintiff and defendants, was executed for the same consideration of ₹ 68 lakhs and an additional sum of ₹ 4 lakhs was paid towards sale consideration. A sum of ₹ 62 lakhs was payable on execution of sale deed and handing over of possession for which the time limit was set for 12 months. In terms of the contract the defendants at their expense were to get the property converted to freehold and obtain requisite permission to sell from court. The first Defendant through her attorney started the process of conversion of the property into freehold and filed the application before the concerned authorities. The plaintiff's husband's help too was sought. A pay order for ₹ 20,820/- was prepared by her husband for payment to DDA for freehold conversion of property which was prepared from the bank of plaintiff.

5. It was urged that her husband also filed the application for freehold conversion with the DDA and pursued the matter with it. An application under Section 29 of the Guardianship and Wards Act, 1890, seeking permission to sell the minors' property was filed before the concerned Court through the attorney/ fourth defendant. The plaintiff's husband on request of the fourth defendant also issued a public notice in the newspaper. In the proceedings under Section 29, he paid ₹ 10,000/- to the counsel on assurance that the money would be reimbursed. It was in fact reimbursed by the fourth defendant by cheque No.809349. Despite all help rendered by the plaintiff and her husband the defendants failed to complete the terms of agreement, i.e.

seeking permission to sell from Court and conversion of property into freehold. As the date for execution of the sale deed was approaching, on request of the first defendant, the parties entered into an addendum dated 08.05.2007 whereby the date for execution of sale deed was extended till 31.10.2007 from 20.05.2007. The consideration price was also enhanced to ₹ 71,40,000/- , an increase of 5% over the original sale consideration. Noting that the defendants were not taking effective steps to perform their part of the contract, the Plaintiff sent a legal notice dated 07.09.2007 calling upon them to execute the sale deed in the absence of which legal proceedings was threatened.

6. This notice was replied by the first two defendants through their counsel and it was conveyed that they had no desire to sell the property and that they were not bound by the agreement since it was executed without the permission of the competent court. The fourth defendant also through his letter conveyed refusal of the Defendant Nos.2 and 3 to execute the sale deed. The Defendants Nos.2 and 3 did not wish to terminate the agreement because within three months they had sent their duly signed photographs for depositing it with DDA for the purpose of getting the property converted to freehold. These documents were addressed to husband of plaintiff and were sent at her address and were received on 10.12.2007, a fact which is admitted by the defendants. The second and third defendant had attained majority on 23.09.2007. By letter dated 11.02.2008, Ex.3/D1 the first defendant for the first time refused to execute the sale deed and was advised to contact her attorney the fourth defendant.

7. The case of the first defendant in the suit was that the agreements were sham, fabricated and without authorization since fourth defendant had no power of attorney on behalf of defendants No.2 and 3 and also he (Defendant No. 4) was never authorized to sell the house. Also, there was no necessity of funds for defendants No.2 and 3, since she had all the necessary funds to take care of her daughters and that she was also not competent to sell the property of minors. It was further contended that though the power of attorney dated 22.03.2006 contained a clause permitting the attorney to sell the property but it was only a *proforma* which was inserted in good faith. It is further contended that in March, 2007, the plaintiff's husband showed interest in purchasing the suit property from the first defendant. However she categorically denied any desire to sell and assured him that in the event of her selling the property, she would consider his request being a neighbor.

8. The stand of the second and third defendant in the suit was that agreement was void and not binding on them since they were minors on the date of execution of alleged agreement and it was executed without the permission of the court. Neither was there any power of attorney on their behalf nor was their mother under any pressure to sell the property. Receipt of notice dated 07.09.2007 is admitted and it is contended that through letter dated 24.09.2007 they had clearly conveyed their intention that they did not want to sell the property and agreements were not binding on them. Although the fourth defendant had also contested the suit, his legal heirs (since fourth defendant

expired during pendency of suit) have not contested the present appeal.

9. The learned Single Judge, during the proceedings in the suit, recorded the statement of fourth defendant under Order 1 Rule 10 CPC – which is reproduced as under:

“Statement of Shri S.K. Malvankar, S/o late Shri J. Y. Malvankar, aged about sixty eight years, retired, R/o C-186, Sainik Nagar, Navada, New Delhi-59

On oath

After seeing the Agreement to sell of 11th December, 2005, I state that it bears my signatures at point-X. I had signed the aforesaid Agreement after reading its contents. (Vol. I am not able to recollect if it was for getting the property freehold. What I recollect is that it was for Rupees sixty eight lacs.) I have recently undergone cataract eye operation.

I do not remember if I had gone to the District Court to file application Mark-Y on 13th/17th October, 2006.

After seeing application Mark-Y and the affidavit accompanying it, witness states that the signatures on these two documents are his signatures.

10. The following issues were framed in the suit:

“1. Whether the Agreements dated 11th December, 2005, 20th May, 2006 and 8th May, 2007 are concocted and fabricated documents? (OPD)

2. Whether defendant No. 1 was not entitled to enter into an Agreement to sell on behalf of defendant Nos. 2 and 3 being minors? (OPD)

3. Whether defendant Nos. 2 & 3 on attaining majority by their conduct have consented to sell off the property? (OPP)

4. Whether the defendant No. 1 never intended to sell the suit property? If so, its effect? (OPD)

5. Whether the plaintiff was ready and willing to perform her part Of agreement? (OPP)

6. Whether the plaintiff is entitled to decree of specific performance as prayed for? (OPP)

7. Whether the plaintiff is entitled to damages in case relief of specific performance is not granted to her? If yes, to what extent? (OPP)

8. Whether the plaintiff is entitled to decree of permanent injunction as prayed for? (OPP)

9. Relief”

11. During the trial, oral evidence was led and witnesses were examined. The plaintiff executed a power of attorney in favour of her husband Sri P.S. Narula who was examined during the trial as PW-1. Only the first defendant examined herself. On the basis of the evidence and materials on record, the learned Single Judge held that the power of attorney dated 22.03.2006 (Ex.4/D1-D3) was executed by the first defendant on behalf of her and her minor daughters i.e. the second and third defendant. It was also held that the agreement to sell dated 20.05.2006 (Ex.PW1/4) was executed by fourth defendant (power of attorney holder) which superseded the earlier Agreement to sell dated 11.12.2005 and that the Addendum dated 08.05.2007 (Ex.PW1/10) was also validly executed by the fourth defendant in exercise of the authority conferred on him through Ex.4/D1-D3. The

Learned Single, Judge relying on the admitted document, i.e. letter dated 11.02.2008 (Ex.3/D1) sent by the first defendant to the plaintiff's husband which referred to fourth defendant as her attorney through the express words "*for further talks contact Mr. S.K. Malvankar, my power of attorney*" and also the admission of the first defendant in her statement that she had not revoked Ex.4/D1-D3, held that the fourth defendant was power of attorney holder of the defendants and was duly authorized to sell the property on their behalf. It was further held that Fourth defendant, on behalf of the other defendants had executed a valid agreement to sell and all his subsequent acts of applying to DDA for freehold conversion of suit property and moving the Court for permission to sell under Section 29 of Guardianship and Wards Act, 1890 were in terms of power of attorney.

12. The learned Single Judge also noticed that document 07.09.2007 (Ex.PW1/11) and its reply by the second and third defendants (Ex. PW1/D1-D3 and Ex.PW1/D4) were admitted documents. Further, the documents Ex.2/D1-D3, addressed to the plaintiff's husband applying to DDA for the freehold conversion of the property were admitted documents. The defendants had moved an application under Section 29 of Guardianship and Wards Act, 1890 read with Order 32 CPC before the court for permission to sell the property of the minor daughters. This was admitted in view of the fact that fourth defendant in his statement under Order 1 Rule 10 CPC dated 17.05.2010 had admitted his signatures on the said application.

13. While deciding the second issue, the learned Single Judge had considered the case laws relied upon by the first defendant in the case of ***M. Veera Raghaviah vs. M. China Veeriah & Anr.*** AIR 1975 AP 350 and ***Shilpi Jain & Ors. vs. Anil Kumar Bansal (HUF) & Ors.*** 2009 (110) DRT

357; *Saroj vs. Sunder Singh & Ors.* 2013 (14) SCALE 356 and *Rangammal vs. Kuppuswami & Anr.* (2011) 12 SCC 220 relied upon by the second and third defendants and *Shri Narayan Bal & Ors. vs. Sridhar Sutar & Ors.* (1996) 8 SCC 54; *Smt Bhagyamma & Ors. vs. Smt. Ningarama & Ors.* 2009 (4) KarL.J. 404 and *Gangoji Rao & Anr. Vs. H.K. Channappa & Ors.* AIR 1983 Kant 222 relied upon by plaintiff. After discussing the scope of Section 6, 8 and 12 of Hindu Minority and Guardianship Act, 1956, the learned Single Judge held that the property in the hands of the second and third defendants could not be termed as Joint Hindu family property as the same had devolved on them under Section 8 of Hindu Succession Act. Relying on the contents of the petition under Section 29 of Guardianship and Wards Act seeking permission to sell, learned Single Judge held that though the proceedings were abandoned on account of the majority of the second and third defendants (on 23.09.2007 i.e. during the pendency of the proceedings) yet their contents clearly showed that there was a necessity and a sale was contemplated- of the suit property= for the welfare of minors. The learned Single Judge also held that though the Sale agreement in the hands of second and third defendants, on attaining majority was a voidable instrument and through their letter dated 23.09.2007, no doubt they had shown their intention not to abide by it, yet their subsequent conduct of sending their duly attested signatures and photographs at the plaintiff's address for conversion of the suit property from lease hold to freehold showed that they acquiesced and acted upon the agreement to sell. The learned Single Judge has also relied on the fact that the first defendant by her letter dated 11.02.2008 for the first time conveyed her intention of not being interested in selling the suit property anymore and held that she was

well aware of the agreement to sell and also all along wanted to sell the property to the plaintiff. The learned Single judge has also relied on the testimony of PW-1 (husband of plaintiff) and the entries in his bank account showing credit entry dated 30.03.2006 and three entries dated 15.04.2006, 15.04.2006, 17.04.2006 respectively with regard to sale of Yamuna Nagar and Gurgaon properties which he sold for ₹ 10,50,000/- + ₹ 2,84,000/- and ₹ 6,25,000/- + ₹ 13,50,000/- + ₹ 6,25,000/- respectively and reached the conclusion that plaintiff had sufficient funds to pay the sale consideration and relying on findings in *Azhar Sultana vs. B.Rajamani & Ors.* AIR 2009 SC 2757 and *R.C. Chandiok & Anr. vs. Chuni Lai Sabharwal & Ors.* AIR 1971 SC 1238 held that the plaintiff was ready and willing to perform her part of the contract.

14. The learned Single Judge held that the defendants had not only received part payments but had also partly acted upon the contract by handing over possession of car garage #46 to the plaintiff which is part of the suit property. For these reasons and also for the reason that rise in price of an immovable property itself is not a ground for refusal to enforce a lawful agreement to sell (*P.S. Rana Krishna Reddy Vs. M.K. Bhagyalakshmi & Anr.* 2007 10 SCC 231), the learned Single Judge decreed the suit and directed the first three defendants Nos. 1-3 to execute the sale deed with respect to the suit property along with all necessary documents in favour of the plaintiff. The defendants were also restrained by way of permanent injunction from creating any third party interest in the suit property.

15. The first contention of the first three defendants is that the GPA dated 22.03.2006 was given by the first defendant for herself and not on behalf of

the second and third defendant and that she (the first defendant) had never authorized fourth defendant to sell the suit property. It is however contended by the plaintiff that through power of attorney Ex.P4/D1-D3, the first defendant had duly authorized the fourth defendant to sell the suit property and power of attorney was executed in her own capacity as well as guardian of the second and third defendants.

16. The first defendant does not dispute the execution of power of attorney Ex.-4/D1-D3. The relevant portion of the said document is reproduced herein:-

“Know all men by these presents that I Mrs. Gita Ganesh Malavankar W/o Late Sh. Ganesh Kumar Janarden Malvankar R/o Moss Bank, 20, High Road, North Stifford, Grays, Essex, RM 16 5UE in UK and lawful Guardian/Mother of two daughters Miss Seema Malvankar and Miss Samita Malvankar both d/o Dr. Ganesh Kumar Janarden Malvankar do hereby appoint, nominate, constitute and authorize Sh. Suresh Kumar Malvankar R/p C-86 Sainik Nagar Main Najafgarh Road, Uttam Nagar, New Delhi 110059 as my true and lawful General attorney in respect of property, flat No. 225 on the ground floor, scooter garage No.104 and car garage No. 46 Cat. SFS AT Yusuf Sarai New Delhi.”

17. This document clearly shows that it was executed by the first defendant not only in her own individual capacity but also in the capacity of lawful guardian of her two minor daughters. Section 6(a) Hindu Marriage and Guardianship Act of the Act states that after the demise of her husband, the mother is the natural guardian of a minor boy and minor unmarried girl in respect of the minor's person and property (excluding his/her undivided interest in joint family property). Section 6 is reproduced below:-

“6. Natural Guardians of a Hindu minor.—The natural guardian of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

18. This provision enabled the first defendant, as the natural guardian of the second and third defendants, to act on their behalf as far as their person and property was concerned. Further Section 8 (1) of the Hindu Minority and Guardianship Act expressly authorizes a natural guardian to do all acts necessary for the welfare and benefit of person and property of a minor. The second and third defendants in their reply Ex.1/D1-D3 had not disputed the authority of the fourth Defendant to act on behalf of their mother and on their behalf. The fourth defendant had also in his letter dated 23.09.2007 (Ex.1/D4) to plaintiff informed her that his authorization as attorney of second and third defendants had ended on their attaining majority since they had not executed any attorney in his favour on attaining majority. These facts clearly show that Fourth defendant was authorized by The first defendant to deal with the property of minors with which she could deal as a natural guardian of minors.

19. It was argued by the defendants that in view of the restrictions of Section 8(2) of Hindu Minority and Guardianship Act, the natural guardian had no authority to mortgage, create charge or transfer by way of gift or sale, etc. any immovable property of the minors, except with the permission of the Court. Though the plaintiff relied on a certified copy of

the petition under Section 29 of Guardianship and Wards Act, 1890 read with Order 32 CPC filed by fourth defendant, it is argued firstly that fourth defendant was never authorized to file such application and secondly pursuant to said application no permission was granted by the Court since the application was dismissed; no charge could be created on the estate of minors without the permission of the competent court and hence there was no legal and valid sale agreement. Reliance is placed on ***Shilpi Jain and Ors. Vs. Anil Kumar Bansal (HUF) and Ors.*** 2009(110) DRJ 357 and ***M. Veera Raghaviah V. M. China Veeriah and Anr.*** AIR 1975 AP 350.

20. On the other hand, it was argued on behalf of plaintiff that since the suit property is jointly owned by all the three defendants who have an undivided interest in it, the suit premises is a joint family property and is excluded from the purview of Section 8 of Hindu Minority and Guardianship Act. Section 6 restrains a natural guardian from dealing with the undivided interest of a minor in a joint family property. It is further argued that the persons directly descending from a common ancestor, include female descendants and therefore joint family property cannot be confined to the coparcener only. Section 12 of Hindu Minority and Guardianship Act permits an adult member of the family to manage the undivided interest of a minor in joint family property, and no guardian has to be appointed, the first defendant being the adult member of the joint family, needed no permission of court while dealing with the joint family property in which minors have undivided interest. Reliance is placed on ***Gangoji Rao and Anr. v. H.K. Chanappa and Ors.*** AIR1983 Kart 222. It is argued that the case law relied upon by defendants has no relevance. It is submitted that : “*Shilpi Jain and Ors. vs. Anil Kumar Bansal (HUF) and*

Others 2009 (110) DRJ 357 is a case of properties owned by Hindu Undivided Family. Also the legal need had not been established in that case. The M.Veera Raghviah vs. M.China Veeriah and Anr. AIR 1975 (Andhra Pradesh) 350 is also not relevant as no minor is involved in that particular case and agreement was collusive.”

21. It is further urged by the plaintiff that despite sending letter dated 23.09.2007, the first three defendants sent documents for the purpose of conversion of property which goes to show that they had ratified the agreement to sell.

22. The issue thus relates to the nature of property in the hands of the first defendant, i.e. whether it was a joint family property in which the second and third defendants being minors had undivided interest or it was their property or estate in the hands of their mother, a natural guardian who could have handled the property in the manner specified in Section 8. Section 8 reads as under:

“8(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.”

23. Section 8(2) places restrictions on this power of the natural guardian while dealing with the estate of a minor stating that such a power can be exercised only with the permission of the Court.

“8 (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.”

24. Section 8(3) further codifies that any disposal of estate of a minor in contravention of sub-section (1) and (2) by a natural guardian is voidable at the instance of a minor claiming under such natural guardian. The said Section is reproduced as under:-

“8(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.”

The provisions of law are clear that a natural guardian can deal with the estate of a minor only in the manner provided for and any contravention thereof renders the transaction voidable at the instance of the minor. However, if the minor possesses an undivided interest in the joint family property then by virtue of Section 12 Hindu Marriage Act the adult member can manage such property and the restrictions of Section 8 would not operate. Section 12 is reproduced herein-

“12. Where a minor has an undivided interest in 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:

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court the welfare of the minor shall be the paramount consideration.”

25. Can the expression “excluding his/her undivided interest in joint

family property” under Section 6 of the Act, be construed so liberally so as to include the suit property which was not a joint family property in hands of Dr. G.K.J Malvankar and which had devolved on the defendants under Section 8 of the Hindu Succession Act and is jointly owned by the defendants each having a definite 1/3 undivided interest in it. In the facts and circumstances of this case, the question is whether the first defendant, being the only adult member and mother of the second and third defendants assumed the character of natural guardian under Section 6 or of Manager under Section 12. The Supreme Court had elaborately discussed the import of three sections (Section 6, 8 and 12). In ***Sri Narayan Bal And Others vs Sri Sridhar Sutar And Others*** AIR 1996 SC 2371:

“4. Section 6 of the Act inter alia provides that the natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are — in the case of a boy or an unmarried girl — the father, and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. Section 8 thereof inter alia provides that 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. Furthermore the natural guardian shall not, without the previous permission of the court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor or lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority. 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 on behalf of the minor. Section 12 provides 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: Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

5. With regard to the undivided interest of the Hindu minor in joint family property, the provisions afore-culled are beads of the same string and need to be viewed in a single glimpse, simultaneously in conjunction with each other. Each provision, and in particular Section 8, cannot be viewed in isolation. If read together the intent of the legislature in this beneficial legislation becomes manifest. Ordinarily the law does not envisage a natural guardian of the undivided interest of a Hindu minor in joint family property. The natural guardian of the property of a Hindu minor, other than the undivided interest in joint family property, is alone contemplated under Section 8, whereunder his powers and duties are defined. Section 12 carves out an exception to the rule that should there be no adult member of the joint family in management of the joint family property, in which the minor has an undivided interest, a guardian may be appointed; but ordinarily no guardian shall be appointed for such undivided interest of the minor. The adult member of the family in the management of the joint Hindu family property may be a male or a female, not necessarily the Karta. The power of the High Court otherwise to appoint a guardian, in situations justifying, has been preserved. This is the legislative scheme on the subject. Under Section 8 a natural guardian of the property of the Hindu minor, before he disposes of any

immovable property of the minor, must seek permission of the court. But since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under Sections 6 and 12 of the Act, the previous permission of the court under Section 8 for disposing of the undivided interest of the minor in the joint family property is not required. The joint Hindu family by itself is a legal entity capable of acting through its Karta and other adult members of the family in management of the joint Hindu family property. Thus Section 8 in view of the express terms of Sections 6 and 12, would not be applicable where a joint Hindu family property is sold/disposed of by the Karta involving an undivided interest of the minor in the said joint Hindu family property. The question posed at the outset therefore is so answered.

6. In the instant case the finding recorded by the courts below is that Jag Bandhu, the eldest male member in the family acted as a Karta in executing the sale and had joined with him the two widows for themselves and as guardians of the minor members of joint Hindu family, as supporting executants. That act by itself is not indicative of the minors having a divided interest in the joint Hindu family property commencing before or at the time of the sale. In this view of the matter, Section 8 of the Act can be of no avail to the appellant's claim to nullify the sale.”

26. A clear distinction is thus drawn between the estate of a minor and the undivided interest of a minor in the joint family property to be managed by the adult member of the family, who could be a natural guardian in the absence of Karta of Joint Family. In the former case, the disposal is voidable, if done without the permission of Court and in the latter, there is no necessity of any such permission and any disposal of undivided share of a minor in the joint family property is binding on the minor. It is also clear

that while Section 8 contemplates the acts of natural guardian while dealing with the immoveable property of a minor, Section 12 deals with undivided interest of minor in a Joint Family property. The distinction between the two expressions “immovable property” or “estate” or minor’s property under Sections 6 and 8 and the expression “undivided interest in joint family property” in Section 6 and 12 would only mean that Section 6 and 8 speak of defined/definite share of minor in a property which could be jointly owned while Section 12 on the other hand deals with undivided interest of a minor in joint family property wherein he or she has a volatile share; it keeps fluctuating, i.e. increasing or decreasing on subtraction or addition of a member in the joint family.

27. The same view is expressed by Bombay High Court In **Narain Laxman Gilankar vs. Uday Kumar Kashi Nath** AIR 1994 Bom.52, -

“Section 8 speaks of power of natural guardian in relation to immovable property of minor” which would mean minor's definite property and not his fluctuating indefinite interest in the joint family property. Language employed in S. 8 seems to be in pari materia with S. 29 of the Guardians and Wards Act and hence both will have to be viewed and construed similarly. Thus, it appears that intention of S. 8 is not to fetter the customary power of natural guardian in the matter of dealing with joint family property including minor's undivided share.”

28. The Division Bench of Karnataka High court in the case **Mangala vs. Jayabai** ILR 1994 Kar 1282, after discussing the *ratio* in several cases (**C.I.T. vs. G.S. Mills** AIR 1966 SC 24), **Gangojirao vs. Chennappa** AIR 1983 Kar 222; **Surjitlal vs. I.T Commr** AIR 1976 SC 109., **Rajasekhar vs. Siddalingappa** ILR 1986 Kar 2765, **T. Goundar vs. Parvathamamma** AIR

1977 Mad 40; **Amrutham vs. Saman** AIR 1991 SC 1256), summarized the principle applicable to joint family property as under:-

“9. Ratio of the Decisions clearly postulates existence of joint Hindu Family consisting of either male members or one male member, by virtue of which after the death of Karta of the Joint Hindu Family, family continued to be Joint Hindu Family provided one male member exists. Mother being natural guardian can meddle with the interest of her minor children which is inclusive of male and female members. We are of the view that in the absence of male member, the family property in the hands of widow and her female children cannot be characterized as Joint Hindu Family Property with a view to enjoin the widow to act as either Manager or as natural guardian to meddle with the family property with a view to bind the interest of minor daughters who will have succeeded to the estate of their father by virtue of succession under the provisions of Hindu Succession Act de hors the provisions of Section 8(3) of the M & G Act. Further a Joint and undivided family may consist of persons who do not form any coparcenary at all, it may consist of persons only provided there is amongst them a potential mother who in the way of nature or law may add a male member to it.

10. From the ratio of the above Decisions, what is to be noted is that Hindu Joint Family can exist with one male member. While dealing with the powers of mother as natural guardian regarding the Joint Family Properties one thing is evident that existence of male member is contemplated. Further, there are instances where male member is a minor even then he can be construed as Karta of the Joint Hindu Family and mother can as natural guardian of the Manager minor karta of Joint Hindu Family can meddle with the family properties for family necessity so as to bind all the members of Joint Hindu Family.

11. The question that arises for consideration is whether restrictions contained in Section 8 is applicable to cases where there is no male member in the family and mother as natural guardian of her minor daughters who constitute the family can

alienate their shares so as to bind their shares which they have succeeded to the estate of their father, by virtue of Hindu Succession Act, who intestate and that too when the family property was retained by him as the Karta of the Joint Hindu Family at the time of death. What is to be noted is that when father dies with sons and minor daughters who are also entitled to inherit jointly with the sons to the father's property under Hindu Succession Act 1956 the interest of minor daughters in the property left by their father's property will be the undivided interest in the Joint Family property and Section 6 of the M & G Act would not apply, since there exists a Joint Hindu Family and share would be undivided interest. But in cases where father dies leaving behind only his wife and minor daughters, the question of family property retaining the character of Joint Hindu Family property does not exist and as such the operation of Section 8(3) of M & G Act is attracted.

12. SALES by mother as natural guardian of her minor daughters shares would not be binding on the minor daughters shares and all alienations have to be declared as void subject to the options to be exercised by the minor daughters since there exists no Joint Hindu Family in the instant case after the death of the father who has left no male issue.

13. In Amrutham Kudumbah v. Sarnam Kudumban reported in AIR 1991 SC 1256 while discussing the scope of sub-section (3) of Section 8 of M. & G. Act, Supreme Court has observed at para. 9 as follows. It reads :

"The effect of this sub-section is that any disposal of immovable property by a natural guardian otherwise than for the benefit of the minor or without obtaining the previous permission of the court is voidable. A person entitled to avoid such a sale is either the minor or any person claiming under him. This means that either the minor, or his legal representative in the event of his death, or his successor-in-interest claiming under him by reason of transfer inter vivos, must bring action within the period prescribed for such a suit, i.e., three years from the date

on which the minor died or attained majority, as the case may be. In the present case, the suit was brought, as found by the Courts below, within three years after the minor attained majority."

14. Whatever be the position in regard to cases under the Taxation Law with reference to joint family, the question now is whether on the death of Virupaksh Deshpande on 30-4-1962, what is the position of mother with reference to Hindu Joint Family as the mother is the guardian of the daughters ? whom who were minors and also with reference to other daughters.

It is settled principle that succession cannot be in abeyance. Section 6 of the Hindu Succession Act provides for devolution of interest of a coparcenary property. The proviso thereto is that if the deceased male Hindu had left him surviving a female relative in Class A, then the interest devolves by succession under the Act. That is the position here.

Consequently on the death of Virupaksha Deshpande who had possessed joint family property and who died leaving behind him a wife and three daughters (and no son) even so the property devolves upon them as heirs in Class A.

Section 19 of the same Act provides that when two or more heirs succeeded of the same class, as heirs they do so under the Act as tenants in common. It is immaterial that the shares are not divided by metes and bounds but each has a definite share. That appears to be the position."

29. To support her contention, the plaintiff in support of her contention relied upon case laws the *ratios* of which are not applicable to the facts of this case. The facts of all such cases show that nature of property in the hand of the person from whom it was inherited was ancestral property belonging to joint family. In **Gangoji Rao &Anr. (supra)**, the suit property was the ancestral property belonging to the joint family of the two

plaintiffs. The ratio of *Gangojirao* case (*supra*) is that a joint family includes in it the mother, sons and unmarried daughters and the expression “joint family property” is used in the wider sense including the shares of these female members. The Court had further held that in the absence of the father, the mother could manage the joint family property including the interest of male and female minors in such property and there was no necessity to appoint a court guardian under Section 12 of Minority and Guardianship Act; the mother can continue managing the family property being a natural guardian. In this case, the suit property was indisputably an ancestral property which had devolved on the mother on the demise of her husband who was the *Karta* of the Hindu undivided family.

30. In *Smt. Bhagyamma* (*supra*) the property in the hands of a deceased male member was ancestral property which had devolved on his wife and four daughters. On these facts the Court held that the family continued to be a Joint Hindu Family and the widowed mother would not have to seek permission of the Court to alienate the property. In *Krishnakanth Magal Lal Vs. Unknown* AIR 1961 Guj 68, the Court held that when a property in the hands of a natural guardian is in the nature of a joint family property, it needs to be governed by the tenets of Hindu law and not by the provisions of the Hindu Minority and Guardianship Act. No permission from a Court under Section 8 (2) of Hindu Minority and Guardianship Act is needed by a natural guardian who is also a *Karta*/manager of a Hindu undivided family before alienating the undivided share of a minor in a joint family property.

31. The ratio of all these cases clearly establishes one fact i.e that if a family retains the characteristic of a Joint Hindu Family and the property

owned by it is a joint family property having the characteristic of an ancestral property, then on the demise of a male *Karta* of such a Hindu undivided family, a female adult member can act as manager and can alienate such property subject to other conditions and no permission under Section 8(2) of Hindu Minority and Guardianship Act is needed. A Joint Hindu Family property retains its characteristic in the hands of an adult member only when it is an ancestral property. After enactment of the Hindu Succession Act, 1956, devolution of properties is governed by its provisions. Earlier, there were two systems of inheritance, Mitakshara system and Dayabhaga system. While Dayabhaga was prevalent in Bengal, the Mitakshara system recognized two modes of devolution of the property, by survivorship which was to be applied to the joint family property and other rule was rule of succession applicable to property held in absolute severalty by the last owner. Even on enactment of the Hindu Succession Act, 1956 these two modes of devolution of property in the *Mitakshara* system were retained by Parliament in the case of joint family property. Section 6 of Hindu Succession Act speaks of devolution of coparcenary property by way of survivorship; the proviso to it clarifies that the rule of devolution by survivorship was limited to eventualities where the deceased is not survived by any female relative in Class-I, if it is so then the property will not devolve by rules of survivorship but under the provisions of the Act. Explanation 1 further contemplates that a partition has to be presumed before the death of a coparcenor to ascertain his share in joint family property which can be said to have devolved on his legal heirs. The Section 6 of Hindu Succession Act, 1956 is reproduced as under:-

“6. Devolution of interest in coparcenary property.—When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.”.

32. Section 8 speaks of general rules of inheritance. It is reproduced as under:-

“8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule.

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule.

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased, and

(d) lastly, if there is no agnate, then upon the cognate of the deceased.”

33. Section 9 clarifies that all heirs of Class-I take their share simultaneously and to the exclusion of others. The said Section 9 is reproduced as under:-

“9. Order of succession among heirs in the Schedule.- Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs, those in the first entry in class II shall be preferred to those in the second entry, those in the second entry shall be preferred to those in the third entry, and so on in succession.

Section 14 declares the property in the hands of a female acquired by her by inheritance to be her absolute property.

34. On conjoint reading of all these provisions, it is apparent that after the Act, even the interest of deceased male member in joint family property inherited by female heirs of Class-I category, in their hands is their absolute property and not an undivided interest in joint family property. They hold it simultaneously and to the exclusion of others as calculated under Section 10. The share which devolves in the hands of surviving male heir of class-I is not needed to be dealt with because deceased here was survived only by female members of class-1 category, i.e., wife and two daughters. Although 2005 amendment in Hindu Succession Act has brought sustentative changes but for us it is not relevant as Mr.Mavelenkar had died on 26.11.1998. It is thus apparent that the share of a class1 female even in the joint family property is her absolute property on which she has absolute rights, and not an undivided interest in the joint family property. In this case the property in the hands of G.G. Malvankar was not joint

family property. It was his self-acquired property allotted to him on leasehold basis. He died intestate and property devolved on defendants under Section 8 of Hindu Succession Act and all three had a definite share i.e. 1/3 each, though the suit property was not divided by metes and bounds. The argument of learned counsel for plaintiff thus has no force. the first Defendant, therefore, could not have alienated it without the permission of the Court.

35. In this case, the permission of Court was not obtained. However, it is also an admitted fact that fourth defendant had applied for the permission and disclosed all the relevant facts necessary to prove that the sale was for the benefit of the minor girls but before an order could be passed by the Court the minors attained majority. In this regard learned Single Judge has observed as under:-

“The plaintiff has placed on record photocopy of the Suit No.410/2006 filed by the defendant No. 1 through her attorney the fourth defendant before the learned District Judge, Tis Hazari under Section 29 of the Guardianship and Ward Act, 1890 read with Order 32 of the CPC seeking permission to sell the suit property. One of the averments in the petition is that the first defendant along with her husband shifted to United Kingdom and after his death the first defendant is living there with the two minor girls i.e. defendants No.2 and 3. The defendants No.2 and 3 were then 16 years old and had just finished class 10th Board examination. The first defendant was then working as Administrator in Dr. J. Demellow's Surgery, 1, King Edward Driveway, Grays, Essex, since October 2004. She was earning £650 per month with which she was able to make both ends meet. However, the said income was not sufficient for higher education of defendants No.2 and 3. So that defendants No.2 and 3 could join medical or chartered accountancy programme and to arrange for their higher education, required funds and thus decided to sell the flat owned jointly by the the first defendant

and defendants No.2 and 3. The fourth defendant the power of attorney of the first defendant in his statement under Order 10 Rule 2 recorded by this Court has stated that the signatures on the application mark 'Y' and the affidavit accompanying the same were his. Thus, the factum of filing the application and the supporting affidavit by the fourth defendant on behalf of the first defendant and defendants No.2 and 3 has been admitted.

From this admission it is clear that when the parties entered into the agreement to sell dated 20th May, 2006 the first defendant was in need of money for the higher education of defendant No.2 and 3.”

36. There is nothing on record to contradict the facts noted by the learned Single Judge. When during the pendency, the minors attained majority, those proceedings become infructuous.

37. In her plea the first defendant denied any knowledge of the Agreement to Sell and its addendum and receipt of part payment. The defendants in all these transactions have acted through her Power of Attorney, Mr. S.K. Malvankar, who was the younger brother of the first defendant's husband. The first Defendant admits execution of Power of Attorney dated 22.03.2006 in favour of fourth defendant. An earlier Power of Attorney dated 14.02.2002 marked as Ex. X1 was shown to the first defendant in her cross-examination and she did not specifically deny the execution of this document. She answers the question evasively “*I am not sure if I had given a Power of Attorney to Mr. S.K. Malvankar in the year 2002, though I had come to India in that year*”. The tenor of her entire cross-examination clearly shows that she had avoided giving correct answers to the questions and either answered vaguely or denied having knowledge of the same.

38. There is no dispute to the proposition of law that a Power of Attorney holder by virtue of Section 2 of Power of Attorney Act is empowered to act in terms of authorization by the executants of Power of Attorney and any act done by him in exercise of such authority and within the authority conferred, binds the executioner. The scope of Section 2 of the Power of Attorney Act is discussed in the case of ***K. Gopalakrishnan vs. Karunakaran rep. by the Power of Attorney*** 2006 (4) KLT416, as under:-

“10. Section 2 of Powers of Attorney Act, 1882 makes it clear that Power of Attorney can execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required by the authority of the Donor of the power, and every instrument and thing so executed and done, shall be effectual in law as if it had been executed or done by the donee of the power. The scope of the above section has been explained in the above referred decision [1956]30ITR163(SC) . From the careful reading of the above provision of the Act as well as the observation of the Hon'ble Supreme Court, it can safely be concluded that a complaint signed by the Power of Attorney in his name, though not on behalf of the complainant, is maintainable and valid in law. Therefore, the Power of Attorney has the authority to act on behalf of the principal and the acts done by him in exercise of that authority are protected even if done in his own name. In the light of the above principle, the complaint even if not signed by the power of attorney on behalf of the complainant but signed in his own name is maintainable and not bad in law, because it is more procedural than substantive.”

39. In a recent judgment, Supreme Court in the case of ***Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and Anr.*** AIR 2012 SC 206 has held as under:-

“13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the

grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In State of Rajasthan v. Basant Nehata 2005 (12) SCC 77 this Court held:

A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favor of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.”

Thus, any act done by an attorney pursuant to the authority conferred upon him, binds the Principle.

40. By virtue of Power of Attorney –Ex. 4/D1-D3, the defendants 1-3 had authorized the fourth defendant to do the following acts-

"1. xxx xxx xxx

2. *To represent us before the officers or DDA, M.C.D, DVB, or any other concerned in connection with the aforesaid property.*

3. xxx xxx xxx

4. xxx xxx xxx

[illegible]

6. xxx xxx xxx

7. *To execute, sign and present all kinds of complaints, appeals, plaints, revisions, written statements, applications, affidavit in proper court of law and officers, to proceed in all the proceedings filed in my/our name and against me in connection with the aforesaid property and to file/defend any suit in any court of law in any manner/matter concerning my said property and to appoint any vakil, advocate, pleader, etc for the said purpose.*

8. *To get the same property mutated and transferred in the name of legal heirs after demise of Dr. Ganesh Kumar Janardan Malvankar.*

9. *To get the aforesaid property converted from Lease Hold into freehold from the concerned Government/Authority/DDA, for the said purpose to sign and submit all affidavits and give any application and sign verify Affidavit. Undertaking, Indemnity Bonds and to deposit the charges and obtain the receipt and to execute conveyance deed/and all other document whatsoever and to present the same for registration and admit the execution thereof and get the same registered.*

10. xxx xxx xxx
11. xxx xxx xxx
12. *To execute/undertake sale of the property and to follow
the procedure in proper and lawful manner for such
disposal.”*

41. The fourth defendant was thus duly authorized to sell the property and while doing so was also directed to follow the procedure. It is also important to note that the earlier Power of Attorney of 2002 to the fourth defendant did not authorize him to sell the property. It was executed to enable him to manage the property without conferring any authority to alienate the property. The fact that despite the existence of Power of Attorney of 2002 in favour of fourth defendant (for managing the property) another one dated 22.03.2006 was given to him without terminating the earlier one, which, permitted the sale of the property shows that defendants wanted to sell the property. Otherwise, there certainly was no occasion for her to execute fresh Power of Attorney to the fourth defendant authorising him to sell the property and complete all other necessary formalities in that regard. It is also a fact that the fourth defendant executed an Agreement to Sell dated 11.12.2005 in favour of plaintiff (the fourth defendant admits his signature at point 'X' in his statement recorded under Order 1 Rule 10). It is clear that the fourth defendant had no authority to sell the house under the Power of Attorney dated 11.12.2005. The fact that in the close proximity of Agreement to Sale dated 11.12.2005, the defendant executed the Power of Attorney dated 22.03.2006 indicates that the first defendant had knowledge of this agreement and consented to it that is why in order to ensure the execution of valid documents, she had executed Power of Attorney dated

22.03.2006, specially empowering the fourth defendant to sell the house. The amount of Rs. 6 lakhs deposited by the plaintiff in the account of the first defendant maintained by her in India indicates her knowledge of the transaction. In her cross-examination, she was asked by the plaintiff to produce the bank record but she did not produce it. She could have easily obtained the relevant record from her bank but she avoided to do so.

42. The Single Judge's observation in regard to the letter dated 11.02.2008 wherein the first defendant told plaintiff "*I do not intend to sell the flat (225 Gulmohar Enclave, New Delhi) anymore.*" is relevant. It clearly showed that the defendant had knowledge of all the transactions. Further, her conduct speaks against her. If she had no knowledge of transactions, she would have on receipt of notice from plaintiff dated 07.09.2007 refuted the claim of the plaintiff and questioned the existence of Agreement to Sell. Moreover, in her letter dated 11.02.2008 she did not dispute the existence of Agreement to Sell. This plea, that she had no knowledge of Agreement seems to have been taken only to avoid her liability. Agreements being valid documents bind the parties.

43. The plea of the second and third defendants is that they are not bound by the agreements entered into by their mother, being voidable and that they had by the letter dated 24.09.2007 (Ex. X1/D1-D3), in response to letter of plaintiff dated 07.09.2007 conveyed their intentions of having no desire to sell the house.

44. An agreement in violation of Section 8, is a voidable agreement at the instance of the second and third defendants or any person claiming through them. A voidable agreement is such which is void or valid at the option of

one of the parties to it. The same arguments were raised before the learned Single Judge as well and the Single Judge has observed as under:-

“18. Despite the letter dated 23rd September, 2007 expressing their intention not to ratify the agreement sent by learned counsel for the defendant No.2 and 3 to the plaintiff, the defendants No.1 to 3 sent their photographs on blank papers with signatures to the husband of the plaintiff on 10th December, 2007 i.e. after attaining the majority by defendants No.2 and 3. The four photographs each of defendants No.1 to 3 pasted on blank papers with their signatures having been sent to the husband of the plaintiff have been admitted by the defendants No.1 to 3. Their case is that these documents were sent for the purpose of conversion. Be that as it may, the factum of sending these documents by post on 10th December, 2007 shows that even after writing letter to the plaintiff for not continuing the agreement to sell, the defendants still had an intention to deal with the plaintiff for the property. Thus by their conduct the defendants No.2 and 3 again agreed to sell the property. This fact is further ratified by the letter of the first defendant dated 11th February, 2008 stating that she did not intend to sell the flat any more, thus for the first time expressing a clear intention not to sell the flat.”

45. The findings of learned Single Judge are based on facts. It is also apparent from the evidence on record that one of the conditions which defendants were to fulfill before execution of sale deed was, “*conversion of property from lease hold to free hold*”. For this, the fourth defendant had moved the concerned authorities and husband of plaintiff had rendered full help and assistance. The plaintiff has been fully co-operative and even prepared a pay order of ₹ 20,820/- from her bank account which was deposited with DDA for conversion of property. Also, when defendants could not trace the original documents of suit property, an advertisement to this effect was published in national daily and expenses were borne by the

plaintiff. The defendants were well aware of all these efforts of the plaintiff in getting their property converted to freehold and an inference can be drawn from them that, with a view to remove the hurdle in execution of sale deed, they had directly sent the documents needed for such conversion to husband of plaintiff instead of sending those papers to their Attorney so that the conversion of the property to freehold before execution of sale deed could be completed. Their conduct led the plaintiff to believe that the defendants wanted to abide by the agreement to sell and she had acted on that belief and made all efforts to get the property converted to freehold. Another fact which shows that the agreement was ratified by defendants is that under the Agreement to Sell, the possession of the garage was handed over to the plaintiff, the defendants had not, at any stage, made any effort to get the possession of the garage back. The second and third Defendants have not testified to prove that they had no intention to sell or that the duly attested signatures were not sent with their consent. The Supreme Court in ***B. Laxmanan vs. B.R. Mangalam Giri & Others* 1995 (1) SCALE 14-** held that the conduct of the respondents who attained majority even during pendency of the suit is an important factor to determine their choice if they had chosen to treat the agreement entered into during their minority, as valid or void and which is voidable by its nature. The Court has held in the said case as under:-

“4. It is true that in the written statement filed by the defendants, defendant Nos. 1, 2, brothers and 4 being the mother representing defendant No. 3-minor, as a natural guardian, had pleaded in paragraph 12 that the agreement to the extent of the share of the minor, is void. Under Section 8(3) of the Hindu Minority and Guardianship Act, 1956, Act 32 of 1956 (for short,

'the Act'), it is only voidable at the instance of the minor or any person claiming under him. The guardian has to obtain permission from the court under Section 8. In this case, admittedly, during the pendency of the suit, the third respondent-minor after becoming the major on July 31, 1975, was duly declared as major and the mother was discharged from guardianship. Thereafter he filed a memo adopting the written statement filed by the defendants 1 and 2, his brothers. In their written statement and also in the reply notice got issued by them, respondents No. 1, 2 and 4 expressly averred and was testified in the evidence of the first defendant that they are "ready and willing to perform their part of the contract". When the minor became major, he had adopted their written statement, it would certainly mean, as rightly pointed out by the High Court, that the minor was also willing to perform his part of the contract along with his brothers. He thereby elected to abide by the terms of the contract. It is not the case that the appellant had called upon the respondents in writing to obtain permission from the court as required under Sub-section (2) of Section 8 of the Act and that they refused to obtain such a sanction. In the suit notice also he did not call upon them to get the sanction of the court. On the other hand, he asked them to return the advance amount. When the minor had attained majority pending the suit and had elected to abide by the terms of the agreement of sale, the need to obtain sanction from the court became unnecessary. Under these circumstances, the necessity to obtain permission from the court under Sub-section (2) of Section 8 of the Act became redundant. It is seen, from the conduct of the appellant, that he is not willing to perform his part of the contract and he wants to wriggle out of the contract. It is also seen that time is the essence of the contract. Sale deed was required to be executed on or before February 23, 1973, the appellant is the defaulting party and he has not come to the court with clean hands."

The learned Single Judge therefore, for all these reasons correctly held that the defendant Nos. 2 and 3 had by their conduct chosen to abide by the agreement to sell. The Single Judge correctly relied on the proposition of

law in the case of ***R.C. Chandiok & Anr. Vs. Chuni Lai Sabharwal & Ors.*** AIR 1971 SC 1238 and in ***Azhar Sultana vs. B. Rajamani & Ors.*** AIR 2009 SC 2757 and reached her conclusion. There is no infirmity in her findings.

46. The Court also holds that there is nothing on record to deny the decree of specific performance. In this case, the Agreement to Sell was partly performed and the possession of garage was not claimed back by the defendants. Further, the rise in the price of immovable property is not a ground to refuse specific performance of a Contract as held in ***P.S. Rana Krishna Reddy vs. M.K. Bhagyalakshmi & Anr.*** 2007 10 SCC 231. In this context, the defendants' plea that possession of garage was never handed over to plaintiff is misconceived and contrary to record. The clause of agreement to sell is-

“Whereas the 2nd party and her two daughters are the absolute owners of Flat #225, Car Garage #46 and Scooter Garage #104, all located in Gulmohar Enclave, (Yusuf Sarai DDA SFS flats) New Delhi 110049. The properties are free from all encumbrances. 2nd party wishes to sell the mentioned properties. The 1st party wants to purchase these properties. The parties have agreed to the following terms and conditions of the sale.

1. The sale price has been settled at Rs. sixty eight lakhs (Rs. 68,00,000/-). Out of this the 1st party has paid Rs. 6,00,000/- (Rs. six lakhs) to the 2nd party as part payment vide cheques #718261 dt.30.11.05; #718262 dt. 01.12.05 and #345386 dt 20.05.06. The 2nd party confirms the receipt of this amount. The balance 62,00,000/- (with an increase of 5% per annum) will be paid at the time of the registration of the sale deed and when the vacant physical possession will be handed over to the 1st party. The registration of the sale deed will be executed within 12 months of this 20th day of May, 2006 in the name of the first party or her nominee. Considering the part payment made to the 2nd party

vacant physical possession of car garage #46 has been made by the 2nd party to the 1st party.”

47. The plaintiff's is aggrieved by the direction of the Court to pay interest at the rate of 18% *per annum* upon the unpaid consideration amount while executing the sale deed. It is submitted that the grant of interest is an equitable relief and is generally granted to a party who has been wrongly deprived of money to which he was otherwise legally entitled. It is submitted that in this case, the Court had itself concluded that it was the first three defendants who had been avoiding the execution of the sale deed in terms of the agreement to sell and that the petitioner had all along been ready and willing to perform her part of the contract and in view of these findings, the imposition of cost has the colour of penalty being imposed upon her and thus contrary to the tenets of provisions of Section 34 of CPC through which the Court exercises its discretion to grant interest to the aggrieved party where there exist no agreement between the parties for grant of interest or where liability arises out of a commercial transaction. Reliance is placed on the findings in the case of ***Clariant International Ltd. vs. Securities & Exchange Board of India*** (2004) 8 SCC 524.

48. On consideration of the arguments of the learned counsel we are of the opinion that Section 34 of the CPC empowers a Court to order payment of interest at such rate as the Court deems reasonable while decreeing the suit. This power is conferred upon the Court while granting the decree of payment of money, but even in cases of a different nature the Courts are not precluded from granting interest. What is to be seen is the facts and circumstances of the case where, for instance where money is being held by one party thereby depriving the other party and causing undue loss to

the other party in terms of the interest etc. Thus, the Court exercises discretionary power. Such discretion needs to be exercised within the four corners of the statute keeping in view the object sought to be achieved. In ***Clariant International Ltd.*** (*supra*), the Supreme Court has held as under:-

“30. Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefore, for which a written demand is mandatory.”

49. Interest being equitable relief has to be awarded to balance the equity. It is apparent from the facts of this case that it is the plaintiff who had approached the Court with a claim for a decree of specific performance for execution of the sale deed which the defendants were not executing. Neither the learned Single Judge has found the plaintiff at fault in any manner, nor did Court find the plaintiff in any way responsible for non-execution or delay in execution of the sale deed. The facts show that he all along had the money ready for payment on execution of the sale deed. Also there is no demand from defendants for interest. The consideration amount on which the interest has been levied by learned Single Judge was payable only on execution of the sale deed by defendants. The Plaintiff herself being the aggrieved party approached the court for relief which was granted to her and In view of these facts, burdening the plaintiff to pay interest on the unpaid consideration amount is unjustified and inequitable.

50. In view of the above findings, the decree of the learned Single Judge is modified the extent to that the Appellant/plaintiff shall not be liable to pay

the interest on the balance consideration amount. The plaintiff's appeal is, accordingly allowed; the defendant's cross objections are for the same reasons, dismissed. The plaintiff is entitled to costs throughout.

**DEEPA SHARMA
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

MAY 23, 2016
sapna/rb/bg

