

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1920 of 1999

Iyyakannu

... Appellant/Plaintiff

Vs.

1.Kulundha Gounder

2.Solai Gounder

3.Palaniammal

4.Valliammal

5.Thangarajammal

... Respondents/Defendants

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree of the Sub Court, Kallakurichi, dated 24.12.1998 made in A.S.No.411 of 1996 reversing the judgment and decree of the District Munsif Court, Kallakurichi, dated 16.10.1996 made in O.S.No.746 of 1988.

For Appellant : Mr.R.Balasubramaniam

For Respondents : M/s.Nathezhda D.Rajasok for
M/s.Sarvabhauman Associates

J U D G M E N T

The unsuccessful plaintiff and first defendant's brother son, who lost the case before the lower appellate Court, filed the second appeal before this Court.

2. The case of the plaintiff is as follows:-

The plaintiff's father and the first defendant are the son of Kulundha Gounder. After the death of Kulundha Gounder, the properties devolved in between the plaintiff's father and the first defendant. When the plaintiff was aged about three years, his father was died. Immediately after the death of the plaintiff's father, the plaintiff was brought to by his maternal grand father. However, he received the benefits from the joint family properties. Since the first defendant has managed the properties as kartha in the capacity of the kartha of the

family. Thereafter, the first defendant stopped to pay the benefit to the plaintiff and thereby the plaintiff requested the first defendant to allot his share of the property through partition. The first defendant denied the partition. Aggrieved over the same, the plaintiff/appellant filed a suit for partition asking 50% of the share in the joint family property.

3. The first defendant filed a written statement is as follows:-

The plaintiff has no right over the property, since the plaintiff's maternal uncle, namely, the first defendant came to the village in the year 1948 and conducted panchayat and at the instance of the panchayatars, the plaintiff has executed a sale deed dated 17.02.1948 for the sale consideration of Rs.200/- in favour of the first defendant and the same was registered in Sankarapuram Sub Registrar Office and the plaintiff affixed his thumb impression and his maternal uncle also affixed his signature as witness in the said sale deed. At the time of execution of sale deed dated 17.02.1948, the plaintiff was aged about 20 to 21 years. Thereafter, claiming very same property through partition is not sustainable.

4. After elaborate trial and considering the pleadings as well as the depositions of either side, the lower Court decreed the suit in favour of the plaintiff. Aggrieved by the said decree and judgment of the lower Court, the respondents/defendants filed appeal in A.S.No.411 of 1996 before the lower Appellate Court. The lower Appellate Court, after considering all the materials available before it, allowed the appeal and set aside the judgment of the lower Court. Aggrieved over the said judgment, the present second appeal is filed.

5. Till date the appeal was not admitted but notice of motion was ordered on 24.01.2000. However, the matter was posted on 07.12.2017, on that day both the counsel present and post the matter on 14.12.2017 for framing question of law. Then, the matter was posted on 14.12.2017, on that day the following substantial question of law is framed.

1. Whether the learned Judge is erred in not following the settled law reported in 2017 (1) Madras Weekly Notes 104?

2. Having held that the Appellant/plaintiff was aged about 17 years 5 months and 15 days at the time of Ex.B-1 dated 17.02.1948, whether the learned Judge is right in holding that Ex.B1 is valid, without advertting to the fact that in the light of Section 7 of the Transfer of Property Act, minor is not competent to be a transferor?

3. Whether the learned Judge is right in not

adverting to the fact that the alleged transfer by a Minor is void as held in AIR 1983 CALCUTTA 76?

6. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents/defendants and perused the materials available on recor.

7. The learned counsel appearing for the appellant would submit that admittedly, the plaintiff/appellant born on 02.07.1930. In order to substantiate his birth, he filed the birth certificate as Ex.A1. The alleged disputed sale deed dated 17.02.1948 was executed by the first defendant was marked as Ex.B1. The lower Court arrived the conclusion that the minor executed the sale deed in favour of any person is not binding on him and it is void. Accordingly, the alleged sale deed executed by the plaintiff in the year,1948 is not binding on the plaintiff. Accordingly, the lower Court decreed the suit in favour of the plaintiff. However, the lower appellate Court, based on the physical appearance of the plaintiff/appellant registered the sale deed may be accepted and also the appearance is sufficient for executing the sale deed. The said observation made in para 9 of the lower appellate Court Judgment is perverse and not sustainable in law. Hence, he prays for allowing this appeal.

8. Per contra, the learned counsel appearing for the respondents/defendants would submit that the appellant/plaintiff appearing before the Sub Registrar Office and executed the sale deed in favour of the first defendant is binding on him. However, in order to prove the claim, the plaintiff is not able to produce any document before the lower Court as well as the lower appellate Court. However, he filed a Xerox copy and the appellant/plaintiff has not taken any steps to call for records from the Sub Registrar Officer to prove his case. The second limp of the arguments advanced by the learned counsel appearing for the respondents/defendants that even assuming the sale deed was invalid, however, the first defendant is enjoying the family property without any interruption for long time and he is entitled for adverse possession as against the plaintiff. The lower Court as well as the lower appellate Court committed serious error in rejecting the claim of adverse possession since the defendants are not proved the properties are enjoyed by the defendants for long time. Hence, he prays for dismissing the appeal.

9. I have considered the rival submissions.

10. On perusal of Ex.A1, admittedly, the plaintiff was born on 02.07.1930 and the sale deed was executed on 17.02.1948, at

that time, the plaintiff/appellant was minor and in order to prove the age of the plaintiff, the defendants has not taken any steps either to file a document or let in evidence. In the absence of any materials to prove the plaintiff is major, the lower appellate Court arrived the right conclusion that the minor agreement or sale deed is void. The said decision has already been decided by this Court as well as the Honourable Apex Court in so many judgment.

11. For better appreciation, Section 7 of the Transfer of Property Act is reads as follows:-

"7 Persons competent to transfer: Every person competent to contract and entitled to transferable property, or authorised to disposes of transferable property not is own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribe by any law for time being in force."

12. In case of any contract or transfer of property in favour of other persons, the basic requirement is that a person who entered contract or is entitled to transfer the property to the extent can be done in the manner prescribed, to raise the issue before the Court whether the minor can transfer the property in favour of the appellant/defendant is valid or not? the same issue for the first time arose before the Privy Council Judgment in DHURMODAS GHOSE Vs. MOHORI BIBEE AND ANOTHER reported in MANU/PR/0033/1903, it is held as follows:-

"12. Both Courts below held that they were bound by authority to treat the contracts of infants as voidable only, and not void; but that this section only refers to contracts made by persons competent to contract, and therefore not to infants.

13. The general current of decision in India certainly is that ever since the passing of the Indian Contract Act (IX. of 1872) the contracts of infants are voidable only. This conclusion, however, has not been arrived at without vigorous protests by various judges from time to time; nor indeed without decisions to the contrary effect. Under these circumstances, their Lordships consider themselves at liberty to act on their own view of the law as declared by the Contract Act, and they have thought it right to have the case re-argued before them upon this point. They do not consider it

necessary to examine in detail the numerous decisions above referred to, as in their opinion the whole question turns upon what is the true construction of the Contract Act itself. It is necessary, therefore, to consider carefully the terms of that Act; but before doing so it may be convenient to refer to the Transfer of Property Act (IV. of 1882), Section 7 of which provides that every person competent to contract and entitled to transferable property...is competent to transfer such property... in the circumstances, to the extent, and in the manner allowed and prescribed by any law for the time being in force. That is the Act under which the present mortgage was made, and it is merely dealing with persons competent to contract; and Section 4 of that Act provides that the chapters and sections of that Act which relate to contracts are to be taken as part of the Indian Contract Act, 1872. The present case, therefore, falls within the provisions of the latter Act.

14. Then, to turn to the Contract Act, Section 2 provides: (e) Every promise and every set of promises, forming the consideration for each other, is an agreement, (g) An agreement not enforceable by law is said to be void, (h) An agreement enforceable by law is a contract, (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

15. Section 10 provides: "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void."

16. Then Section 11 is most important, as defining who are meant by "persons competent to contract"; it is as follows: "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject." Looking at these sections, their Lordships are satisfied that the Act makes it essential that all contracting parties should be "competent to contract," and expressly provides that a person who by reason of infancy

is incompetent to contract cannot make a contract within the meaning of the Act. This is clearly borne out by later sections in the Act. Section 68 provides that, "If a person incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person." It is beyond question that an infant falls within the class of persons here referred to as incapable of entering into a contract; and it is clear from the Act that he is not to be liable even for necessaries, and that no demand in respect thereof is enforceable against him by law, though a statutory claim is created against his property. Under Sections 183 and 184 no person under the age of majority can employ or be an agent. Again, under Sections 247 and 248, although a person under majority maybe admitted to the benefits of a partnership, he cannot be made personally liable for any of its obligations; although he may on attaining majority accept those obligations if he thinks fit to do so. The question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in the case of an infant. Their Lordships are, therefore, of opinion that in the present case there is not any such voidable contract as is dealt with in Section 64.

17. A new point was raised here by the appellants' counsel, founded on Section 65 of the contract Act, a section not referred to in the Courts below, or in the cases of the appellants or respondent. It is sufficient to say that this section, like Section 64, starts from the basis of there being an agreement or contract between competent parties, and has no application to a case in which there never was, and never could have been, any contract.

18. It was further argued that the preamble of the Act showed that the Act was only intended to define and amend certain parts of the law relating to contracts, and that contracts by infants were left outside the Act. If this were so, it does not appear how it would help the appellants. But in their Lordships' opinion the

Act, so far as it goes, is exhaustive and imperative, and does provide in clear language that an infant is not a person competent to bind himself by a contract of this description.

19. Another enactment relied upon as a reason why the mortgage money should be returned is Section 41. of the Specific Relief Act (I. of 1877), which is as follows: "Section 41. On adjudging the cancellation of an instrument the Court may require the party to whom such relief is granted to make any compensation to the other which justice which may require." Section 38 provides in similar terms for a case of rescission of a contract. These sections, no doubt, give a discretion to the Court; but the Court of first instance, and subsequently the Appellate Court, in the exercise of such discretion, came to the conclusion that under the circumstances of this case justice did not require them to order the return by the respondent of money advanced to him with full knowledge of his infancy, and their Lordships see no reason for interfering with the discretion so exercised."

and yet another Privy Council Judgment in SRI KAKULAM SUBRAHMANYAM AND ANOTHER Vs. KURRA SUBBA RAO reported in A.I.R. (35) 1948 PRIVY COUNCIL 95, it has held as follows:-

"7. Their Lordships think it is clear that the words "the transferor" refer back to the person who "contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf." Counsel for the respondent rely upon Section 11 Contract Act which is as follows :

"Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject."

They submit that, having regard to that section and to the decision of their Lordships' Board in Mohori Bibee v. Dhunnodas Ghose (1903) L.R. 30 I.A. 114 a minor cannot be a person who contracts. It is clear that, if the mother and guardian had taken no part at all in the transaction, the respondent could not have entered into a valid contract to sell the land in suit to the appellants, but it is equally

clear that such a contract could and did come into existence in the present case, and the question for decision is—was the person who contracted, within the meaning of Section 53A, the respondent or his mother?

8. The position of a guardian under the Hindu law was considered by their Lordships' Board in the case of Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree (1856) 6 M.I.A. 393 and the following passage is to be found at p. 412 :

"They consider that the acts of the Ranee cannot be reasonably viewed otherwise than as acts done on behalf of another, whatever description she gave to herself, or others gave to her."

9. Thus the act of the mother and guardian in entering into the contract of sale in the present case was an act done on behalf of the minor appellant. The position of the minor under such a contract is discussed in the following passage, with which their Lordships agree, in Pollock and Mulla's Indian Contract and Specific Relief Acts, 7th Edn, 7 p. 70 :

"A minor's agreement being now decided to be void, it is clear that there is no agreement to be specifically enforced; and it is unnecessary to refer to former decisions and distinctions, following English authorities which were applicable only on the view now overruled by the Privy Council."

The learned authors are here referring to the decision in 30 I.A. 114 case of Mohori Bibee v. Dhurmodas Ghose already cited. They continue (p. 71) :

"It is, however; different with regard to contracts entered into on behalf of a minor by his guardian or by a manager of his estate. In such a case it has been held by the High Courts of India, in cases which arose subsequent to the governing decision of the Privy Council, that

the contract can be specifically enforced by or against the minor, if the contract is one which it is within the competence of the guardian to enter into on his behalf so as to bind him by it, and, further, if it is for the benefit of the minor. But if either of these two conditions is wanting, the contract cannot be specifically enforced at all."

In the present case neither of the two conditions mentioned is wanting, having regard to the findings in the Courts in India. It would appear, therefore, that the contract in the present case was binding upon the respondent from the time when it was executed. If the sale had been completed by a transfer, the transfer would have been a transfer of property of which the respondent, and not his mother, was the owner. If an action had been brought for specific performance of the contract, it would have been brought by or against the respondent and not by or against his mother."

and the very same view followed by another Judgment in HARI SATYA BANERJEE AND OTHERS Vs. MAHADEV BANERJEE AND OTHERS reported in AIR 1983 76, it has held as follows:-

"7. On an appeal by the plaintiff the learned Additional District Judge has reversed the decision of the learned Subordinate Judge when he upheld the claim of the plaintiff's purchase of the 1/3rd share of defendant No. 2 in the disputed 8 plots by the two purchases dated Sept. 11, 1946 and Jan. 1, 1960. The learned Additional District Judge held that Jalad Barani sold on behalf of the minor defendant No. 2 his 1/3rd share in the three plots 4945, 4949 and 4950 to meet a legal necessity of the minor acting as his de facto guardian. Such a transfer was not void but was Voidable at the instance of the minor and since the minor within 3 years of his attaining majority had not effectively annulled the same, the sale would stand. As -for the other 5 plots, according to the learned Additional District lodge the plaintiff acquired the 1/3rd share of defendant No. 2 therein by his purchase dated Jan. 27, 1960 (Ext. 1a) executed by defendant No. 2 after he had attained majority. According to him, the plaintiff acquired the share of

defendant No. 2 therein by the said transfer notwithstanding the earlier sale by defendant No. 2 dated Dec. 23, 1947 (Ext. A) in favour of defendant No. 11 and the deed of release dated April 7, 1947 (Ext. B). The sale dated Dec. 23, 1947 by defendant No. 2 was held to be altogether void because the transferor-executant was at the relevant time a minor and, as such, was not competent to effect the transfer by himself. The original transaction being void it could not be rendered valid by a subsequent ratification by the deed of release dated April 7, 1947 (Ext. B). In the result the Court of Appeal below declared plaintiffs' 2/3rd share in the disputed eight plots and directed partition thereof in terms of the order of the learned Subordinate Judge. Feeling aggrieved, the defendant No. 1 and defendants Nos. 3 to 10 have preferred the present second appeal to this Court.

8. Mr. Mitter appearing in support of this appeal has strongly assailed the decision of the learned Additional District Judge. According to Mr. Mitter the trial Court was right in its conclusion that the plaintiff could acquire no title to the 3 plots 4945, 4949 and 4950 by the Kobala dated Sept. 11, 1946 (Ext. 1) executed by Jalad Barani on behalf of minor defendant No. 2. Such a sale having been effected by a person who was neither the natural guardian nor the guardian appointed by the Court for the minor and the plaintiff having further failed to establish the alleged legal necessity for the sale it was voidable at the instance of the minor in the sense that the minor could repudiate the transfer on his attaining majority and he has done so in the present case. Mr. Mitter contends that such sale could stand only if the minor had ratified the same after attainment of majority. According to Mr. Mitter the learned Additional District Judge was acting on a misapprehension that such a sale was voidable in the sense that unless it is avoided by the minor on his attaining majority by a judicial rescission it would be a valid and binding transaction so far as the minor is concerned. It is contended by Mr. Mitter that the minor having repudiated the transfer by his subsequent sale of the very same three plots in

favour of defendant No. II dated April 7, 1949 (Ext. A/1) the plaintiff could acquire no interest from defendant No. 2 in those 3 plots. On the other hand it was defendant No. 11 and through him the defendant No. 1 who validly acquired the 1/3rd interest of the defendant No. 2 in those 3 plots by the purchase dated April 7, 1949 as above. So far as the other 5 plots are concerned, according to Mr. Mitter the learned Additional District Judge may be right in his conclusion that the transfer by defendant No. 2 during his minority dated Dec. 23, 1947 (Ext. A) was a void transaction and the learned Judge may be further right in his view that a transaction which is void cannot be rendered valid by the subsequent ratification, but he failed to take note of the fact that the so-called deed of release Ext. B when properly construed would appear to be a deed of independent conveyance capable of conferring on its own terms title to the land covered by it on the person in whose favour it was being executed. Necessarily therefore defendant No. 11 having acquired the 1/3rd share of defendant No. 2 in those plots, the plaintiff could acquire no interest by his subsequent purchase from defendant No. 2 dated Jan. 27, 1960 (Ext. 1 (a)).

9. Mr. Mukherji appearing on behalf of the plaintiff/respondent has contested all the points raised by Mr. Mitter. According to Mr. Mukherji, Jalad Barani Debi, the maternal grandmother was undisputedly acting as a guardian for the minor as would appear dear from the compromise decree (Ext. F) passed in a suit brought by the minor against his two uncle, namely, the present plaintiff and the present defendant No. J. When she as such a guardian sold the 3 plots, namely, 4945, 4949 and 4950 to meet the legal necessity of the minor such a transfer is binding on the minor because of such necessity even if the transfer was made not by the natural guardian or the guardian appointed by the Court but by the de facto guardian. On the materials on record, Mr. Mukherje contends that the Court should have held that existence of the legal necessity as recited in the deed (Ext. I) being highly probable there was no scope for the minor either to repudiate or annul

the sale of these 3 plots made on his behalf by Jatad Barani. As for the said 5 plots it has been strongly contended by Mr. Mukherji that Ext. B which is described as a deed of release is nothing but a deed of ratification and it cannot be interpreted as an independent conveyance for any lawful consideration. Such being the position, the earlier sale (Ext. A) in favour of defendant No. 11 by the minor during his minority being altogether a void transaction it was rightly held by the Court of appeal below that the same cannot be rendered valid by the subsequent deed of ratification. So far as the independent purchase (Ext. A/1) by defendant No. 11 of 3 plots, namely, 4945, 4949 and 4950 is concerned, the purchaser could acquire no interest by such purchase because the vendor had lost all his right, title and interest by the earlier sale in favour of the plaintiff dated Sept. 11, 1946 (Ext. 1). Hence, according to Mr. Mukherji, the Court of appeal below had rightly upheld the plaintiff's claim of acquisition of 2/3rd share in the disputed 8 plots -- 1/3rd by inheritance and 1/3rd by purchase from defendant No. 2.

13. Next we proceed to consider the claim of the plaintiff in respect of the other 5 plots. It is not in dispute that defendant No. 2 transferred the 5 plots in favour of the plaintiff by the sale deed dated Jan. 27, 1960 (Exhibit 1a) after he attained majority. Title said to have been acquired by this deed would prevail unless it is established, as claimed by the defendants, that the defendant No. 2 had divested himself of his share in these 5 plots by his earlier transfers made in favour of defendant No. 11 and through him to defendant No. 1. It appears that on Dec. 23, 1947 when defendant no. 2 was still a minor he executed a deed of sale (Ext. A) in respect of a number of plots including the disputed 5 plots in favour of defendant No. 11. Mr. Mitter in his fairness has not disputed that this is altogether a void transaction and defendant No, 11 acquired no right, title or interest from defendant No. 2 by such purchase. It further appears that after attainment of majority, the said defendant No. 2 again executed a deed described as a deed of release (Ext. B) in favour of defendant No. 11

with regard to the plots ineffectively conveyed by his earlier sale as aforesaid. While the learned Subordinate Judge has held that the original sale dated Dec. 23, 1947 supported by the disclaimer dated April 7, 1949 perfected the title of defendant No. 11, the purchaser, the Additional District Judge has held that the original sale being void it could not have been perfected by the subsequent ratification. In our view, the learned Additional District Judge is right in his conclusion. Mr. Mitter again has not disputed the correctness of that conclusion of the lower appellate Court.

He has, however, taken, a different stand before us. According to Mr. Mitter the deed (Ext B) dated April 7, 1949 should be construed having regard to the substance of its contents whatever be its description and so construed it should be held that it does constitute an independent conveyance of the plots covered by the document though the consideration may be acknowledgement of the consideration received during his minority when he executed the sale deed dated Dec. 23, 1947. Mr. Mukherji appearing on behalf of the respondent has strongly disputed the position that the consideration paid to defendant No. 2 during his minority when he executed the deed dated 23-12-47 can be any valid consideration for a subsequent transfer by the minor when he attains majority. Reliance was placed by Mr. Mukherji on some earlier decisions of this Court on the point but in our opinion it would not be necessary for us to go into this aspect because in our considered opinion it is not possible for us to construe the deed dated April 7, 1949 to be an independent conveyance by defendant No. 2 in favour of defendant No. 11.

14. Mr. Mitter may be right in his contention that Ext. B, the deed of release dated April 7, 1949 must be read having regard to its substance irrespective of the description of the document. A deed though described as a deed of disclaimer or a release may be construed on its terms to constitute a conveyance or a gift if in substance it amounts to such as pointed out by the Supreme Court in the case of Kuppaswami Chettiar v. A. S. P. A. Armugam Chettiar, . But there can be no dispute for the

proposition that the document must be read on its terms to find out whether parties in substance intended to convey one's title to the other and whether the operative words of the deed sufficiently do so or not. When we refer to this document we find that it opens with a recital that it is a deed of release. The executant then goes on to recite that he during his minority executed a deed of sale dated Dec. 23, 1947 on acceptance of a consideration of Rs. 400/- from the releases in respect of the plots specified in the Schedule. Then it goes on to recite that the executant was a minor at the time when he executed the said sale deed and had it registered but he has attained majority since thereafter. It is further stated that since the sale was effected during minority the executant had been requested by the recipient to execute a deed of release and on such request the deed of release was being executed. On such a recital the operative portion of the document goes on to state that the release since his purchase had owned and possessed the lands so purchased in his own rights and that the executant had never been in possession since then. It is then recited that the executant will have no objection to the release and/or his heirs and legal representatives enjoying the properties so purchased possessed of full rights for transfer as he had been doing since the purchase. It is contended by Mr. Mitter that in this document the executant having acknowledged the transfer reaffirmed that the purchaser would go on enjoying the property so purchased in his own rights from generation to generation with every right to transfer the same. This, it is contended by Mr. Mitter constitutes re-transfer of what was originally, transferred and, as such, it constitutes a conveyance. We are, however, unable to accept such an interpretation of the document. To us it appears that by this the parties intended to ratify the earlier transaction and that exactly was done by the document in clear terms. What is being reaffirmed is what the release had been doing since the original purchase and the executant, merely ratifying his earlier act, acknowledges that he or his successor-in-interest would raise no objection to the enjoyment by the release of the land earlier sold on his own rights from

generation to generation under the original purchase. The document does not even purport to release any existing right, title or interest in favour of the release far less to effect conveyance of any such right, title or interest. Though described as a deed of release it is clearly a deed of ratification. In that view, the decisions relied on by Mr. Mitter can be of no help to him and we must uphold the view of the learned Additional District Judge that by this deed of ratification which has been described as a deed of release the defendant No. 11 and consequently through him, defendant No. 1 could acquire no title to the disputed 5 plots because original transfer being void it could not be validated by the ratification. (Narendra Nath v. Hrishikesh, AIR 1919 Cal 875). Necessarily the plaintiffs claim of acquisition of 1/3rd share in these 5 plots by virtue of his second purchase dated Jan. 27, 1960 (Ext. 1a) must be upheld. Parties being admittedly co-sharers and no case of ouster having been made out, the conclusion of the learned Subordinate Judge that defendant No. 1 acquired title, to the 1/3rd share by adverse possession cannot also be supported. Mr. Mitter too has not pressed such a point before us.

13. In view of the above categorical decision, the sale deed executed by the minor in favour of the defendant is not valid and it will not be binding on the plaintiff. In the instant case, the plaintiff, who was the minor at the time of sale, executed the sale deed in favour of the defendant and the trial Court arrived at the conclusion that the minor executed the sale deed in favour of any person is not binding on him and it is void. Accordingly, the trial Court decreed the suit in favour of the plaintiff. However, the lower appellate Court has come to a wrong conclusion holding that the sale deed could have been registered based on the physical appearance of the plaintiff/appellant and further held that the appearance was sufficient for executing the sale deed. Therefore, the above reported decisions are squarely applicable to the fact of this case.

14. In view of the above, I find error in the judgment passed by the lower appellant Court and I do not find any error in the judgment passed by the lower Court and accordingly, the substantial questions of law are answered in favour of the appellant/plaintiff.

15. In the result, the second appeal is allowed. The judgment and decree passed by the Sub Court, Kallakurichy dated 24.12.1998 made in A.S.No.411 of 1996 is set aside and the decree and judgment passed by the District Munsif Court, Kallakurichy, dated 16.10.1996 made in O.S.No.746 of 1988 is confirmed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rrg

To

1. The Sub Judge,
Kallakurichy.
2. The District Munsif Court,
Kallakurichy.
3. The Section Officer,
VR Section, High Court,

+1cc to M/s.R.Balasubramaniam, Advocate, S.R.No.2722

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.1597

S.A.No.1920 of 1999

CNR(CO)
CS/27/02/18

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