

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered On: 12.01.2018

Reserved On: 05.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.432 of 2000

Shanmugham ...Appellant/3rd Defendant

Vs.

1.Jayalakshmi
2.Jagadambal
3.Kathirvelu Naicker
4.Murugesan
5.Babiammal
6.Dhanusu
7.Malliga
8.Gengadharan

...Respondents/Plaintiff &
Defendants 1,5 to 7 &9 to 11

Prayer:

Second Appeal filed under Section 100 of Code of Civil Procedure, 1908, against the judgment and decree of the Court of Principal Sub Judge, Chengalpattu in A.S.No.15 of 1997 and dated 31.08.1999 in reversing the well considered judgment and decree of the Court of the Principal District Munsif, Chengalpattu in O.S.No.15 of 1983 and dated 27.11.1996.

Appellant : Mr.V.Raghavachri

J U D G M E N T
सत्यमेव जयते

The appellant is the second respondent in A.S.No.15 of 1997. The first respondent herein filed a suit in O.S.No.15 of 1983. The said suit was dismissed by the lower Court. As against the dismissal of the suit, the first respondent filed an appeal in A.S.No.15 of 1997 before the lower Appellate Court. The lower Appellate Court modified the order of the lower Court. As against the order of the lower Appellate Court, the appellant has filed this second appeal.

2.The case of the plaintiff before the trial court is as follows: The plaintiff filed suit for partition. The plaintiff is the grand daughter of Raghava Naicker and daughter

of Sabapathy Naicker. The said Raghava Naicker had five sons namely, Dhanapal, Sabapathy Naicker, Raghava Naicker/ Adikesava Naicker, Kathirvan Naicker and Murugesha Naicker. The third defendant/ appellant is the brother of the plaintiff. He was born to the first wife of Sabapathy Naicker namely, Bhagyammal. After the death of the said Bhagyammal, Sabapathy Naicker married the plaintiff's mother Babiammal, who is the seventh defendant in the suit. The said Sabapathy Naicker died in the year 1978 leaving behind the plaintiff and defendants 3 and 7 as his legal heirs. Accordingly, they are entitled to succeed Sabapathy Naicker.

3.Initially, the Schedule properties were joint family properties of Raghava Naicker and his sons. All the five sons jointly exerted in the ancestral property and enjoyed the yield jointly along with Raghava Naicker. The properties yielded sufficient income and there was surplus funds. With the surplus funds, several properties were acquired and they also enjoyed the joint acquisitions. Except the third defendant, all the persons were living in the joint family house. During his lifetime, the plaintiff's grandfather made some arrangement amongst his sons. Though there was actual partition, in order to maintain the properties, some of the properties were divided in between the legal heirs of Raghava Naicker for easy mode of enjoyment and cultivation. Therefore, all the properties were treated as joint family properties.

4.The plaintiff's father Sabapathy Naicker died in the year 1978 and after his death, the mother of the plaintiff along with the plaintiff and the third defendant became helpless. Having the minor plaintiff in her arms, she was driven out of the joint family property and the seventh defendant's room was trespassed and occupied by Dhanapal and Adikesava Naicker/ brothers of the plaintiff's father on the 16th day ceremony of Sabapathy Naicker and they carried away all the articles mentioned in the 'C' Schedule. The share of the plaintiff was also denied. The seventh defendant, mother of the plaintiff did not take care of the plaintiff and her interest was not properly looked after.

5.The plaintiff was under the care and custody of her parental uncle namely, T.Govindasamy Naicker and T.Muthu Naicker. They were taking care of the plaintiff's education. The plaintiff was living with them and was going to school from Vadaperumpakkam Village. Thereafter, on 19.02.1992, the seventh defendant issued a legal notice through her Lawyer. After receipt of the legal notice, the other defendants sent a reply containing false allegations. On seeing the reply notice, the plaintiff came to know that the other defendant has extracted a Release Deed from the seventh defendant from the share of the plaintiff as well as the seventh defendant in the suit

properties. The signature was obtained from the seventh defendant without informing the purpose of taking her signature on 07.05.1982. Thereafter, the plaintiff's parental uncle T.Muthu Naicker obtained certified copy of the documents and thereafter, it was known that the seventh defendant has executed a Release Deed in favour of the third defendant.

6.In respect of the share of minor plaintiff's property, without consent of the minor, there is no power to the natural guardian to execute Release Deed of the plaintiff minor's property. Accordingly, the Release Deed executed by the seventh defendant in favour of the third defendant is void on the ground of mis-representation, threat and coercion. The fourth defendant who is none other than the elder brother of the plaintiff's father was instrumental in extracting the document.

7.At the time of filing the suit, the plaintiff was a minor and was under the care and protect of the paternal uncle Thiru.Muthu Krishnan. Subsequently, the plaintiff attained majority. In the year 1972, there was a Panchayat at Otteri Village between the legal heirs of Raghava Naicker, immediately after the death of the plaintiff's father. The allegation that in the Panchayat the seventh defendant and her relatives demanded Rs.2,800/- towards the value of her share and the plaintiff and to give her 40 cents in S.No.472/1 of Sirudaveer Village and also the movables of the seventh defendant have been denied. The seventh defendant did not execute any Release Deed in favour of the second defendant represented by his paternal uncle. The second defendant was not in exclusive possession and enjoyment of the property.

8.The above said illegal acts of the brothers of the plaintiff's father came to be known only in the year 1982. Thereafter, the plaintiff had instituted the suit for the decree in her favour and for allotment of 1/15th share of the Schedule properties by appointing an Advocate Commissioner to effect partition by metes and bounds and allot such share to the plaintiff and also pass a decree to set aside the Release Deed dated 24.03.1972 executed by the seventh defendant in favour of the third defendant and for past profits at the rate of Rs.2,000/- per year for three years from 1980 to 1982 onwards and for future damages.

9.The other defendants filed written statements. However, it is not issued before this Court. Since the lower Court as well as the lower Appellate Court arrived at a conclusion that the properties are not joint family properties except a few properties it is not necessary to discuss about the same.

10.However, the written statement filed by the fourth defendant on behalf of the third defendant who is none other

than the brother of the plaintiff is as follows: After the death of Raghava Naicker, his legal heirs were enjoying their share. Accordingly, Sabapathy Naicker was also enjoying his share separately and subsequently, he had purchased

the following properties in Chinna Veppedu Village:

"1.S.No.9/5	.. 0.12 cents
2.S.No.11/5	.. 2.32 cents
3.S.No.15/1	.. 0.14 cents
4.S.No.15/7	.. 0.03 cents
5.S.No.37/6	.. 0.07 cents
In Sirudhaveer Village	
6.S.No.473/1	.. 0.40 cents"

11.After the death of Sabapathy Naicker, the seventh defendant abandoned the third defendant and went to her parents house along with the plaintiff. Since there was no one to take care of him, the fourth defendant brought up the third defendant. The plaintiff and her mother lived separately without taking care of the third defendant till March, 1972. In the middle of March, 1972, there was a mediation regarding the properties of Sabapathy Naicker and the third defendant. The panchayat was held in the house of Village Munsif, Otteri Village in the presence of Thangavelu Naicker and Muthu Naicker who were the close relatives of the seventh defendant and Raghava Naicker.

12.In the panchayat, the seventh defendant and her relatives demanded Rs.2,800/- towards the value of the share of the seventh defendant and her daughter in the lands of Sabapathy Naicker in Chinnaveppedu Village and Periaveppedu Village. Further they demanded S.No.473/1 comprising of 40 cents in Sirudhaveer Village exclusively and to give the movables of the seventh defendant to her. The demand was made by the seventh defendant for herself and for the plaintiff as her guardian. After negotiations, the demand of the seventh defendant was accepted by the panchayat and the fourth defendant. According to the arrangement made in the panchayat, she executed a Release Deed dated 24.03.1972 in favour of the third defendant on her behalf and on behalf of the plaintiff. Similarly, the fourth defendant executed a Release Deed in favour of the third defendant and the plaintiff. On behalf of the third defendant 40 cents of land in S.No.473/1 in Sirudhaveer Village was also given to the plaintiff and her mother in terms of the agreement for the well being of the plaintiff and her mother. Later on the seventh defendant instigated the plaintiff to file a suit for partition in order to defeat the rights of the third defendant.

13.The lower Court dismissed the suit in limine. As

against the dismissal of the suit, the plaintiff filed an appeal before the lower Appellate Court. The lower Appellate Court framed the following issues:

"1) Whether the alleged oral partition in 1961 is true and valid?

2) Whether the Plaintiff is entitled to partition of the entire properties belonging to the family?

3) Whether the Release Deed dated 24.03.1972 executed by the 7th Defendant Baby Ammal is valid and binding?

4) Whether the Plaintiff is entitled to further profits?

5) To what relief the plaintiff is entitled to?"

14. With regard to the issues 1 and 2, the lower Appellate Court held in favour of the appellant/ third defendant that the said oral partition in the year 1961 is true and valid and binding on the first respondent/ plaintiff and answered against the first respondent/ plaintiff. With regard to issue no.3, it relates to execution of Release Deed by the seventh defendant in favour of the third defendant is valid and for issue no.4 whether the plaintiff is entitled to future profits or not, the issue was held in favour of the first respondent/ plaintiff on the ground that as per Section 8 (2) of the Hindu Minority and Guardianship Act, 1946, the natural guardian of minor shall not without previous permission of the Court alienate the property. On the ground the suit was decreed in favour of the first respondent/ plaintiff and Release Deed dated 24.03.1972 executed by the seventh defendant in favour of the third defendant is not binding on the first respondent/ plaintiff, insofar as her share is concerned. Accordingly, the Release Deed executed by the seventh defendant was set aside. With regard to future profits, the lower Appellate Court held against the first respondent/ plaintiff. The lower Appellate Court decreed the suit in the above terms. As against the same, the present second appeal is filed.

15. At the time of admission, the following substantial questions of law were framed for consideration:

"i) Whether the lower appellate Court is right in decreeing the suit particularly when the 7th defendant as natural guardian of the plaintiff had relinquished her rights and that of the minor after accepting substantial money and property?

ii) Whether the lower appellate Court is right in holding that the family arrangement

is true and valid but not binding on the plaintiff as per Section 8 of Hindu Minority and Natural Guardianship Act?

iii) Whether the lower appellate Court is right in holding that the act of guardian is not binding upon the minor, particularly when the defendants herein have established the necessity of family arrangement for resolving the dispute?

iv) Whether a bona fide family arrangement could be set at naught by a party to it on the ground of her status as minor in the absence of fraud?

v) Whether the lower appellate Court had not erred in disregarding the rights of a natural guardian to enter into a compromise or settlement of family dispute and whether the ward could assail the same on attaining majority?"

16. The learned counsel appearing for the appellant would submit that the issue involved in this case travels in a narrow compass. Whether the natural guardian is entitled to relinquish the rights of the minor after accepting substantial amount of money and property is right or not and the family arrangement made by the elders is binding on the plaintiff as per Section 8 of Hindu Minority and Natural Guardianship Act is true and valid and the family arrangement made by the elders is binding on the first respondent/ plaintiff since the arrangement was made for the well being of the plaintiff and her mother.

17. The learned counsel appearing for the appellant would further submit that since the properties belonged to joint family property, as a co-parcener, the seventh defendant is not entitled, however, for the well being of minor child, the seventh defendant executed a Release Deed in favour of the third defendant, it is binding on the plaintiff as her mother/ seventh defendant was not taking care of the third defendant. At the time of the death of the plaintiff's father, the plaintiff was six months old and the third defendant was ten years old. At the relevant point of time, family arrangement was made in the presence of elders. The seventh defendant also received a sum of Rs.2,800/- towards the value of the share of the seventh defendant and her daughter in the lands of Sabapathy Naicker in Chinnaveppedu Village and Periaiveppedu Village and 40 cents in S.No.473/1 in Sirudhaveer Village from the third defendant and the same was also sold to third parties. Thereafter, at the instigation of the seventh defendant, the plaintiff filed the

suit only with a view to defeat the rights of the third defendant which is not sustainable.

18. In support of his contention, the learned counsel appearing for the appellant relied upon the following decisions:

(i) (1964) 5 SCR 836 (C. Beepathumma and others Vs. Velasari Shankaranarayana Kadambolithaya and others), the relevant portion of which reads as follows:

"17. The doctrine of election which has been applied in this case is well-settled and may be stated in the classic words of Maitland -

"That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it."

(see Maitland's Lectures on Equity, Lecture 18)

The same principle is stated in White and Tudor's Leading Cases in Equity Vol. 18th Edn. at p. 444 as follows :

"Election is the obligation imposed upon a party by Courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both.... That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument."

(ii) AIR 2001 Mad 184 (K. Jagannathan Vs. A.M. Vasudevan Chettiar), the relevant portion of which reads as follows:

"Section 8 of the Act applies only to separate property of the minor and the same cannot be applied to his or her undivided interest in joint family property. This is also clear from the language used in Section 6 of the Act. For the sake of repetition, we say that it; is not the case of alienation of minor's property by the mother under Ex.A-4. In Ex.A-4, the minor plaintiff was represented by his mother as guardian in respect of his interest in the joint family property."

(iii) This Court in an un-reported decision rendered on

24.02.2012 in S.A.No.1093 of 1999 (Karuppana Gounder Vs. Minor Moorthy alias Venkatachalam) has held as follows:

"8.As for the other ground of challenge that in the absence of an order of sanction from the competent court in terms of Section 8 of the Hindu Minority and Guardianship Act, the interest of the minor could not be compelled to be sold by virtue of the agreement to sell, which is sought to be specifically enforced, particularly in the teeth of the rejection of such claim for sanction by the Court, though attractive as the submission may look we are of the view that there is no merit in the said ground of challenge. Though it might have been agreed to between the parties that sanction has to be obtained in respect of the minor's interest or share, it should not be overlooked that such stipulation was for the benefit of the purchaser and if the plaintiff is prepared to purchase the same even without a sanction from the Court, it is no reason for the appellants to contend that in the absence of such sanction in respect of the minor's share, the same cannot be compelled to be sold by enforcing the agreement of sale. This question as to the necessity for obtaining the sanction of the District Court Under Section 8 of the Hindu Minority and Guardianship Act in a matter of the kind in the case of sale by mother of the minor child in respect of a property belonging to the joint family in the absence of the father, and in her capacity as the manager, and natural guardian came up directly for consideration before the Apex Court in the decision in Sri Narayan Bal and others and Sri Sridhar Sutar and others, 1996 (I) CTC 390:1996(1) Supreme 638. In the light of the above decision of the Apex Court, we consider it un-necessary to advert to the other series of decision in this regard. That was also a case, therein two brothers constituted a joint Hindu family. One of the brothers had a wife, an adult son and a few minor sons. The other brother also died but had a son and he too died leaving behind his wife and few minor sons. The sons of one of the brothers and the widow of the other brother for herself and as guardian of her minor sons and

the wife of the son of the other brother, for herself and as guardian of her minor sons, executed a sale deed pertaining to certain joint family lands in favour of the defendant in those proceedings, who appears to have subsequently sold that property to the other defendant. After all these, the members of the original joint family filed a suit for a declaration that the sale of the joint family property by their guardians were vitiated. It is in that context, apart from the other questions of fraud, misrepresentation and undue influence alleged, the question about the want of sanction Under Section 8 of the Hindu Minority and Guardianship Act as a factor vitiating the sale also fell for the consideration of the Apex Court. The learned Judge in dealing the said issue, have held as follows:-

"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 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 convenient. Further more 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.

28. Moreover, the Learned Counsel for the Respondent/Plaintiff relies on the decision of the Hon'ble Supreme Court Smt. Rani and another V. Smt. Santa Bala Debnath and others in AIR 1971 Supreme Court 1028, wherein it is held as follows:

Legal necessity does not mean actual compulsion: it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity. Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in evidence, their value varying according to the circumstances in which the transaction was entered into. The recitals may be used to corroborate other evidence of the existence of legal necessity. The weight to be attached to the recitals varies according to the circumstances. Where the evidence which could be brought before the Court and is within the special knowledge of the person who seeks to set aside the sale is withheld, such evidence being normally not available to the alienee, the recitals go to his aid with greater force and the Court may be justified in appropriate cases in raising an inference against the party seeking to set aside the sale on the ground of absence of legal necessity wholly or partially, when he withholds evidence in his possession.

29. At this juncture, this Court refers to Section 8 of the Hindu Minority and Guardianship Act, 1956, which deals with 'Powers of natural guardian' and the same is extracted as follows:

8. Powers of natural guardian. - (1) The natural guardian of a Hindu minor has a power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate, but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the Court, -

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

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

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

(a) proceedings in connection with the application shall be deemed to be proceedings

under that Act within the meaning of section 4A thereof;

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

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

(6) In this section, court means the city civil court or an district court or a court empowered under Section 4A of the Guardians and Wards Act, 1890 within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

32. In view of the ingredients of Sections 6 and 12 of the Act, this Court comes to an irresistible conclusion that Section 8 of the Hindu Minority and Guardianship Act, 1956 is not applicable in respect of a joint Hindu family property, which is sold/disposed of by the Karta involving an undivided interest of the minor in the said joint family property. In this connection, the decision of the Hon'ble Supreme Court Sri Narayan Bal and others V. Sridhar Sutar and others in AIR 1996 Supreme Court 2371 relied upon by the Learned Counsel for the Appellant/Defendant squarely applies to the facts of the present case, as opined by this Court. Therefore, the contra view taken by the First Appellate Court in its Judgment in A.S.No.27 of 1998 and allowing the First Appeal is clearly unsustainable in the eye of law. Apart from that, the Appellant/Defendant has wiped out the two loans of the deceased Nagappan taken from individual borrowers and also, he has discharged No.4/90 Sheep loan availed by the deceased Nagappan from the Indian Overseas

Bank, as clearly spoken to by the Manager of the Bank, who has been examined as D.W.3 before the trial Court.

34. Under the Hindu law, the father has special powers of alienation of joint family property including the minor son's share either for legal necessity or for the benefit of the estate. He can even sell the joint family property including the minor son's share for the discharge of antecedent debts, which are not tainted by illegality or immorality as per decision Ramaraja (V.V.V.) V. Korada Malleswara Rao in 1999 (2) HLR 257 (AP).

19. On a perusal of the decisions cited supra, it is known that the doctrine of election, that he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it. The Hon'ble Apex Court held that election is the obligation imposed upon a party by Courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both and he who accepts a benefit under a deed or will must adopt the whole contents of the instrument.

20. The learned counsel appearing for the appellant vehemently emphasised that there was a Release Deed executed by the seventh defendant for the well being of the minor child after enjoying the fruits, the plaintiff after lapse of some years cannot turn on the same. The natural guardian has right to alienate the property which belongs to the minor. Hence, in the present case Doctrine of Election would apply and the Release Deed executed by the seventh defendant will be binding on the plaintiff.

21. With regard to the other decision, Section 8 of the Hindu Minority and Guardianship Act, 1946, is only for separate property of the minor and the same cannot be applied here in the un-divided interest in the joint family property. In the present case, admittedly, the properties are joint family properties. Subsequently, the natural guardian executed a Release Deed in favour of other member of the joint family and the first respondent/ plaintiff had no separate property in the joint family. Accordingly, Section 8 of the Hindu Minority and Guardianship Act will not apply in the present case on hand. On the above grounds, the learned counsel appearing for the appellant prayed for allowing the second appeal.

22. Heard the learned counsel appearing for the appellant.

Though the name of the respondents appear in the cause list there is no representation on behalf of the respondents. However, this Court decided to proceed on the case based on the materials available on record.

23. For better appreciation, Section 8 of the Hindu Minority and Guardianship Act, 1946, is extracted hereunder:

8 . Powers of natural guardian.- (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,-

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

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

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

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

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and (c) an appeal lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, "Court" means the city civil court or a district court or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

24. The un-disputed facts are that at the time of death of Sabapathy Naicker, who is the father of the first respondent/ plaintiff as well as the appellant/ third defendant, the plaintiff is six months baby and the third defendant is ten year old boy. Admittedly, the property belongs to Sabapathy Naicker. He acquired the property from joint family based on the oral partition during the year 1961. When the said Sabapathy Naicker acquired the property from the joint family, he became the absolute owner of the property. Thereafter, the plaintiff and defendants 3 and 7 have equal share on the property. Once the father of the third defendant and plaintiff died, the question of family partition retaining joint Hindu Family does not exist.

25. However, on a perusal of the entire records though the seventh defendant received an amount as well as 40 cents in S.No.473/1 in Sirudhaveer Village from the third defendant and subsequently, sold the same to third parties, the fact remains that she utilized the same for purchasing 48 cents of land in her name. The fact that she has not purchased the land in the name of the plaintiff jointly with her name shows that she was not taking into account the interest of the minor child. The behaviour of the seventh defendant leaving the plaintiff in lurch shows that she has not taken care of the plaintiff.

26. The plaintiff was under the care and custody of her parental uncle namely, T.Govindasamy Naicker and T.Muthu Naicker. They were taking care of the plaintiff's education and

had given her in marriage. The facts clearly shows that the seventh defendant/ mother of the plaintiff has never bothered about the care of the plaintiff after the death of her father and the terms of the Relinquishment Deed does not reflect that the seventh defendant has acted in the interest of the plaintiff. Assuming that the seventh defendant was allotted some property that too only after the issuance of legal notice, family arrangement was held and the fourth defendant obtained the Relinquishment Deed from the seventh defendant.

27. Apart from the above, as per Section 8 of the Hindu Minority and Guardianship Act, a natural guardian has to act in the interest of minor. In the present case, though the seventh defendant executed the Relinquishment Deed in favour of the third defendant. However, the said fund was not utilized for the welfare of the minor and also committed a grave error by not obtaining permission as required under Section 8 of the Hindu Minority and Guardianship Act. Without previous permission of the Court, the minor's property cannot be alienated.

28. The very same issue came up for consideration before the Hon'ble Apex Court in Civil Appeal No.10582 of 2013 and on 25.11.2013, the Hon'ble Apex Court has held as follows:

"12. In the present case, though it is stated that the property has been sold for the proper benefit of the minors, their protection, education and marriage, there is nothing on record to suggest that previous permission of the Court was obtained by the natural guardian before transfer by sale in question.

13. Where the father dies leaving behind only minor daughters and their mother as natural guardian, the share of the daughters became definite; the question of family partition retaining the character of joint Hindu Family property does not exist. In the present case, after the death of the father, the property has been shared amongst each member of the family and recorded in the mutation register having 1/4th share each. In such circumstances, the provision of sub-section (3) of Section 8 shall attract as the mother sold the property without previous permission of the Court. Hence, both the sale deeds executed by the second respondent in favour of the first respondent shall become voidable at the instance of the minor i.e. the

appellant and the Proforma-respondent nos.4&5.

14. In view of the finding recorded above, we set aside the judgments and orders passed by the trial court, First Appellate Court and Second Appellate Court. Accordingly, the suit stands decreed in favour of the appellant and proforma respondent Nos.4 and 5. The appeal is allowed with no costs."

29. In view of the above, the substantial questions of law framed at the time of admission are answered against the appellant. The second appeal fails and the same is dismissed. The judgment and decree of the Court of Principal Sub Judge, Chengalpattu in A.S.No.15 of 1997, dated 31.08.1999 reversing the judgment and decree of the Court of the Principal District Munsif, Chengalpattu in O.S.No.15 of 1983, dated 27.11.1996 is confirmed. No costs.

Sd/-
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

pri

To

1. The Court of Principal Sub Judge,
Chengalpattu.
2. The Court of Principal District Munsif,
Chengalpattu.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.V.Raghavachari, Advocate SR.No.2735

S.A.No.432 of 2000

SAI (CO)
GN(19/02/2018)