

327

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 2274 of 1989 (O&M)
Decided on: 06.02.2018**

Badlu Singh and others**.....Appellants****versus****Sukhma Devi****.....Respondent****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. Umesh Aggarwal, Advocate
for the appellants.Mr. C.B.Goel, Advocate
for the respondent.

Rajbir Sehrawat, J.(Oral)

1. The present appeal has been filed by the plaintiffs challenging the concurrent judgments and decrees passed by the Courts below; whereby their suit for possession regarding the suit property was dismissed.

2. For convenience, the parties would be referred herein as the plaintiffs and defendants; as they were referred in the original suit.

3. The brief facts of this case are that the suit for possession was filed by the plaintiffs, claiming that they are the owner of the suit property. However, about one month ago, the defendant had taken the possession of the suit land illegally. The defendant was requested to vacate the same. However, she refused to vacate it and she claimed that she had obtained the suit land on lease from their mother vide lease deed dated 30.08.1962. It was claimed that the mother of the plaintiff never executed any lease deed as claimed by defendant. Further it was claimed that the plaintiff No.1 was born on 10.10.1941 while the plaintiff No.2 was born on 12.12.1944. Therefore, the

impugned lease deed dated 30.08.1962 is not binding upon them. Hence, the possession of the suit property was prayed for.

4. Upon notice, the defendant contested the suit by taking routine preliminary objections. On merits, it was averred that the defendant is in possession of the suit land under the lease deed duly executed in her favour for a period of 99 years; which will expire in the year 2061. It was further denied that the plaintiffs did not have the knowledge of the registered lease deed dated 30.08.1962. Therefore, it was prayed that the plaintiffs were not entitled to seek possession of the suit land before the expiry of lease deed.

5. Parties led their respective evidence.

6. After hearing the parties and appreciating the evidence on record, the trial Court held that in the present case, the ownership of the plaintiffs over the suit land is not disputed. Therefore, the plaintiffs were held to be the owners of the suit property. However, so far as the lease deed is concerned, the learned trial Court held that, admittedly, the lease deed was executed by the mother of the plaintiffs as natural guardian. Still further, the plaintiff No. 1 was already major at the time of execution of the lease deed and he is also the signatory to the lease deed. So far as the plaintiff No. 2 is concerned, the learned trial Court held that the plaintiff No. 2 had attained majority on 12.12.1962, just after 4 months of the execution of the said lease deed. Therefore, if he had any grievance against the lease deed, he should have challenged the same within the period of three years after attaining majority as per the law of limitation. However, admittedly, the suit was filed after about 25 years. Therefore, the suit, filed by the plaintiffs was held to be time barred. Hence, the suit was dismissed. Aggrieved against this judgment and decree, the plaintiffs filed appeal before learned Appellate Court.

7. However, the lower Appellate Court also dismissed the appeal filed

by the plaintiffs on the same ground of limitation and the plaintiff No. 1 being signatory to the lease deed. Aggrieved against the judgment and decree passed by the lower Appellate Court, the present appeal has been filed by the appellants.

8. While arguing the case, learned counsel for the appellants has submitted that, admittedly, the plaintiff No. 2 was minor at the time when the lease deed was executed. Therefore, the lease deed was *void ab initio*. Therefore, the same is not binding upon the rights of the plaintiff No. 2. Since, the lease deed is void, therefore, there is no limitation for challenging the same.

9. On the other hand, learned counsel for the respondent has submitted that both the Courts below have rightly passed the judgments and decrees. According to learned counsel for the respondent the disposal of the property of the minor by natural guardian, is at the best, voidable at the instance for the minor on attaining the majority. Such disposal by a natural guardian is not *void ab initio*. Hence, the suit should have been filed by the plaintiffs within the period of three years from the date of attaining the majority. However, the suit was filed after about 25 years. Therefore, both the Courts have rightly dismissed the suit.

10. Having heard learned counsel for the parties, this Court finds no substance in the arguments raised by the learned counsel for the appellants. Admittedly, the plaintiff No.1 was major at the time of execution of the lease deed and he is the signatory to the lease deed as well. Therefore, plaintiff No. 1 is estopped from challenging the validity of the same; either on the ground of lack of knowledge or on the ground of his minority. So far as plaintiff No. 2 is concerned, as per the record, he was minor on the date of

guardian, the mother had every right to dispose of the property of the minor for the benefit of the estate of the minor under Section 8 of the Hindu Minority and Guardianship Act, 1956. The relevant provision of the section 8 is reproduced herein:-

Section 8 in The Hindu Minority and Guardianship Act, 1956

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 realisation, 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 by any person claiming under him.

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11. The bare perusal of the provisions of the law shows that the disposal of the property of the minor by a natural guardian, even if the same is done by the natural guardian without permission of the Court, is only voidable as per the provisions of the statute and is not *void ab initio*. In the present case, the lease deed is not claimed to be signed by the minor so as to make it *void ab initio*; rather it is signed by the mother of plaintiff No. 2 as natural guardian. Therefore, the same would be governed by Section 8 of the Hindu Minority and Guardianship Act, 1956.

12. In view of the above, since the lease deed was only a voidable

document at the instance of plaintiff No. 2 and not *void ab initio*, therefore, the suit was required to be filed by him within three years from the date of his attaining majority. The date on which he attained the majority is 12.12.1962. However, the present suit was filed on 16.07.1987; which is about 25 years after attaining the age of majority. Hence, the suit has rightly been held to be time barred by the both Courts below.

13. No other argument was raised by the learned counsel for the parties.

14. In view of the above, the present appeal is dismissed being devoid of any merits.

6th February, 2018
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[RAJBIR SEHRAWAT]
JUDGE

<i>Whether speaking/reasoned</i>	-	<i>Yes</i>
<i>Whether reportable</i>	-	<i>Yes</i>