

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 380 of 2004**

Maniram S/o Shri Pardeshi, Aged about 35 (33) years, Caste Gadariya, Occupation Labour R/o Village Motipur, Rajnandgaon, Chhattisgarh.

---- Appellant/Plaintiff**Versus**

1. Dudashan, Aged about 35 (33) years S/o Ramchand Lodhi, Occupation Farmer R/o Baherabhata, Tahsil & Distt. Rajnandgaon, Chhattisgarh.
2. Bhagirathi, Aged about 61 years, S/o Shri RamBhagat Lodhi, Occupation Farmer, R/o Baherabhata, Tahsil & Distt. Rajnandgaon, Chhattisgarh.
3. Ganeshiya Bai, aged about 55 years, W/o Shri Pardeshi, Caste- Gadariya, Occupation- House wife R/o Motipur, Tahsil & Distt. Rajnandgaon, Chhattisgarh.
4. State of Chhattisgarh, Through Collector, Rajnandgaon, Dist. Rajnandgaon, Chhattisgarh.

---Respondents/Defendants

For Appellant	:	Shri P.K.C. Tiwari, Senior Advocate with Mr. Shashi Bhushan Tiwari, Advocate
For Respondents No. 1 & 2	:	Mr. Saket Pandey, Advocate
For State	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****06.08.2019**

1. The substantial questions of law involved, formulated and to be answered in this plaintiff's second appeal state as under:

“1. Whether the Courts below committed an error of law by holding that the plaintiff's suit based upon the knowledge of transaction in 1991 was barred by limitation ?

2. Whether the Courts below were justified in holding that the limitation for the purpose of this suit will be extended by 3 years after removal of the legal disability under Sections 6 and 8 of The Indian Limitation Act without recording a finding about knowledge of the sale ?”

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. The suit property was purchased by defendant No. 3 - Ganeshiya Bai in the name of her minor son i.e. the plaintiff (Maniram) by registered sale deed dated 22/03/1969. Thereafter, on 12/04/1970, plaintiff's mother – Ganeshiya Bai sold the suit property in favour of defendant No. 2 namely Bhagirathi and thereby, delivered the possession of the suit property to the said defendant.
3. Plaintiff herein filed a civil suit bearing No. 129A/02 for declaration of title and recovery of possession on 25/07/1991 stating *inter alia* that her mother / de-facto guardian was not empowered to alienate the suit property without permission of the Court as required under Section 8 (2) of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as “Act of 1956”) and therefore, he is entitled for declaration of title and recovery of possession.
4. The defendants filed written statement and claimed that plaintiff's mother / defendant No. 3 sold the suit property in favour of defendant No. 2 for legal necessity and further

claimed that suit of the plaintiff is also barred by limitation as it ought to have been filed within three years from the date of attainment of majority by the plaintiff.

5. Learned trial Court, after appreciating oral and documentary evidence available on record, though held that the subject alienation made by plaintiff's mother / defendant No. 3, in favour of defendant No. 2, is void but dismissed the civil suit vide judgment and decree dated 25/07/2002 holding that the suit is barred by limitation.
6. Questioning the said judgment and decree of the trial Court, plaintiff preferred civil appeal bearing No. 10-A/02 wherein learned first appellate Court agreed with the finding recorded by the trial Court *qua* limitation and dismissed the suit by its judgment and decree dated 19/04/2004.
7. Being aggrieved by the judgment and decree of learned first appellate Court, this second appeal has been preferred by the plaintiff in which substantial questions of law have been formulated and incorporated in the opening paragraph of this judgment.
8. Mr. P.K.C. Tiwari, learned senior counsel along with Mr. Shashi Bhushan Tiwari, counsel appearing for the plaintiff would vehemently submit that both the Courts below are absolutely unjustified in dismissing the suit of the plaintiff as barred by limitation, as Article 65 of the Limitation Act, 1963 (hereinafter referred to as the "Act of 1963") would be applicable in that case whereby a period of 12 years is available to the plaintiff to file a suit for recovery of possession based on title after

attainment of majority by the plaintiff under Article 65 of the Act of 1963. As such, the judgment and decree of both the Courts below deserve to be set aside.

9. Mr. Saket Pandey, learned counsel appearing for defendants No. 1 and 2 would submit that both the Courts below have rightly dismissed the suit of the plaintiff as barred by limitation, as in this case, Article 60 of the Act of 1963 would apply and accordingly, the plaintiff ought to have filed the civil suit within three years from the date of attaining majority, which he failed to do, as he attained majority in the year 1986 and the suit was filed on 25/07/1991, and as such, the suit was hopelessly barred by limitation and rightly dismissed by the two Courts below.

10. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

11. Ganeshiya Bai / defendant No. 3 is the mother of plaintiff, who purchased the suit property in the name of plaintiff, when he was minor, by a registered sale deed dated 22/03/1969 (Annexure P/1) and sold it immediately thereafter on 12/04/1970 for sale consideration of Rs. 95/- in favour of defendant No. 2 and thereby, delivered the peaceful possession of the suit property to defendant No. 2.

12. While deciding the issue, learned trial Court as well as the first appellate Court recorded a finding that plaintiff attained the age of majority in the year 1986 and the civil suit ought to have been filed by him within three years from the date of attainment

of majority whereas, it was filed on 25/07/1991, therefore, the suit was apparently barred by limitation and dismissed accordingly.

13. Admittedly, the civil suit filed by the plaintiff was for declaration of title and recovery of possession. It is also not in dispute that the sale of suit property was made by an unregistered sale deed dated 12/04/1970 in favour of defendant No. 2 – Bhagirathi by plaintiff's mother/ natural guardian i.e. defendant No. 3, at the time when the plaintiff was minor and he attained the age of majority in the year 1986.

14. At this stage, it would be appropriate to notice the provisions contained in Section 8 (2) and 8 (3) of the Act of 1956, which is quoted below :-

**“8. Powers of natural guardian – (1). XXX
XXX**

(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. ”

15. By virtue of Section 8 (2) of the Act of 1956, the sale deed executed by guardian of the minor, without the permission of the Court, is not void *ab initio* but it is voidable at the instance of the minor or any person claiming under him as is apparent from the focused perusal of Section 8 (3) of the Act of 1956.

16. Now, the question would be whether the suit filed by the plaintiff, without seeking setting aside of the sale deed dated 12.04.1970, was maintainable and within the period of limitation.

17. Article 60(a) of the Limitation Act, 1963 provides as under:-

60. To set aside a transfer of property made by the guardian of a ward-	Three years	When the ward attains majority.
(a) by the ward who has attained majority.		

A careful perusal of the aforesaid provision would show that it applies to the suit filed by the minor who attained majority and thereby, period of limitation for filing a suit by minor to set aside a transfer of property made by his guardian would be three years from the date he (minor) attains majority.

18. Furthermore, in the matter of ***Madhukar Vishwanath v. Madhao & others***¹, their Lordships of the Supreme Court has held as under :-

“5. We do not think, given the state of the pleadings, that we can uphold the submission.

1 (1999) 9 SCC 446

The suit proceeded upon the basis that there was no legal necessity for Baburao to have alienated the said property. The plaint should, therefore, properly have pleaded for a declaration that the alienation was bad in law; possession was only the consequential relief. Even if the suit was entertained as pleaded, no decree for possession could have been passed without first finding that the alienation was not for legal necessity and was, therefore, bad in law. To such a suit the provisions of Article 60 apply. Article 60 relates to a suit to set aside a transfer of property made by the guardian of a ward by the ward who has attained majority and the period prescribed is three years commencing on the date on which the ward attains majority. The suit in the instant case was filed much after this period of three years had elapsed in August 1969.”

19. The Supreme Court, in the matter of ***Vishwambhar & others v. Laxminarayan (dead) through LRs. and another***² has held as under:-

“9.Article 60 of the Limitation Act prescribes a period of three years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. Therefore, the trial court rightly dismissed the suit filed by Digamber. The judgment of the trial court dismissing the suit was not challenged by him. Even assuming that as the suit filed by one of the

2 (2001) 6 SCC 163

plaintiffs was within time the entire suit could not be dismissed on the ground of limitation, in the absence of challenge against the dismissal of the suit filed by Digamber the first appellate court could not have interfered with that part of the decision of the trial court. Regarding the suit filed by Vishwambhar, it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December 1985) by introducing such a prayer by amendment of the plaint the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances, the amendment of the plaint could not come to the rescue of the plaintiff.”

20. Very recently, in the matter of ***Murugan and others v. Kesava Gounder (dead) through LRs. and others***³ their Lordships of the Supreme Court revisited the law on the point and held that the alienation made in violation of Section 8(2) of the Act of 1956 is voidable and it would not be void, it was further held that holding the alienation to be void would deprive the minor of the right to affirm or ratify the transaction upon attaining majority. It was finally held that voidable alienations made on behalf of minor are required to be set aside before relief for possession can be claimed by the minor on attaining majority and held as under:-

“22. The alienations, which were voidable, at the instance of minor or on his behalf were required

to be set aside before relief for possession can be claimed by the plaintiffs. Suit filed on behalf of the plaintiffs without seeking prayer for setting aside the sale deeds was, thus, not properly framed and could not have been decreed.”

21. Now the question is regarding the period of limitation within which the minor, who has attained the age of majority, is required to file the suit for avoiding sale of immovable property under Section 8(3) of the Act of 1956. The said question is no longer *res integra* and decided by the Supreme Court in the matter of **Murugan** (supra) by holding as under:-

“31. The Limitation Act, 1963 has been enacted by the Parliament after the enactment of Hindu Minority and Guardianship Act, 1956. Article 60 of the Limitation Act, 1963 which provides for limitation “suits relating to decrees and instruments”. The Limitation Act contemplates suit to set aside a transfer of property made by the guardian of a ward for which limitation is contemplated as three years. Article 60 of the Limitation Act although provides for a limitation of a suit but also clearly indicates that to set aside a transfer of property made by the guardian of a ward a suit is contemplated.

37. We are, thus, of the considered opinion that in the present case it was necessary for the person claiming through minor to bring an action within a period of three years from the date of the death of the minor to get sale deed executed by Balaraman set aside. We, thus, conclude that the sale deeds executed by Balaraman were not repudiated or avoided within the period of limitation as prescribed by law. Issue No. 3 is answered accordingly.”

22. Reverting to the facts of the present case, from the findings recorded by both the Courts below, it is quite vivid that in the instant case, plaintiff has attained the age of majority in the year 1986 and the civil suit for declaration of title and recovery of possession has been filed by him on 25/07/1991, which is barred by limitation, as admittedly, in this case, Article 60 (a) of the Act of 1963 would apply and accordingly, plaintiff was required to institute the civil suit within three years from the date of attainment of the age of majority by him, which he has apparently filed on 25/07/1991 even without seeking the relief of declaration that the sale is voidable. The plaintiff was required to seek cancellation of sale deed executed by Ganeshiya Bai and in absence of that relief, suit as framed and filed by the plaintiff was not maintainable.

23. Both the Courts below have rightly concluded that the suit ought to have been filed within a period of three years from the date of attainment of majority by the plaintiff, which he failed to do. As such, the finding recorded by both the Courts below that the civil suit filed by the plaintiff is barred by limitation is a finding of fact based on evidence available on record in which I do not find any perversity or illegality. The substantial questions of law framed in this second appeal are answered against the plaintiff and in favour of defendants.

24. The second appeal deserves to be and is accordingly dismissed. No order as to cost(s).

25. A decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet