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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2019
PRONOUNCED ON : 16.12.2019

CORAM
THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.2182 of 2002

Udhayakumar

... Appellant/Respondent/Plaintiff

Vs.

1. Dhandapani (died)

2. Devakiammal (died) ..Respondents 1 & 2/Apepllants/Defendants

3. Virudhambal

4. Loganathan

5. Janakiraman

[(RR3 to 5 brought on record as LR's of the deceased R1 vide Order of Court dated 19.03.2018 made in CMP.No.2991 of 2018 in SA.No.2181 of 2002)

6. Sekar Naidu

7. Gopu Naidu

8. Selvam Naidu

9. Banu

10.Vigneshwar

(RR6 to 10 brought on record as LR's of the deceased R2 viz., Devakiammal vide Order of Court dated 05.08.2019 made in CMP.No.19055/2018) ...Respondents 3 to 10.

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 25.09.2001 in A.S.No.83 of 2000 on the file of the Principal District Court, Cuddalore allowing the appeal against the judgment and decree dated 18.04.2000 in O.S.No.257 of 1996 on the file of the Sub-Court, Panruti.



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For Appellant : Mr.N.Suresh

For Respondents: Mr.S.Kingston Jerold
for R3 to R5

: Mr.K.Govi Ganesan for R6 to R10

JUDGMENT

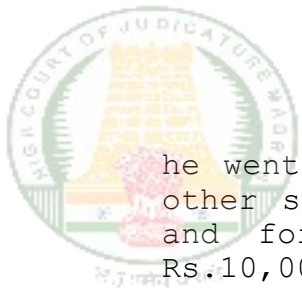
This second appeal has been filed by the plaintiff against the judgment and decree passed by the Principal District Judge, Cuddalore in A.S.No.83 of 2000 dated 25.09.2001 reversing the judgment and decree passed by the Sub-Judge, Panruti in O.S.No.257 of 1996 dated 18.04.2000.

2. The appellant had filed a suit in O.S.No.257 of 1996 on the file of the Sub-Judge, Panruti for the relief of partition to divide the suit properties into two equal shares and allot one such share to him and also for mesne profits. The learned Sub-Judge, Panruti, by the Judgment dated 18.04.2000 had passed a preliminary decree to divide the suit properties into two equal shares and allot one such share to the plaintiff. He directed that the property which was purchased by the second defendant under Ex.A.1 shall be allotted to him on the basis of equity in the final decree proceedings. In respect of mesne profits, he ordered for separate enquiry. He also directed the defendants to pay the costs to the plaintiff. Aggrieved by the same, the defendants 1 and 2 had filed an appeal in A.S.No.83 of 2000 on the file of the Principal District Judge, Cuddalore. The learned Principal District Judge by the judgment dated 25.09.2001 had allowed the said appeal and set aside the judgment and decree passed by the trial court and dismissed the suit. However, he directed the parties to bear their respective costs through out. Feeling aggrieved, the plaintiff has filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are in brief as follows:

The plaintiff's father Kothandapani and the first defendant are brothers. The plaintiff's father Kothandapani and grand father Natesa Kounder died 18 years ago in a fire accident. Subsequently, within a year, the plaintiff's mother also passed away. Thereafter, the plaintiff and his younger brother were under the care and custody of the first defendant. The first defendant maintained the plaintiff and his brother from and out of the income derived from the ancestral property. When the plaintiff's brother Raja was studying in VIII standard,

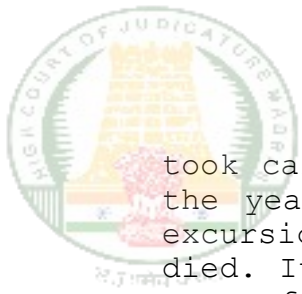


he went for excursion on 03.12.1991 along with his teachers and other students and at that time, he drowned in a lake and died and for that, the first defendant had received a sum of Rs.10,000/- as compensation from the teachers of the school. For recovery of the said amount, the plaintiff will file a separate suit. The plaintiff is the sole legal heir of his father and hence he demanded partition of his father's share. But the first defendant demanded refused to come for amicable partition. Hence, the plaintiff had issued a lawyer's notice on 21.05.1996 to the first defendant calling upon him for amicable partition. The first defendant after receipt of the said notice, had sent a reply notice through his Advocate on 26.05.1996 with false averments. The first defendant had stated that the plaintiff's father had relinquished of his rights over the family properties after receiving a sum of Rs.5,000/- from him. Hence, the plaintiff was constrained to file the above suit for partition. Since the second defendant had purchased Item No.3, she also has been impleaded as a party.

5. The averments made in the written statement filed by the first defendant are in brief as follows:

a) In the notice issued by the plaintiff dated 21.05.1996, the plaintiff had specifically admitted that even during the life time of his grand father Natesa Gounder, there was a division in the family and the family properties were divided. When the plaintiff himself had admitted the partition between his father and the first defendant in the said notice, the plaintiff is not entitled for the relief of partition. The plaintiff has been excluded from the joint possession of the suit properties and hence, the plaintiff is not entitled to value the suit under Section 37(2) of the Tamil Nadu Court Fees Act. He should have valued the suit under Section 37 (1) of the aforesaid Act. Further, the plaintiff is not the legitimate son of Kothandapani. The said Kothandapani was leading a loose life and he was having illicit connection with many women including plaintiff's mother. Out of the said illicit connection, plaintiff's mother gave birth to the plaintiff and there was no marriage between Kothandapani and plaintiff's mother viz., Panchalai at the time of birth of the plaintiff. Hence the plaintiff is not a legitimate son of the said Kothandapani. By over sight, the same was omitted to mention in the reply notice.

(b) In the year 1976, the said Kothandapani received a sum of Rs.5,000/- from the first defendant and relinquished all his interest in the family property in favour of the first defendant and from that date onwards, the first defendant alone has been in exclusive possession and enjoyment of the entire properties and thereby he perfected title by adverse possession and also by ouster. It is true that the said Kothandapani and Natesa Gounder died in a fire accident, subsequently, the plaintiff's mother also died and hence the first defendant alone



took care and custody of the plaintiff and his brother Raja. In the year 1991, when the plaintiff's brother Raja was going for excursion along with his school mates, he drowned in a lake and died. It is false to say that the first defendant had received a sum of Rs.10,000/- as compensation for the death of the plaintiff's brother. The first defendant had received only a sum of Rs.7,000/- and Rs.3,000/- was taken by the Mediator to spent to secure the amount. The amount so received was spent for litigation. Now, nothing is available with the first defendant. It is true that the first defendant sold Item No.3 to the second defendant, but the plaintiff is not entitled to claim any share in the suit property. The plaintiff was added as party in the said sale deed at the instance of the purchaser to be on the safer side. The plaintiff cannot claim any right over the suit properties. The plaintiff had filed the above suit at the instance of Chellammal and Angammal who are the aunts of the plaintiff. Therefore, the first defendant prayed to dismiss the suit.

6. The averments made in the written statement filed by the second defendant are in brief as follows:

The second defendant had purchased Item No.3 of the suit properties from the first defendant. Even prior to purchase, only the first defendant was in possession and enjoyment of the said property claiming that the said property was allotted to him in the family partition. Hence, the second defendant is the bonafide purchaser of Item No.3 of the suit properties for valuable consideration. The plaintiff was added as a party only to be on the safer side, to have a binding safe since there was no written document for partition. Ever since the date of purchase, the second defendant alone has been in possession and enjoyment of the Item No.3 of the suit properties openly and continuously and thereby she perfected titled by adverse possession also. The suit is barred by limitation. The plaintiff cannot seek partition without setting aside the sale deed. If for any reason, the Court comes to the conclusion that the plaintiff is entitled to any share, the property which was purchased by the second defendant may be allotted to him on equity basis. Therefore, the second defendant prayed to dismiss the suit.

7. Based on the aforesaid pleadings, the learned Sub-Judge, Panruti, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1. He also examined three more witnesses as PWs.2 to 4. He had marked Exs.A1 to A6 as exhibits on his side. On the side of the defendants, the first defendant was examined as D.W.1 and three more witnesses were examined as DWs.2 to 4. They had marked Exs.B1 to B9 as exhibits. A xerox copy of the school record sheet of the plaintiff was marked as Ex.C.1.



8. The learned Sub-Judge, Panruti, after taking into consideration of the materials placed before him found that the plaintiff is the legitimate son of Kothandapani. He further found that there was no partition between the plaintiff's father and the first defendant. He also found that there is no evidence that the plaintiff's father had relinquished his share by receiving Rs.5000/- and as such, the plaintiff is entitled to get $\frac{1}{2}$ share in the suit properties. Accordingly, he passed a preliminary decree for partition to divide the suit properties into two equal shares and allot one such share to the plaintiff. He also directed to allot the property which was purchased by the second defendant under Ex.A.1 to him during final proceedings on equity basis. He also directed separate enquiry in respect of mesne profits. Aggrieved by the same, the defendants had filed an appeal in A.S.No.83 of 2000 on the file of the Principal District Judge, Cuddalore. The learned Principal District Judge, Cuddalore, had allowed the said appeal and set aside the judgment and decree passed by the trial court and dismissed the suit. However, he directed the parties to bear their respective costs through out. Feeling aggrieved, the plaintiff has filed the present second appeal.

9. This Court at the time of admitting the second appeal has formulated the following substantial questions of law:

"1) Whether the son born to a man and his wife whose marriage was admitted not always legitimate whether born before or after the marriage and consequently the plaintiff whose father was admitted to be Kothandapani was bound to be treated as his legitimate issue?

2) Whether the plaintiff was not entitled to a share after the life time of the father as a heir to the father even if he were to be illegitimate in respect of joint family properties by virtue of Section 16(A) of the Hindu Marriage Act?

3) Whether the learned District Judge did not erred in truncating the evidence secured through the exhibits B1 and B3 that there had been already a partition between his father and the first defendant failing to note that the same document referred to the fact that on account of his father's death during a very young age of the plaintiff the first defendant himself was enjoying all the properties and managing the same on behalf of the plaintiff and his younger



brother, action to demand and secure partition and separate possession”.

10. Heard Mr.N.Suresh, learned counsel for the appellant/plaintiff and Mr.S.Kingston Jerald, learned counsel for the respondents 3 to 5 and Mr.Govi Ganesan, learned Counsel for the respondents 6 to 10.

11. Substantial Questions of Law Nos.1 to 3:-

The learned counsel for the appellant/plaintiff has submitted that the first appellate court erred in reversing the well considered judgment and decree of the trial court. He further submitted that since the plaintiff's parents died and the plaintiff and his brother Raja were under the care and custody of the first defendant, he only admitted the plaintiff in the school and at that time, he only might have given the date of birth of the plaintiff. He further submitted that the first defendant while examining himself as D.W.1 deposed that he does not know when the marriage between the plaintiff's father and mother was solemnized and also deposed that he did not furnish the date of birth to the school. Since the first defendant had admitted the plaintiff in the school, he only gave the date of birth and hence he might have given wrong date of birth. He further submitted that even though in Advocate's Notice, the plaintiff has stated already partition took place between his father and the first defendant, since after the death of his parents, the plaintiff and his younger brother were under the care and custody of the first defendant, the first defendant had managed the entire properties. He further submitted that the first defendant failed to prove that the plaintiff's father had relinquished his right over the family properties by receiving a sum of Rs.5,000/-. He further submitted that if really, the plaintiff's father had relinquished his right over the suit properties, the first defendant ought not have shown the plaintiff and his brother as parties in Ex.A.1 Sale Deed.

12. The learned counsel for the appellant/plaintiff has further submitted that the plaintiff's brother Raja died when he was going to excursion. The first defendant filed a suit for himself and also on behalf of the plaintiff and claiming compensation and in that suit, he has admitted that the plaintiff is the legitimate son of Kothandapani. He further submitted that in the reply notice, the first defendant has not taken a plea that the plaintiff is the illegitimate son of Kothandapani, but, only in the written statement he has taken a plea that the plaintiff is the illegitimate son of Kothandapani. He further submitted that since the first defendant is not a father to the plaintiff, he cannot claim that he is a natural guardian and at the most he can be termed as defacto guardian.



He further submitted that as per Section 11 of the Hindu Minority and Guardianship Act, 1956, no person shall be entitled to dispose of or deal with the property of a Hindu minor merely on the ground of his or her being the defacto guardian of the minor and as such, Ex.A1 sale deed executed by the first defendant for himself and also as guardian for the plaintiff, is void abinitio and hence the said document need not be set aside. He further submitted that the trial court taking into consideration of the aforesaid facts and evidence in a proper perspective had rightly decreed the suit, but the first appellate court erroneously reversed the well considered judgment of the trial court and dismissed the suit and therefore he prayed to allow the second appeal and set aside the judgment and decree passed by the trial court and restore the judgment and decree passed by the trial court.

13. In support of the aforesaid contentions, the learned counsel for the appellant/plaintiff has relied upon the following decisions:

1. Ranganatha Gounder & Another Vs. Kuppuswami Naidu & Others CDJ 1975 MHC 430 = 1976 (2) MLJ 128
2. Meka Peethamabaram Vs. Nanduri Lakshminarayana CDJ 1977 APHC 226= 1978 (1) Andhwr 512, 1978 (1) APLJ 47

14. Per contra, the learned counsel for the respondents 3 to 5 (L.Rs of the first respondent/first defendant) has submitted that the plaintiff himself in his evidence has categorically admitted that his date of birth is 25.01.1976 but the Ex.A4 would show that the marriage between the plaintiff's father Kothandapani and his mother Panchalai was performed only on 18.03.1976. So, it is clear that even before the marriage was solemnised between the parents of the plaintiff, the plaintiff was born and hence the plaintiff cannot claim that he is the legitimate child of the said Kothandapani. He further submitted that in Ex.A2 notice, the plaintiff himself has categorically admitted that even during the life time of his grand father Natesa Gounder, the properties were divided into two shares and shares were allotted to his father and the first defendant separately and as such, the plaintiff is not entitled to file a suit for partition. He further submitted that since the plaintiff was eo nomine party in Ex.A1 sale deed, he ought to have filed a suit for setting aside the said sale deed but he has not asked any such relief and hence he cannot seek partition in respect of the item No.3 of the suit properties. He further submitted that the trial court without taking into consideration of the aforesaid facts, had erroneously decreed the suit and hence the first appellate court had rightly interfered with the findings of the trial court and set aside the judgment and decree passed by the trial court and in the said factual



findings, this court cannot interfere and therefore he prayed to dismiss the second appeal.

15. The learned counsel for the respondents 6 to 10 (L.Rs of the second respondent/second defendant has submitted that he is adopting the arguments of the learned counsel for the respondents 3 to 5. He further submitted that the second defendant is a bonafide purchaser for valuable consideration and hence if this court comes to the conclusion that the second appeal has to be allowed, the property which was purchased by the second defendant may be allotted to the second defendant on equity basis.

16. It is an admitted fact that the plaintiff's father Kothandapani and the first defendant are brothers and they are the sons of one Natesa Gounder. It is also an admitted fact that the plaintiff's father Kothandapani's grandfather Natesa Gounder died in a fire accident which took place when the plaintiff was 1½ years old child and his younger brother Raja was 3 months old. It is also an admitted fact that thereafter within one year, the plaintiff's mother Panchali also died and thereafter, the plaintiff and his younger brother Raja were under care and custody of their paternal uncle (first defendant). It is also an admitted fact that in the year 1971, the plaintiff's younger brother Raja also died when he went for excursion by drowning in a lake. So, plaintiff is the sole legal heir for his father Kothandapani.

17. Since the joint family got the properties, after the death of grandfather Natesa Gounder, father Kodandapani, mother Panchalai and brother Raja, the plaintiff being the sole legal heir of his father, in the normal course, he is entitled to get ½ share and the first defendant is entitled to get ½ share in the said joint family properties.

18. In this case, the first defendant denied the claim of the plaintiff on two grounds; first is that the plaintiff is not the legitimate son of Kothandapani; second is that the plaintiff's father Kothandapani relinquished his interest in the joint family properties by receiving Rs.5000/-

19. In so far as the first contention is concerned, according to the first defendant, Ex.A4 (marriage certificate) issued by Arulmigu Veerattaneswarar Devasthanam would show that the marriage between the parents of the plaintiff was solemnised on 18.03.1976 and that Ex.C1 (xerox copy of the school record sheet) would show that the plaintiff's date of birth is 25.01.1976 and therefore, the plaintiff was born even before the marriage between their parents which was solemnised on 18.03.1976 and as such the plaintiff is not a legitimate son of



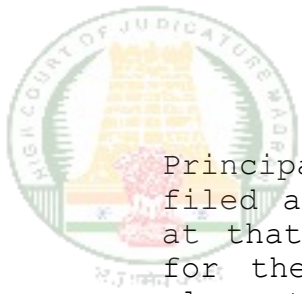
the deceased Kothandapani and therefore, he cannot claim partition. It is to be pointed out that the first defendant while examining himself as DW1 has categorically admitted that he only admitted the plaintiff and his brother Raja in the school. In such a case, he only might have given date of birth before the school but he has stated in his evidence that he has not given any date of birth of the plaintiff in the school and that the school authorities themselves have put a date as date of birth of the plaintiff. So in such a case also, it cannot be said that the date which is mentioned in Ex.C1 is the correct date of birth of the plaintiff.

20. It is also to be pointed out that in the reply notice (Ex.B2), the first defendant has not raised this plea. On the contrary, he has stated in the said reply notice as follows:-

" It is true that the father and grand father of your client died in a fire accident about 18 years ago, that your client's mother also died subsequently within a year, that even during the lifetime of Natesa there was a division and that your client's father Kothandapani got divided. All other allegations in your notice are false. It is absolutely false to say that each survey number was divided into two halves and that your client's father cultivated his share of properties. The notice mentioned properties and the properties sold to Devaki Ammal were allotted to the share of my client in the partition that took place more than 20 years ago, and ever since then my client alone has been and is in possession and enjoyment of the same exclusively and absolutely, claiming absolute title to the same openly, continuously, uninterruptedly and adverse to the interest of anyone else and my client has also prescribed title by adverse possession. Your client's father received money of Rs.5,000/- and went out of the family relinquishing all his interest in the family properties and no property was allotted to his share in the partition which took place more than 20 years ago. All other allegations to the contra in your notice are false. It is pertinent to mention that your client has not stated which portion of the property was allotted to hi father's share."

So, it is clear that the first defendant in his reply notice has admitted that the said Kothandapani is the father of the plaintiff.

21. It is also to be pointed out that in Ex.A6 (a certified copy of the plaint filed in O.S.No.41 of 1993 on the file of the



Principal Sub-Judge, Cuddalore) that the first defendant had filed a suit for himself and on behalf of the plaintiff (since at that time, the plaintiff was a minor) claiming compensation for the death of the plaintiff's brother Raja. In that suit also, the first defendant has categorically admitted that the plaintiff is the son of Kothandapani. Hence, the first defendant is estopped from denying that the plaintiff is not a legitimate son of Kothandapani.

22. Let us now see the next contention of the first defendant that the plaintiff's father Kothandapani had relinquished his interest in the first family properties by receiving Rs.5000/-. With regard to the said contention, the first defendant has not produced any documentary evidence.

23. It is to be pointed out that a perusal of Ex.A1 (a registration copy of the sale deed dated 12.09.1986) shows that the first defendant had sold Item No.3 of the suit properties to the second defendant for himself and on behalf his minor son Pavadai and also on behalf of his deceased brother Kothandapani's minor children viz., minor Udayakumar (plaintiff) and minor Raja.

24. The first defendant in paragraph No.12 of the written statement has stated that the plaintiff is not entitled to claim of any share in item No.3 of the suit properties. He further stated that the plaintiff was added as a party in the said sale deed at the instance of the purchaser to be on the safe side. The second defendant also stated in paragraph No.3 of her written statement that she purchased item No.3 of the suit properties from the first defendant for valuable consideration and at the time of purchase and even prior to her purchase, the first defendant alone was in possession and enjoyment of the said property as his absolute property. She further stated that the plaintiff was impleaded as a party in the said sale deed only to be on the safer side, to have a binding sale since there was no written document for partition. But they have not stated any reason for including the plaintiff's brother Raja also as a party in the said document. Further in the said document, it is clearly stated that the said property belongs to them ancestrally and that they have jointly enjoyed till the disposal of the said property. It is also to be pointed out that during cross-examination of PW1, it was suggested that the plaintiff's father had executed a release deed in favour of the first defendant by receiving Rs.5000/- but the said document has not been produced before the court. Therefore the contention of the first defendant that the plaintiff's father Kodandapani had relinquished his interest in the joint family properties by receiving Rs.5000/-, cannot be accepted.



25. It is true that the plaintiff has stated in his pre-suit notice (Ex.A2) that even during the life time of Natesa Gounder, he himself divided the joint family properties into two shares and allotted shares to his father Kothandapani and the first defendant. It is an admitted fact that when the plaintiff was 1½ months old child, his father and grandfather died in a fire accident and subsequently, within one year his mother also died and it is only the first defendant who alone brought up the plaintiff and his brother Raja. In such a case, naturally the properties which were allotted to the plaintiff's father also would have been taken over by the first defendant and he only might have managed his properties and also his brothers properties jointly and that must be a reason that he sold item No.3 of the suit properties by showing that he is the guardian for the plaintiff and his brother also. Further the recitals in the said sale deed (Ex.A1) also would show that they have enjoyed the said properties jointly by treating it as joint family properties. Therefore, the contention of the defendants that the Item No.3 of the suit properties absolutely belonged to the first defendant and only for safer side, the name of the plaintiff also included in the sale deed, cannot be accepted.

26. As already pointed out that the first defendant has not produced any documentary evidence to show that the plaintiff's father had relinquished his right over the joint family properties. Further, the contention of the first defendant would show that after the death of the plaintiff's father, the first defendant alone managed the entire properties. In such a case, the plaintiff is entitled to seek partition.

27. The first defendant has relied upon Exs.B6 to B9 (diaries) said to have been written by the plaintiff's father Kothandapani and contended that in the said diaries, the plaintiff's date of birth has been mentioned as 25.01.1976. The trial court after going through the said documents elaborately discussed and found that the said diaries could not have been written by the plaintiff's father Kothandapani as the handwriting and signatures are different. But the first appellate court not at all discussed about the genuineness of the aforesaid documents. Further, it is to be pointed out that the first defendant has not at all stated anything about the aforesaid diaries in the written statement or in the reply notice. It is well settled that no amount of evidence can be looked into without pleading.

28. The trial court taking into consideration of the aforesaid facts, had rightly held that the plaintiff is the legitimate son of Kothandapani and also held that the first defendant failed to prove that the said Kothandapani had relinquished his interest in the joint family properties but the first appellate court had erroneously reveals the said findings.



29. The next question that arises for consideration is that whether the plaintiff can seek partition in respect of Item No.3 of the suit properties without seeking relief for setting aside the Ex.A1 sale deed. In Ex.A1 sale deed, it is clearly stated that the first defendant had executed the said document for himself and also on behalf of his minor son, plaintiff and his brother as guardian. So, in the said document, the plaintiff was shown as eo nomine party. In such a case, he should have asked to set aside the said sale deed.

30. In Ranganatha Gounder & Another Vs. Kuppuswami Naidu & Others (cited supra), this court in paragraph No.8 has held as follows:

'8.....Secondly assuming th at the suit properties were the joint family properties of the children of the sixth respondent herein through Chinna Gopal Naidu, still the sixth respondent has no power to alienate' the said properties. Section 11 of the Act which I have already extracted abrogates the power of the de facto guardian to deal with any property of a minor, whether it is an undivided interest in a joint family property or not. Unlike Sections 6 and 9, which while referring to the "minor's property" expressly state "excluding his or her undivided interest in, joint family property "and" other than the undivided interest referred to in Section 12 "respectively, Section 11 does not exclude any such undivided interest of a minor in the joint family property from its scope and therefore the incompetency of a de facto guardian to deal with a minor's property extends to all the properties of a minor without any exception, Therefore, this argument is not of any avail to the appellants herein.'

31. In Meka Peethamabaram Vs. Nanduri Lakshminarayana (cited supra), the High Court of Andhra Pradesh in paragraph No.24 has held as follows: -

24.....While on the subject of guardianship of Hindu minors, the Act obviously wanted to curtail the powers of "De facto guardians" altogether. Section 11 read with the definition of the expression "guardian" in clause (b) in section 4 shows that the Parliament did not choose to recognize the de facto guardians" as one of the guardians in respect of the property of Hindu minor, and made it clear that no person shall be entitled to dispose of or deal with the



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property of a minor (whether an undivided share, or otherwise) merely because he purports to or acts as his de facto guardian, I am thus of the opinion that, Section 11 dis-entitles a de facto guardian not only from alienating the separate property of a minor (separate property, in the sense, not including his undivided share in a joint family property), but also his undivided share in a joint family property. If so, it must be held that the alienations effected by the paternal grandmother of the plaintiffs under exs.B-1 and B-2, are void, and the plaintiffs are entitled to a decree in that behalf."

32. But in *Sri Narayan Bal and Others Vs. Sri Sridhar Sutar and Others* (1996) 8 SCC 54 the Hon'ble Supreme Court after dealing with the provision of Sections 6, 8 and 12 of the Hindu Minority and Guardianship Act, 1956, held that Section 8 in view of the express terms of Sections 6 and 12 of the Act, would not be applicable where a joint Hindu Family property is sold/disposed of by the Karta or by any adult member of the family involving an undivided interest of the minor in the said joint Hindu family property. The relevant paragraph is extracted hereunder:

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

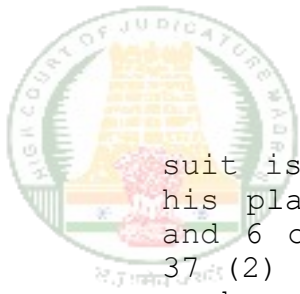


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permission of the Court. But since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under Sections 6 and 12 of the Act, the previous permission of the Court under Section 8 for disposing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

33. From the aforesaid decision of the Hon'ble Supreme Court, it is clear that as per Section 12 of the Hindu Minority and Guardianship Act, 1956, the adult member of the family in the management of the joint Hindu family property can dispose of the undivided interest of the minor in the joint family property. Section 11 of the Act deals with the power of the defacto guardian, whereas Section 12 of the Act deals with powers of the adult member of the family who is in management of the joint family property. Section 12 of the Act empowers the person who is in management of the joint family property to dispose of the said property including the minors undivided interest. In this case, admittedly the first defendant was in management of the entire joint family properties and as such in view of the aforesaid decision of the Hon'ble Supreme Court, he is entitled to dispose of the joint family property including the undivided the minors interest. Therefore, the plaintiff should have asked the relief to set aside the Ex. A1 sale deed, but in this case, he has not asked any such relief. Hence he cannot seek partition in respect of item No.3 of the suit properties. In so far as the other items of the suit properties are concerned, the plaintiff is entitled to get $\frac{1}{2}$ share. Accordingly, the substantial questions of law are answered.

34. In the result, the second appeal is partly allowed. The judgments and decrees passed by the courts below are set aside. The suit in O.S.No.257 of 1996 on the file of the Sub-Court, Panruti, is partly decreed and a preliminary decree is passed to divide item Nos.1, 2, 4, 5 and 6 of suit properties into two equal shares and one such share be allotted to the plaintiff. In so far as the item No3 of the suit properties is concerned, the



suit is dismissed. Since the plaintiff himself has admitted in his plaint that he is in joint possession of item Nos.1,2,4,5 and 6 of the suit properties and valued the suit under Section 37 (2) of the Tamil Nadu Court Fees Act, he is not entitled to seek mesne profits. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Vv/gv

To

1. The Principal District Judge
Cuddalore.
2. The Subordinate Judge
Panruti

Copy to

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

- +1 CC to Mr. Govi Ganesan, Advocate sr 104664
+1 CC to Mr.N.Suresh, Advocate sr 104770.

S.A.No.2182 of 2002

AD(CO)
SP(16/12/2020)