

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.08.2019

PRONOUNCED ON :13.09.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.NO.473 OF 2015

AND

M.P.NO.1 OF 2015

S.Mallika ... Defendant/Appellant/Appellant

Vs

R.Krishnaveni ... Plaintiff/Respondent/Respondent

PRAYER:

The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the learned I Additional Sub Judge, Salem, in A.S.No.97 of 2010 dated 24.06.2011 confirming the judgment and decree of the Learned II Additional District Munsif, Salem, in O.S.No.1319 of 2008 dated 10.02.2010.

For Appellant : Mr.J.Ramakrishnan

For Respondent : Mr.V.Bhiman

JUDGMENT

The Defendant in O.S.No.1319 of 2008 on the file of the II Additional District Munsif, Salem, is the Appellant herein.

2.O.S.No.1319 of 2008 had been filed by R.Krishnaveni, seeking a preliminary decree of 2/3rd share with respect to two items of suit property in S.No.49/3B, AchanKuttapatti Village, Ayothiyapattinam, Salem. The first item of suit property measures 1.55 acres and the second item of suit property measures 0.46 acre, totally 2.01 acres of Punja land. By judgment and decree dated 10.02.2010, the learned II Additional District Munsif, Salem, had granted 1/3rd undivided share to the Plaintiff. The Defendant then filed A.S.No.97 of 2010 on the file of the I Additional Sub Court, Salem. By judgment dated 24.06.2011, the First Appeal was dismissed and the judgment of the Trial Court is confirmed. Aggrieved by the said judgment,

the Defendant had filed the present Second Appeal. The Second Appeal had been admitted on 21.10.2016, on the following four substantial questions of law:

"(i) Whether the judgments of the Court below are vitiated in that, they have applied the provisions of the Sections 6 and 8 of the Hindu Minority and Guardianship Act, 1956 to a sale of a minor's undivided share in a joint family property to declare such sale as void?

(ii) When the plaintiff as a minor is co-nominee a party to Ex.B1 sale deed being represented by her mother as guardian, then, whether the present suit for partition is maintainable, without seeking to set aside the sale made under Ex.B1?

(iii) Whether the present suit is barred by Limitation as contemplated under Article 60 of the Limitation Act, Considering that the respondent herein has not filed the present suit within 3 years for attaining the majority to challenge the sale made under Ex.B1?

(iv) When the father is not alive, and there is other male member, whether the mother being the eldest adult member in management of the joint family properties is not competent to act as a natural guardian to deal with such properties, as contemplated under Section 12 of the Hindu Minority and Guardianship Act, 1956?"

O.S.No.1319 of 2008 (II Additional District Munsif Court, Salem):

3.The Plaintiff claimed that the suit property originally belonged to her grandfather C.Serangan. He had two wives namely, Lakshmi and Pappammal. He had one son Perumal and one daughter Dhanakodi through Lakshmi, his first wife, and one son Ramasamy and two daughters namely, Then and Ramayee through Pappammal, his second wife. Serangan, his first wife Lakshmi and his son Perumal died. Thereafter, there was a partition among Pappammal, the second wife of Serangan and Ramasamy, his son and Ayyammal, widow of Perumal by a registered partition deed, dated

15.05.1987. The suit property was allotted to the share of Perumal who was represented by Ayyammal. The Plaintiff was a minor on the date of partition. Perumal had died leaving behind Ayyammal and two daughters namely, Mariayee @ Maheswari and the Plaintiff herein, Krishnaveni. The Plaintiff thereafter, claimed 1/3rd undivided share in the suit property, in view of the amendment to the Hindu Succession Act. She claimed she was entitled to ½ share and another 1/3rd share in her father's ½ share. She consequently, claimed an undivided 2/3rd share in the suit property. The Plaintiff had married on 15.09.1994. She stated that she came to know that Ayyammal and Mariayee @ Maheswari had sold the entire suit property including the share of the Plaintiff to one Muthusamy. She claimed that the sale of 2/3rd share, when she was a minor was void. She also claimed that the sale was not binding on her. Muthusamy had sold the property to the Defendant, Malliga on 24.11.2008. She claimed that the said sale deed was also not binding on her. She demanded partition and separate possession. It is under these circumstances, that the suit was filed seeking 2/3rd undivided share in the suit properties.

4. In the written statement, it had been stated that originally the property belonged to Serangan. There was a partition on 15.5.1987 among the family members after the death of Serangan. This partition deed was also registered as Doc.No.386/1987. After the partition, in order to meet urgent family expenses and also to maintain the minor daughter namely, the Plaintiff and also to discharge existing loans, Ayyammal, for herself and on behalf of the Plaintiff who was a minor, and her another daughter Mariayee@Maheswari executed a sale deed on 28.11.1988 in favour of one Muthusamy. The said Muthusamy executed a general power of attorney in favour of one Settu on 13.11.2008 by Doc.No.745/2008. The Defendant had purchased the suit properties from Settu on 28.11.2008, for valuable consideration of Rs2,50,000/- and the sale deed was registered as Doc.No.4858/2008. It had been stated that the Defendant is in possession of the suit property. The Defendant specifically stated that the plaintiff was aware about the sale executed by her mother Ayyammal in favour of Muthusamy. The consideration was used for the welfare of the family and also for the Plaintiff. It was stated that though Court permission was not obtained, the sale was voidable at the instance of the Plaintiff and the limitation for challenging the sale was three years from attaining the age of majority. It was stated that the Plaintiff had not sought the relief to set aside the sale deed. It was finally stated that the suit should be dismissed.

5. On the basis of the above pleadings, the learned II Additional District Munsif, Salem, framed the following issues for trial:

- "(i) Whether the suit is maintainable without seeking a declaration to set aside the sale deed 28.11.1988?
- (ii) Whether the suit was barred by limitation?
- (iii) Whether the plaintiff had paid proper Court fees?
- (iv) Whether the plaintiff is entitled for preliminary decree?"

6. During trial, the Plaintiff examined herself as PW-1 and examined another witness Ponnusamy as PW-2. On the side of the Defendant, Muthusamy, the vendor of the Defendant was examined as DW-1. The Plaintiff marked Exs.A1 to A4. EX.A1 was the partition deed dated 15.05.1987, Ex.A2 was the copy of the Advocate notice, Ex.A3 was the acknowledgement card, and Ex.A4 was the notice issued by the Plaintiff to the reply give by the Defendant. On the side of the defendant, Exs.B1 to B6 were marked. Ex.B1 was the copy of the sale deed dated 28.11.1982, Ex.B2 was the copy of the reply notice dated 14.12.2008, Ex.B4 was the copy of the Chitta, Ex.B5 series were the copies of the kist receipts paid by DW-1 and Ex.B6 was the sale deed in favour of the Defendant dated 24.11.2008.

7. On the basis of oral and documentary evidence, the learned II Additional District Munsif, Salem, decreed the suit and granted a preliminary decree of 1/3rd undivided share to the Plaintiff. The learned II Additional District Munsif, held that the suit was maintainable even without setting aside the sale deed dated 28.11.1988. It was also stated that the suit was not barred by limitation. It was also found that proper court fees had been paid. It was finally held that the Plaintiff was entitled to an undivided 1/3rd share in the suit property.

A.S.No.97 of 2010 (I Additional Sub Court, Salem):

8. The Defendant then filed the said First Appeal. The learned I Additional Sub Judge, Salem, framed necessary points for consideration and by judgment dated 24.06.2011, confirmed the findings of the learned Trial Judge, Salem, with respect to the finding that the suit was maintainable even without setting aside the earlier sale deed and that the suit had been filed within the period of limitation. The fundamental principle on which the Appeal was dismissed was that the mother of the Plaintiff did not obtain permission from the Court to execute

the sale deed of the property, holding that, when the Plaintiff had an existing right and was a minor, then permission should have been obtained from the Court to execute such sale deed.

S.A.No.473 of 2015:

9.The unsuccessful Defendant S.Malliga, then filed the present Second Appeal. As stated above the Second Appeal had been admitted on 21.10.2016, on the following four substantial questions of law:

"(i) Whether the judgments of the Court below are vitiated in that, they have applied the provisions of the Sections 6 and 8 of the Hindu Minority and Guardianship Act, 1956 to a sale of a minor's undivided share in a joint family property to declare such sale as void?

(ii) When the plaintiff as a minor is co-nominee a party to Ex.B1 sale deed being represented by her mother as guardian, then, whether the present suit for partition is maintainable, without seeking to set aside the sale made under Ex.B1?

(iii) Whether the present suit is barred by Limitation as contemplated under Article 60 of the Limitation Act, Considering that the respondent herein has not filed the present suit within 3 years for attaining the majority to challenge the sale made under Ex.B1?

(iv) When the father is not alive, and there is other male member, whether the mother being the eldest adult member in management of the joint family properties is not competent to act as a natural guardian to deal with such properties, as contemplated under Section 12 of the Hindu Minority and Guardianship Act, 1956?"

10.Heard arguments advanced by Mr.J.Ramakrishnan, learned counsel for the Appellant and Mr.V.Bhiman, learned counsel for the Respondent.

11.As stated above, the Appellant was the Defendant in the original suit and the Respondent was the Plaintiff in the original suit.

12.The primary ground on which both the court below had granted partition and a preliminary decree of 1/3rd undivided share to the Respondent was that, when her mother Ayammal and her sister Mariayee@Maheswari had sold the property when the

Respondent was the minor on 28.11.1988, the mother Ayyammal had not obtained permission from the Court to execute the sale deed on behalf of the Respondent, who was then a minor. Both the courts below therefore held that the sale deed was vitiated and was void. It was also held by both the courts below that there was no necessity for the Respondent to seek a relief to set aside the said sale deed.

13. Thereafter, observing that there were three co-sharers to the suit properties namely, the mother Ayammal, her elder daughter Mariayee@Maheswari and her younger daughter Krishnaveni, the Respondent herein, both the Courts below had granted an undivided 1/3rd share to the Respondent/Plaintiff. Both the Courts below had also stated that the Appellant who had purchased the property on 28.11.2008, did not obtain title to the entire property. It was under those circumstances that the suit had been decreed by granting a preliminary decree of 1/3rd share to the Respondent herein.

14. Section 6 of the Hindu Minor and Guardianship Act, 1956, is as follows:

"Sec.6. Natural guardians of a Hindu minor.-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),

(a) in the case of a boy or an unmarried girl-the father, and after him, the mother; provided that the custody of a minor who was not completed the age of five years, shall ordinarily be with the mother;

(b)

(c)

Explanation.-In this section, the expressions "father" and "mother" do not include a step-father and a step-mother."

15. Section 8 of the said Act is as follows:

"Sec.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).....

(5).....

6.In this section, "Court" means the City Civil Court or a District Court or a Court empowered under section 4-A of the Guardians and Wards Act, 1890, within the local limits of whose jurisdiction the immovable property in respect to 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."

According to Section 6 of the said Act, the natural guardian of a Hindu Minor with respect to her property is the father and after him is the mother. According to Section 8 of the said Act, the natural guardian shall not transfer by sale any part of the immovable property of the minor without permission of the Court. However, both the Courts below have unfortunately over looked Sub Section 3 of Section 8 of the Act which states that any disposal of immovable property by a natural guardian in contravention of Sub Section 1 of sub Section 2 is voidable at the instance of the minor or any other person claiming under him. Once the provision states that the sale is voidable then necessarily a relief must be sought to set aside the sale and the said relief must be sought within 3 years of attaining age of majority by the minor.

16. Article 60 of the Limitation Act is as follows:

Description	Period of limitation	Time from which period begins to run
To set aside a transfer of property made by the guardian of a ward:		
(a) by the ward who has attained majority;	Three years	When the ward attains majority.
(b) by the ward's legal representative:		
(i) When the ward dies within three years from the date of attaining majority;	Three years	When the ward attains majority.
(ii) when the ward dies before attaining majority.	Three years	When the ward dies.

17. In this connection, the learned counsel for the respondent relied on AIR 1966 SC 24, Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Seth Govindram Sugar Mills, wherein, it had been held as follows:

"10. The next question is whether after the death of Nandlal a new partnership was entered into between the representatives of the two branches of the families i.e. Nandlal's and Bachhulal's. Before we consider this question it is as well that we advert to incidental questions of law that were raised. One is whether the widow of Nandlal could under Hindu law be a karta of the joint Hindu family consisting of three widows and two minors. There is conflict of view on this question. The Nagpur High Court held that a widow could be a karta: see CIT v. Seth Laxmi Narayan Raghunathdas [(1948) 16 ITR 313] ; Pandurang Dahke v. Pandurang Gorle [ILR 1947 Nag 299] . The Calcutta High Court expressed the view that where the male members are minors and their natural guardian is the mother, the mother can represent the Hindu undivided family for the purpose of assessment and recovery of taxes under the Income Tax Act: see Sushila Devi Rampuria v. ITO [(1959) 38 ITR

316] ; and Sm. Champa Kumari Singhi v. Additional Member, Board of Revenue, West Bengal [(1961) 46 ITR 81] . The said two decisions did not recognize the widow as a karta of the family, but treated her as the guardian of the minors for the purpose of income tax assessment. The said decisions, therefore, do not touch the question now raised. The Madras and Orissa High Courts held that coparcenership is a necessary qualification for the managership of a joint Hindu family and as a widow is not admittedly a coparcener, she has no legal qualifications to become the manager of a joint Hindu family. The decision of the Orissa High Court in Budhi Jena v. Dhobai Naik [AIR 1956 Orissa 6] followed the decision of the Madras High Court in V.M.N. Radha Ammal v. CIT [(1950) 18 ITR 225, 230, 232, 233] wherein Satyanarayana Rao, J., observed:

"The right to become a manager depends upon the fundamental fact that the person on whom the right devolved was a coparcener of the joint family ... Further, the right is confined to the male members of the family as the female members were not treated as coparceners though they may be members of the joint family."

Viswanatha Sastri, J., said:

"The managership of a joint Hindu family is a creature of law and in certain circumstances, could be created by an agreement among the coparceners of the joint family. Coparcenership is a necessary qualification for managership of a joint Hindu family."

Thereafter, the learned Judge proceeded to state:

"It will be revolutionary of all accepted principles of Hindu law to suppose that the senior most female member of a joint Hindu family, even though she has adult sons who are entitled as coparceners to the absolute ownership of the property, could be the manager of the family ... She would be the guardian of her minor sons till the eldest of them attains majority but she would not be the manager of the joint family for she is not a coparcener."

The view expressed by the Madras High Court is in accordance with well settled principles of Hindu law, while that expressed by the Nagpur High Court is in direct conflict with them. We are clearly of the opinion that the Madras view is correct."

It was therefore stated that a mother cannot be considered as a guardian and could not have effected the sale in the year 1988 to Muthusamy. Unfortunately, the said judgment had not been rendered on the provisions of the Hindu Minority and Guardianship Act, 1956, wherein, very specifically it had been provided under Section 6 of the said Act, that after the father, the mother is the natural guardian of a minor child. Moreover the question was whether the mother could be a co-parcener even though she has adult sons. This facts in this case are clearly distinguishable and the ratio laid down therein is not applicable to the facts of the present case.

18.The learned counsel for the Appellant relied on 2001 6 SCC 163, Vishwambhar and Others Vs. Laxminarayanan (Dead) Through LRS. And Another. The brief facts of the case had been given in paragraphs 3 and 4 of the Judgment which are given below:

"3. The gist of the case pleaded by the plaintiffs was that their mother as guardian executed the above sale deeds without any legal necessity and without sanction of the court. The transfers made by her were void ab initio and not binding on the plaintiffs and they are entitled to ignore the same altogether. In para 4 of the plaint, it was averred "the transaction, therefore, is liable to be treated as of no legal validity, right from its inception and Defendant 1 never got any title to it under the law". Averment to the same effect was made in respect of the sale deed dated 24-10-1974 in favour of Defendant 2 in para 5 of the plaint. The plaintiffs pleaded that the purchasers are trespassers on the suit land; that the plaintiffs have a right to recover possession of the suit land from the purchasers within 12 years which they have done. Reliance was placed on Article 65 of the Limitation Act. In para 7 of the plaint, it was asserted that the suit has been filed within the period of limitation with reference to the suit transaction for the relief of recovery of possession by way of partition of the suit land. It is relevant to state here that the relief of declaration that the sale deeds executed by Defendant 3 in favour of Defendants 1 and 2 are invalid and inoperative and that the said sale deeds be set aside, were added in the plaint subsequently by amendment.

4. The contesting Defendants 1 and 2 filed written statements pleading, inter alia, that the Hindu Minority and Guardianship Act is not applicable in the case since the alienation has been made by the mother as natural guardian of the minors. She was also the manager of the joint family property. In such a case, according to the defendants, lack of sanction under Section 8 of the Act is not fatal to the alienations. The defendants further averred that the alienations were made for legal necessity, for maintenance of the plaintiffs, for meeting the marriage expenses of Defendants 4 to 7, for satisfying antecedent debts etc. They also took the plea of limitation since the suit was filed beyond 3 years after the minors attained majority. They prayed for dismissal of the suit with costs. Defendants 3 to 7 supported the case of the plaintiffs."

19. Thereafter, the Honourable Supreme Court held as follows:

"9. On a fair reading of the plaint, it is clear that the main fulcrum on which the case of the plaintiffs was balanced was that the alienations made by their mother-guardian Laxmibai were void and therefore, liable to be ignored since they were not supported by legal necessity and without permission of the competent court. On that basis, the claim was made that the alienations did not affect the interest of the plaintiffs in the suit property. The prayers in the plaint were inter alia to set aside the sale deeds dated 14-11-1967 and 24-10-1974, recover possession of the properties sold from the respective purchasers, partition of the properties carving out separate possession of the share from the suit properties of the plaintiffs and deliver the same to them. As noted earlier, the trial court as well as the first appellate court accepted the case of the plaintiffs that the alienations in dispute were not supported by legal necessity. They also held that no prior permission of the court was taken for the said alienations. The question is, in such circumstances, are the alienations void or voidable? In Section 8(2) of the Hindu Minority and Guardianship Act, 1956, it is laid down, inter alia, that the natural guardian shall not, without previous permission of the court, transfer by sale any part of the immoveable property of the minor.

In sub-section (3) of the said section, it is specifically provided that any disposal of immoveable property by a natural guardian, in contravention of sub-section (2) is voidable at the instance of the minor or any person claiming under him. There is, therefore, little scope for doubt that the alienations made by Laxmibai which are under challenge in the suit were voidable at the instance of the plaintiffs and the plaintiffs were required to get the alienations set aside if they wanted to avoid the transfers and regain the properties from the purchasers. As noted earlier in the plaint as it stood before the amendment the prayer for setting aside the sale deeds was not there, such a prayer appears to have been introduced by amendment during hearing of the suit and the trial court considered the amended prayer and decided the suit on that basis. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold, then a suit without such a prayer was of no avail to the plaintiffs. In all probability, realising this difficulty the plaintiffs filed the application for amendment of the plaint seeking to introduce the prayer for setting aside the sale deeds. Unfortunately, the realisation came too late. Concededly, Plaintiff 2 Digamber attained majority on 5-8-1975 and Vishwambhar, Plaintiff 1 attained majority on 20-7-1978. Though the suit was filed on 30-11-1980 the prayer seeking setting aside of the sale deeds was made in December 1985. 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 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."

It is thus seen that the Honourable Supreme Court had specifically held that the suit should be filed within the period of limitation, namely three years from the age of attaining majority and there should be a prayer to set aside the sale deed. The ratio laid therein is directly applicable to the facts of this case. Therefore, I hold that both the Courts below had erred in holding that there was no necessity to seek a relief to set aside the sale deed executed by the mother Ayyammal, acting as guardian of the Respondent. I also hold that both the Courts below had erred in not appreciating that the suit was barred by limitation under Article 60 of the Limitation Act.

20. In the present case, the following dates would reveal that the suit is barred by Limitation under Article 60. The suit properties were allotted to Ayyammal, by a partition deed dated 15.05.1987 executed between herself, Pappammal and Ramasamy. The Plaintiff was a minor on the date of partition. Ayammal for herself and representing the Plaintiff as guardian and her elder daughter Mariayee@Maheswari sold the property by sale deed dated 28.11.1988 to Muthusamy, who was examined as DW-2. Muthusamy sold the property through his power of attorney agent Sattu on 28.11.2008 to the Defendant. The suit was filed on 16.12.2008. The Plaintiff had described herself as being aged 31 years in the plaint. This would evidently mean that she had filed the suit nearly 13 years after attaining the age of majority. Under Section 6 of the Hindu Minority and Guardianship Act, 1956, the natural guardian of Hindu minor is the father and in his absence the mother. In the present case, the father of the Plaintiff, Perumal had died even before the partition deed dated 15.05.1987. Consequently, in his absence, the mother of the Plaintiff Ayammal was her natural guardian. Under Section 8(2) (a) of the Hindu Minority and Guardianship Act, 1956, the natural guardian cannot, without previous permission of the Court, transfer by sale any part of an immovable property of the

minor. In the present case, it is admitted that Ayammal who acted as the guardian of the Plaintiff did not obtain permission of the Court to execute the sale deed on 28.11.1988 in favour of Muthusamy. It had further been provided under Section 8(3) of the said Act, that any disposal of immovable property by a natural guardian in contravention of the stipulation to obtain permission of the Court is voidable at the instance of the minor. If that sale is voidable then, if the minor is to avoid obligation under the sale deed, then the sale deed should be set aside in manner known to law. The manner known to law is by a judgment of the Court to set aside the sale deed in so far as it relates to the share of the minor. Article 60 of the Limitation Act provides that a minor has to set aside the transfer of property made by a natural guardian within a period of three years from the date when the minor had attained the age of majority. In the present case, neither has the Plaintiff sought a prayer to set aside the sale deed nor has she filed the suit within the period of three years from the date of attaining the age of majority. The suit has to fail on these grounds.

21. Accordingly, the first substantial question of law is answered that the judgments of the Courts below are vitiated since the Respondent had not filed a suit seeking the relief to declare the sale deed dated 28.11.1988 as void. The second substantial question of law is answered that the suit is not maintainable without setting aside the sale deed in Ex.B1. The third substantial question of law is answered that the suit is barred by limitation as contemplated under Article 60 of the Limitation Act, since the suit had not been filed within three years from the date of attaining the age of majority by the Respondent. The fourth substantial question of law is answered that the mother is the natural guardian under Section 6 of the Hindu Minority and Guardianship Act, 1956 and in the present case, since the Respondent had a undivided interest in a joint family property, the appointment of natural guardian is also not contemplated.

22. In view of the above reasons, I have no hesitation to hold that both the Courts below have unfortunately erred in granting a decree in favour of Respondent/Plaintiff herein. The Judgment dated 10.02.2010 in O.S.No.1319 of 2008 on the file of the II Additional District Munsif Court, Salem, and the Judgment dated 24.06.2011 in A.S.No.97 of 2010 on the file of the I Additional Sub Court, Salem, are both set aside and the Second Appeal is allowed, with costs. Consequently, connected miscellaneous petition is closed.

MEMORANDUM OF COSTS
SA.No.473 of 2015

Respondent (	) Costs	Rs.P.
Stamp for Vakalatnama		10.00
Do.used for the Memo	... (Court Fees)	500.00
Do.for do.of the Lower Court ..	(Stamp) ...	45.00
Do.for do.of the do.	... (Batta) ...	30.00
Advocate's fee on rupees	...(FC not filed)	
Translation Printing Charges		Nil
----- Typing		
To be paid to the Respondent (	) -----	
		585.00
by the Appellant (	) -----	

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

smv

To

1.The I Additional Sub Court, Salem.

2.The II Additional District Munsif Court, Salem.

3.The Section officer
VR Section, Madras High Court.

+1cc to Mr.J.Ramakrishnan, Advocate, S.R.No.78875

+1cc to Mr.V.Bhiman, Advocate, S.R.No.79061

S.A.No.473 of 2015

VSNII(CO)
CS/22/10/2020