

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.02.2020

Date of Verdict : .06.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.572 of 2005

1. M.Raju
2. B.Vijaya
3. M.Gopal

...Appellants/Appellants
/Respondents1 to3

Vs.

1. Deepa
2. Mahendran
3. Navaneethan
4. Sundariammal

...Respondents/Appellants
Plaintiffs 1 to 4

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 01.03.2005, in A.S.No.29 of 2004 on the file of the District Court at Ooty, reversing the judgment and decree dated 12.07.2004 in O.S.No.225 of 1998 on the file of the Sub Court at Ooty.

For Appellants : Mr.Srinath Sridevan
For Respondents
For R1 to R3 : Mr.K.Sridharan
For R4 : Notice served

JUDGMENT

This second appeal is directed as against the judgment and decree dated 01.03.2005, in A.S.No.29 of 2004 on the file of the District Court at Ooty, reversing the judgment and decree dated 12.07.2004 in O.S.No.225 of 1998 on the file of the Sub Court at Ooty.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiffs in brief is as follows :-

3.1. The suit is filed for declaration and partition. The plaintiffs are the sons of one, Joghee, who is the husband of the fourth defendant herein. The suit property originally belonged to the plaintiff's father and after his demise, the plaintiffs and the fourth defendant, who is the mother of the plaintiffs, are being the legal heirs of the deceased Joghee, had been in possession and enjoyment of the suit property along with other properties left by him. The fourth defendant is being the guardian of the minor plaintiffs had been managing the suit properties left by him including the suit properties. The suit properties are well developed tea estates yielding an average income of more than Rs.40,000/- per month.

3.2 Further stated that apart from the suit properties, other property belonged to the said Joghee also valuable property and its monthly income is more than Rs.30,000/- per month. While their father was alive, he had left no debt at the time of his death. Therefore, there was no necessity for the fourth defendant to sell any part of the property left by her husband. While being so, on 14.02.1997, the fourth defendant acting for herself and for the plaintiffs as guardian sold the 'A' schedule property in favour of the first defendant for sale consideration of Rs.1,94,000/-. On the same day, she also sold another property described in 'B' schedule suit property in favour of the second defendant for sale consideration of Rs.50,750/- In fact, the suit properties are more than worth about Rs.10,00,000/- at the prevailing market value and these properties were not sold for any family debt. Therefore, the sale deeds executed by the fourth defendant in favour of the first and second defendant are not binding the plaintiffs to the extent of 3/4 shares in the suit properties. After the sale, the first and second defendants had been put in possession of the suit property by the fourth defendant. When this fact was brought to the notice of the plaintiffs, they had questioned the fourth defendant about the sale. Subsequently, the first and second defendants leased out the suit property to the third defendant. Hence, the suit challenging the sale deeds executed in favour of the first and second defendants and also claiming their respective 3/4 shares in the suit properties.

4. Resisting the same, the defendants 1 and 2 filed written statement and stated that the suit property belonged to one, Bokka Halan and he had two sons. After his demise, his sons inherited the said properties. The husband of the fourth defendant owned more than 20 acres and after his demise, the suit properties were maintained by his wife, namely the fourth

defendant. The said property never yielded Rs.40,000/- per month as alleged in the plaint. The suit properties were duly purchased by registered sale deeds for valid sale consideration from the fourth defendant and as such they are bonafide purchasers. Thereafter they leased out the suit property in favour of the third defendant. He further contended that the other legal heirs of the Bokka Halan were not impleaded in the suit property as such the suit is bad for non joinder of necessary parties and prayed for dismissal of the suit.

5. The third defendant filed written statement separately stating that the suit properties were purchased by the defendants 1 and 2 for valid sale consideration. In fact, those properties were sold by the fourth defendant only for the welfare of the plaintiffs. Now the fourth defendant colluded with the plaintiffs and filed the present suit to make unlawful gain. Therefore prayed for dismissal of the suit.

6. In support of the plaintiffs' case, P.W.1 was examined and two documents were marked as Ex.A.1 and Ex.A.2. On the side of the defendants, D.W.1 was examined and did not mark any document. On considering the oral and documentary evidences adduced by the respective parties and the submissions made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiffs preferred an appeal suit in A.S.No.29 of 2004 before the District Court at Ooty. The first appellate Court on appreciating the materials placed on records, allowed the appeal by reversing the judgment and decree passed by the trial Court and decreed the suit in favour of the plaintiffs. Challenging the same, the defendants 1 to 3 have come forward with the present second appeal.

7. At the time of admission of the second appeal on 18.05.2005, the following substantial questions of law were framed :-

- a) Whether a suit to set aside a sale effected during the minority of persons, can be filed through a guardian during their minority itself?
- b) Whether the education and marriage expenses of the children will not constitute a legal necessity?
- c) Whether the guideline value is the sole deciding factor for deciding the legal necessity?

8. The learned counsel appearing for the defendants 1 to 3 submitted that the present suit is nothing but puppet suit. The fourth defendant colluded with the plaintiffs and filed the present suit only to nullify the sale deeds executed in favour of the first and second defendants. Both the sale deeds were executed by the fourth defendant for necessity and as such the necessity was in existence on the date of sale. In fact, the sale deed executed by the fourth defendant was witnessed by the husband of the first plaintiff and as such the first plaintiff got married even at the time of execution of sale deed though she was minor. Therefore, they had full knowledge about the sale executed by the fourth defendant in favour of the defendants 1 and 2. The fourth defendant already was facing a criminal trial in criminal No.87 of 1997 on the file of the Judicial Magistrate, Kotagiri arising out of offences punishable under Section 138 NI Act. Therefore, she had legal necessity to settle the amount in pursuant to a complaint which was pending in CC.No.87 of 1997 on the file of the Judicial Magistrate, Kotagiri. He further submitted that the fourth defendant was conveniently absent before the trial court and remained exparte. It shows that she colluded with the plaintiffs and instituted puppet suit against the defendants 1 to 3. Admittedly, the entire suit property belonged to one, Bokka Halan, who had two sons. After his demise, his two sons partitioned the said property, in which the suit property was allotted to the husband of the fourth defendant, namely B.H.Joghee. The plaintiffs did not produce any document to prove the partition between their father and his brother. While being so, the plaintiffs failed to implead the necessary party to the suit as such the suit itself is bad for non joinder of necessary parties.

8.1 He further vehemently contended that Section 8 of the Hindu Minority and Guardianship Act, 1956 should be read along with Section 12 of the said Act. Therefore, Section 8 is not applicable to the case on hand since the sale itself is for legal necessity and the necessity of the family. In support of his contentions, he relied upon the following judgments:

- (i) Sri Narayan Bal and Others Vs. Sri Sridhar Sutar and Others reported in 1996 (8) SCC 54
- ii. K. Logambal and 3 others Vs. V.V. Sakunthala and 6 others reported in 1997 (II) CTC 602
- iii. Manoharakumari Vs. Anitha & another reported in 2010 (3) CTC 411
- iv. Vasantrao Gulabrao Thakre through his Legal Heirs Vs. Sudhakar Wamanrao Hingankar and others reported in 2018

(5) Mh.L.J

(v) Kehar Singh (dead) through legal representatives and

others Vs. Nachittar Kaur and others reported in (2018) 14 SCC 445

9. Per contra, the learned counsel for the plaintiffs submitted that admittedly the plaintiffs were minor at the time of the sale deed executed by the fourth defendant in favour of the defendants 1 and 2. The plaintiffs' father acquired the suit property by partition along with his brother. Originally, the suit property belonged to their grandfather Bokka Halan. After his demise, the suit properties were partitioned between two brothers, namely the father of the plaintiffs and his brother. After his demise, the property devolved into plaintiffs and their mother, namely fourth defendant. Therefore, Section 8 of the Hindu Minority and Guardianship Act, 1956 prohibits the sale of the property owned by minors without permission. As such the sale deed executed by the fourth defendant in favour of the first and second defendants are nullified and the first appellate court rightly declared those sale deeds as null and void. In this regard, he relied upon the judgment dated 24.01.2013 passed by this Court in the case of Selvam and others Vs. Mangaiyarkarasi in SA.No.1057 of 2001.

10. Heard, Mr.Srinath Srideven, learned counsel appearing for the defendants and Mr.K.Sridharan, the learned counsel appearing for the plaintiffs.

11. The property originally belonged to one, Bokka Halan and he had two sons. After his demise, one of his two sons, namely the father of the plaintiffs B.H.Joghee, was allotted more than twenty acres of land and he was in possession and enjoyment of the same till his death. Therefore, the suit property was acquired by the said B.H.Joghee by partition and it is self acquired property. After his demise, the fourth defendant, being the mother of the plaintiffs and natural guardian acting for herself and acting as a guardian on the part of the plaintiffs, she sold out the suit property in favour of the first and second defendants by two sale deeds, which were marked as Ex.A.1 and Ex.A.2 on 14.02.1997. The sale deeds were executed by the fourth defendant for herself and on behalf of the plaintiffs as their natural guardian. Admittedly, at the time of the sale of the properties, the plaintiffs were minors. The second defendant is none other than the own aunt of the plaintiffs and the first defendant is her husband. Both the sale deeds were executed on the same day, namely on 14.02.1997. According to the plaintiffs, the first defendant purchased the 'A' schedule property admeasuring 3.88 acres comprised in

S.No.944/3 for a sum of Rs.1,94,000/- and the second defendant purchased 'B' schedule property admeasuring 2.30 acres comprised in S.No.970/1 for a sum of Rs.50,750/-. Both the properties are tea estates and they would fetch a sum of Rs.40,000/- and Rs.30,000/- per month respectively. Therefore, the sale consideration was very low and it was not effected in pursuance of the guideline values prevailing in the suit property.

12. The learned counsel for the appellants submitted that the suit properties were sold for legal necessity since the fourth defendant was facing criminal prosecution in CC.No.87 of 1997 on the file of the Judicial Magistrate, Kotagiri initiated for the offences punishable under Section 138 of Negotiable Instruments Act. He further contended that though the property belonged to minor cannot be sold without the permission of the Court as provided under Section 8 (3) of the Hindu Minority and Guardianship Act, 1956, if the property is a joint Hindu family property, in which the minor had undivided share sold by the karta of the family, no previous sanction from the court is necessary. At this juncture, it is relevant to extract the provisions under Section 8 (1) (2) (3) of the Hindu Minority and Guardianship Act, 1956 and Section 12 of the said Act as follows:

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.

12. Guardian not to be appointed for minor's undivided

interest in joint family property

Where a minor has an undivided interest in 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.

Admittedly, the suit property was allotted to the father of the plaintiffs by way of partition between himself and his brother. Therefore, it is not a joint Hindu family property and as such Section 12 is no way related to the case on hand. As discussed above, it is a self acquired property by the father of the plaintiffs and after his demise, the entire property devolved into the plaintiffs and the fourth defendant being the wife of the deceased Joggi.

13. The learned counsel for the appellants relied upon the judgment in the case of Sri Narayan Bal and Others Vs. Sri Sridhar Sutar and Others reported in 1996 (8) SCC 54 to substantiate his contention that where a Hindu joint family property is sold / disposed of by the karta involving undivided interest of the minor in the said Hindu joint family property, Section 10 would not apply, and the relevant paragraph of the said judgment is extracted hereunder:

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 be viewed in a single glimpse, simultaneously in conjunction with each other. Each provisions, and in particular Section 8, cannot be viewed in isolation. If read together the intent of the legislative 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, is alone contemplated under Section 8, whereunder his powers and duties are defined. Section 12 carves out an exception to the rule that should there be no adult member of the joint family in management of the 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 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 to 12 of the Act, the previous permission of the Court under Section 8 of 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.

14. He also relied upon the judgment in the case of K.Logambal and 3 others Vs. V.V.Sakunthala and 6 others reported in 1997 (II) CTC 602, wherein it is 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, . 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.

15. He also relied upon the judgment in the case of Vasantrao Gulabrao Thakre through his Legal Heirs Vs. Sudhakar Wamanrao Hingankar and others reported in 2018 (5) Mh.L.J, wherein it is held as follows:

13. In the instant case, it is an admitted position that the original 13 sa582.06 plaintiffs had only an undivided interest in the joint family property, which was subject matter of aforesaid sale-deed dated 30.03.1974 executed by their mother in favour of the appellant. Therefore, applying the position of law as laid down by the Hon'ble Supreme Court in the above quoted judgment of Sri Narayan Bal and others .v. Sridhar Sutar and others (supra) and followed by this Court in the case of Sandhya Rajan Antapurkar and others .v. State of Maharashtra (supra), it is evident that the mother of the original plaintiffs was not required to take

permission of the Court under Section 8(2) of the aforesaid Act before executing the sale- deed in favour of the appellant. The appellate Court in the impugned judgment and order, thus, committed an error in holding that it was imperative for the mother of the original plaintiffs to have obtained permission of the Court before executing the aforesaid sale-deed. The judgment of the Hon'ble Supreme Court in the case of Saroj .v. Sunder Singh and others (supra) relied upon by the learned Counsel for respondent Nos.1 to 4 is distinguishable, because in that case the Court recorded that the share of daughters after the death of their father had become definite and it had been so recorded in the mutation register. In the present case, the Court is concerned admittedly with undivided share of the minors (original plaintiffs) and, therefore, Section 8 is clearly not applicable as laid down by the Hon'ble Supreme Court in the case of Sri Narayan Bal and others .v. Sridhar Sutar and others (supra). Accordingly, the first question of law, on which this appeal was admitted, is answered in 14 sa.582/06 favour of the appellant and against respondent Nos.1 to 4.

16. The above judgments are pertaining to the joint Hindu family property and as such Section 8 (3) is not applicable to the case on hand. As discussed above, the suit properties are not joint Hindu family properties and the suit properties are acquired by the father of the plaintiffs by partition and as such admittedly, the suit properties are not joint Hindu family properties. Therefore, the above judgments are not helpful to the case on hand.

17. The learned counsel for the defendants, relying upon the judgment in the case of Kehar Singh (dead) through legal representatives and others Vs. Nachittar Kaur and others reported in (2018) 14 SCC 445, stated that the suit properties were sold out by the fourth defendant for legal necessity, the relevant paragraph of the said judgment is extracted hereunder:

20) Mulla in his classic work "Hindu Law" while dealing with the right of a father to alienate any ancestral property said in Article 254, which reads as under:

'Article 254

254. Alienation by father - A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may:

(1) make a gift of ancestral movable property to the extent mentioned in Article 223, and even of ancestral immovable property to the extent mentioned in Article 224;

(2) sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and greatgrandsons therein, for the payment of his own debt, provided the debt was an antecedent debt, and was not incurred for immoral or illegal purposes(Article 294).'

21) What is legal necessity was also succinctly said by Mulla in Article 241, which reads as under:

'Article 241

241. What is legal necessityThe following have been held to be family necessities within the meaning of Article 240:

- (a) payment of government revenue and of debts which are payable out of the family property;
- (b) Maintenance of coparceners and of the members of their families;
- (c) Marriage expenses of male coparceners, and of the daughters of coparceners;
- (d) Performance of the necessary funeral or family ceremonies;
- (e) Costs of necessary litigation in recovering or preserving the estate;
- (f) Costs of defending the head of the joint family or any other member against a serious criminal charge;
- (g) Payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a father, it is not enough to show merely that the debt is a preexisting debt;

The above are not the only indices for concluding as to whether the alienation was indeed for legal necessity, nor can the enumeration of criterion for establishing legal necessity be copious or even predictable. It must therefore depend on the facts of each case. When, therefore, property is sold in order to fulfil tax obligations incurred by a family business, such alienation can be classified as constituting legal necessity.'

22) The High Court, after taking note of the

aforementioned legal principles of Hindu law, dealt with this question on facts in para 12, which reads as under:

'19. In the light of the aforesaid legal position, now it has to be examined as to whether the defendants have discharged their onus to prove the existence of the legal necessity at the time of the impugned sale deed. Defendant Tara Singh, while appearing as DW 13 has stated that amount of Rs.5,500/was paid by him as earnest money, Rs.500/was spent for payment of Taccavi loan and registration of sale deed and Rs.934/was paid to the vendor, about 34 days prior to the registration of the sale deed, for payment of Taccavi loan an amount of Rs.12,566/was paid at the time of registration of the sale deed. DW 1 Shri Gopal, who was an Assistant in the DC office, Ludhiana has stated that Pritam Singh vendor was granted loan of Rs.3,000/in the year 1995 and he did not pay a penny from the said loan till 20.11.1964. DW 2 Ram Dass, a tubewell mechanic has proved that Pritam Singh had spent Rs.4,000/for installing a tubewell in the year 1963. DW 9 Sat Pal, Additional Wasil Baqa Nawis, Ludhiana has proved that the vendor Pritam Singh had taken various loans from the department for purchase of seeds bag. Rs.500/for repair of house and Rs.2,500/for purchasing pumping set. This witness further stated that Pritam Singh had purchased a Rehri for Rs.1,025/from him in the year 1961. DW 11 Dalip Singh has proved that Pritam Singh had borrowed a sum of Rs.3,000/from him in the year 1959 by executing a pronote. This witness has also stated that Pritam Singh had performed marriage of his 5 children.'

23) In our considered opinion, the approach, reasoning and the conclusion arrived at by the High Court on the question of legal necessity as to whether it existed in this case while selling the suit land by Pritam Singh or not does not call for any interference as the same was rightly dealt with by the High Court while appreciating the evidence on record.

24) It has come in evidence that firstly, the family owed two debts and secondly, the family also needed money to make improvement in agriculture land belonging to the family. Pritam Singh, being a Karta of the family, had every right to sell the suit land belonging to family to discharge the debt liability and spend some money to make improvement in agriculture land for the maintenance of his family. These facts were also

mentioned in the sale deed.

18. In the above case also, the Hon'ble Supreme Court of India discussed about the legal necessity and power of karta of joint Hindu family to sell the ancestral property. In the case on hand, admittedly, the suit properties were acquired by partition by the father of the plaintiffs and as such it is not a Hindu joint family property. Though PW1 admitted that her mother, namely the fourth defendant arranged for her education and her marriage expenditures, the fourth defendant was not examined on the side of the defendants to establish the same. Further, PW1 stated that on the date of the death of their father, they were not owing debt to anybody and a cheque case was pending in CC.No.87 of 1997 on the file of the Judicial Magistrate, Kotagiri against the fourth defendant claims to have been filed by the first defendant. Thus, the sale deeds were effected while pending the criminal proceedings against the fourth defendant. As discussed above, the property is not a Hindu joint family property and it is a self acquired property by their father. Therefore, the above judgments are not helpful to the case of the defendants.

19. As pointed out by the learned counsel for the respondents, Section 8 (2) of the Hindu Minority and Guardianship Act provides that the natural guardian shall not sell without prior permission of the Court and any sale without such permission is rendered voidable under Section 8 (3) of the said Act. In such case, the minor plaintiff could seek to set aside such transfer as voidable. Admittedly, the fourth defendant being the mother and also acting as guardian of the minors sold the said property to the first and second defendants without any prior permission from the Court. Therefore both the sale deeds are voidable one. That apart, in the sale deeds executed in favour of the first and second defendants which were marked as Ex.A.1 and Ex.A.2, the husband of the first plaintiff is one of the witnesses. Therefore, the defendants contended that the sale itself is valid one and only for the welfare of the minor plaintiffs, the suit properties were sold out. In this regard, the learned counsel for the respondents relied upon the judgment dated 24.01.2013 passed by this Court in the case of Selvam and others Vs. Mangaiyarkarasi in SA.No.1057 of 2001, the relevant paragraphs are extracted hereunder:

14. The learned counsel for the respondent commented upon the conduct of the father in attesting the sale deed and it was contended that the attestation of the sale deed would amount to execution itself. On the other hand, it is contended by the learned counsel

for the appellant that, mere attestation of the document by the father, in a transaction executed by the mother would not confer validity upon the transaction entered into on behalf of the minor. The mother has acted as guardian in selling her property of her minor sons admittedly, in the presence of the father. The father has signed in the sale deed as attester. It is not a case where disqualification is alleged on the part of the father. It is a case where the father, of course, on behalf of the minors, challenged the sale made by the mother on behalf of the minors. Just because, the father is an attesting witness to the document of sale executed by the mother whether it could be contended that father is the Executant of the sale deed. What is the legal effect and impact of the father signing in the sale deed as an attester, is an issue to be considered.

14.1. The decision reported in (1989) 1 M.L.J. 54 (T.N.Panchayats Devel. Officers Assn. v. Govt. of T.N.) is relied upon by the learned counsel for the appellants and the observation runs as follows:-

Under the personal law of the parties, the mother of the 1st plaintiff though appointed as guardian in respect of the property-settled on the first plaintiff, would only be in the nature of a de facto guardian in the presence of the father of the first plaintiff who would be the de jure guardian. There is no dispute that the exchange deed had been entered into on behalf of the first plaintiff through her mother and her father had not been participating in that transaction at all. In other words the deed of exchange would be a transaction entitled into on behalf of the 1st plaintiff through her de facto guardian and such a transaction by the father of the 1st plaintiff would not confer any sanctity or legality on that transaction. Thus from the mere attestation of the exchange deed by the father of the 1st plaintiff, the validity of the transaction cannot be upheld. 14.2. The decisions relied upon by the appellants clearly go to show that the sale effected by the mother, though attested by the father, is the sale executed only by the mother and not by the father. The sale executed by the mother is not valid, as the permission of the Court was not obtained.

20. This court held that while executing the sale deed by the mother on the capacity of guardian, the father signed as

attestor. By mere attestation of the exchange deed by the father of the first plaintiff, the validity of the transaction cannot be upheld. In the case on hand, though the husband of the first plaintiff signed as an attestor to the sale deed, the validity of the sale deed cannot be upheld since the sale deeds executed by the fourth defendant are not valid as permission of the Court was not obtained. Therefore, the first appellate court rightly reversed the findings of the trial court and decreed the suit in favour of the plaintiffs. As such, this Court does not find any valid reason to interfere with the findings rendered by the first appellate court.

21. Therefore, this Court is of the considered opinion that no substantial questions of law are involved in this second appeal. Be that as it may, all the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the plaintiffs and as against the defendants.

22. In the result, this Second Appeal stands dismissed. No order as to costs.

Sd/-

Asstistant Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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1. The District Court,
Ooty
2. The Sub Court at Ooty.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

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