



S.A.No.591 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 20.02.2024	Judgment Pronounced on 28.03.2024
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CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.591 of 2018

M.Bojan

..Appellant

Vs.

1.B.Malathi
2.V.Ananthi
3.B.J.Halan
4.Parvathy

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 04.01.2018 made in A.S.No.41 of 2017 on the file of the Subordinate Court, Coonoor, reversing the judgment and decree dated 30.09.2010 passed in I.A.No.157 of 2010 in O.S.No.18 of 2009 on the file of the District Munsif Court, Kothagiri.

For Appellant : Mr.V.G.Sureshkumar

For Respondents

For RR1 & 2 : Mr.P.R.Balasubramanian

For RR3 & 4 : No appearance



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JUDGMENT

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This Second Appeal has been filed against the judgment and decree dated 04.01.2018 made in A.S.No.41 of 2017 on the file of the Subordinate Court, Coonoor, reversing the judgment and decree dated 30.09.2010 passed in I.A.No.157 of 2010 in O.S.No.18 of 2009 on the file of the District Munsif Court, Kothagiri.

2.The unsuccessful defendant is the appellant herein. The defendant filed an application under Order 7 Rule 11 of Code of Civil Procedure to reject the plaint. The Trial Court allowed the said application and rejected the plaint. However, on appeal, the First Appellate Court reversed the findings of the Trial Court and dismissed the application filed under Order 7 Rule 11 of Code of Civil Procedure and rejected the plaint.

3.I have heard Mr.V.G.Sureshkumar, learned counsel for the appellant and Mr.P.R.Balasubramanian, learned counsel for the respondents 1 and 2.

4.Mr.V.G.Sureshkumar, learned counsel for the appellant would invite my attention to the plaint averments and allegations and also the affidavit



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filed in support of the application to reject the plaint. The learned counsel for the appellant would submit that the plaintiffs had approached the Court based on a Will executed by the grandfather of the plaintiffs on 19.03.1986 and that the plaintiffs were minors at that point of time and after attaining majority, the plaintiffs had taken possession of the property bequeathed them and they have been in absolute possession of the same. According to the plaintiffs, the 1st defendant attempted to trespass into the said property in the last week of August 2008 and came to light that the 1st defendant was claiming that the father of the plaintiffs namely, the 2nd defendant had sought for a loan of Rs.50,000/- and repayment was secured by executing a Sale Deed property to convey the suit property.

5.The learned counsel for the appellant would place reliance on the following decisions:

1) 2006 (12) SCC 709 (State of Punjab and Another Vs. Balkaran Singh).

2) 1998 2 LW 171 (The State of Tamil Nadu represented by the District Collector, Thiruchirapalli. Vs. K.Purushothaman).

3)2008 6 MLJ 597 (Udhayakumar and Others Vs. Krishnamoorthy @ S.K.Moorthy).



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4) 1977 4 SCC 467 (T.Arivanandam Vs. T.V.Satyapal

and Another).

5.2001 6 SCC 163 (Vishwambhar and Others Vs. Laxminarayan (Dead) through LRs and Another).

6) 2020 7 SCC 366 (Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and Others).

7) 2016 SCC Online MAD 33926 (Karuppaiah Vs. Karthick).

8) 2017 SCC Online ORI 905 (Malatilata Mishra and Another Vs. Keshab Chandra Mohapatra).

6.Per contra, Mr.P.R.Balasubramanian, learned counsel for the respondents 1 and 2 would submit that the First Appellate Court has rightly allowed the appeal and he would further referred to Sections 6, 8, 9 and 11 of the Hindu Minority and Guardianship Act, 1956 and in this connection, he would place reliance on the following decisions:

1) (2003) 1 SCC 557 (Saleem Bhai and Others Vs. State of Maharashtra and Others).

2) (2008) 12 SCC 661 (Kamala and Others Vs. K.T.Eshwarasa and Others).

3)S.A.No.711 of 2009 (R.Arumugam Vs. P.R.Palanisamy and Another).



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4)CA.No.7413 of 2023 (Kum.Geetha, D/o. Late Krishna and Others Vs. Nanjundaswamy and Others).

5)C.A.No.605 of 2005 and 601 of 2005 (Baljinder Singh Vs. Rattan Singh).

6)AIR 2017 Bombay 77 (Rameshwar Babasaheb Paul Vs. Shivaji Eknathrao Paul and Others).

7)AIR 2002 SC 215 (Madhegowda (D) By Lrs Vs. Ankegowda (D) By Lrs & Others).

8)AIR 1998 ORI 196 (Smt.Kamala Kumari Bohara Vs. Harekrishna Ghadei and Others).

9)AIR 1985 CALCUTTA 66 (Kali Charan Naskar Vs. Sudhir Chandra Naskar and Another).

10)AIR 2004 MADRAS 319 (T.S.Bellieraj Vs. Vinodhini Krishnakumar and Others).

11)(1992) 1 MLJ 1 (Commissioner, H.R. and C.E. and Others Vs. P.V.Subramania Ayyar and Others).

12)AIR 1965 Assam and Nagaland 16 (Prasanna Kumar Sarmah and Others Vs. Tulsinath Sarma Thakur and Others).

13)AIR 1930 All 858 (Mahomed Raza Ahmad and Others Vs. Zahoor Ahmad and Others).

7.The learned counsel for the respondents would place reliance on the above decisions and would contend that the Sale Deed, being *void ab initio*



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since inception and there was no legal necessity for sale and the sale was not in the welfare of the minors, triable issues arise for consideration and the plaint cannot be rejected on the ground that it is hit by the law of limitation. According to the learned counsel, the Sale Deed was also without the permission of the Court and the father or the mother had no right to deal with the property. He would contend that Article 60 of the Limitation Act would have no application to the facts of the present case, since despite transfer of property, the minors have been in possession of the suit property. He would further contend that Section 27 of the Limitation Act would not apply for the same reason that the minors are in possession of the suit property, though alienated by the guardian, during their minority.

8.He would further state that the first prayer seeking to set aside and cancel the Sale Deed is independent of the remaining prayers in the suit and he would contend that the prayer for declaration and injunction can be decided only at the time of trial and Order 7 Rule 11 of CPC cannot be invoked to shut out the valuable rights of the plaintiffs. He would therefore state that Article 60 of the Limitation Act would not apply and the case was governed by Article 59 of the Limitation Act and consequently, the suit was



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not liable to be dismissed.

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9.I have carefully considered the rival submissions advanced by the learned counsel on either side.

10.The application to reject the plaint has been filed on the main ground that the suit is barred by limitation. It is well settled law that the limitation is a mixed question of fact and law and ordinarily when the plea of limitation is raised by the defendant, unless the defendant is able to show, on the face of the plaint that the suit is barred by limitation, the Courts would not venture to reject the plaintiff under Order 7 Rule 11 of Code of Civil Procedure.

11.Keeping in mind the above settled position of law, the plaint would have to be examined. The plaintiffs have prayed for the following two reliefs:

(i) to set aside and cancel the Sale Deed dated 27.01.1993, registered on the file of the Sub Registrar, Kotagiri, as null and void and inoperative.

(ii) and for the relief of declaration that the plaintiffs are the absolute



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owners of the suit property and for a consequential injunction to restrain the 1st defendant, his men, servants, agents, legal representative and any person claiming through or under him, from in any way, interfering with the plaintiffs possession and enjoyment of the suit property.

12. From the above, it can be seen that apart from seeking cancellation of the Sale Deed in favour of the 1st defendant, the plaintiffs also seek to declare their title to the suit property and also for permanent injunction to protect their possession.

13. Under Article 59 of Limitation Act, 1963, the period of limitation to cancel or set aside an instrument or decree is three years and the time begins to run when the facts entitling the plaintiffs to have the instrument or decree cancelled or set aside or contract rescinded, first becomes known to the plaintiffs.

14. Under Article 65 when the suit is filed for possession of immovable property or any interest thereon based on title, the period of limitation provided is 12 years and it begins to run from the date of possession of the



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defendant becoming adverse to the plaintiffs.

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15. In the present case, according to the plaintiffs, they are in physical possession of the suit property and they claim to know of the alleged Sale Deed in favour of the 1st defendant only in November 2008, when the 1st defendant sent a reply notice to the notice issued by the plaintiffs on 01.10.2008. The suit has been filed immediately thereafter, in January 2009. However, it is the case of the defendant that the plaintiffs, being minors and the Sale Deed having been executed by their guardian on 27.01.1993, would have to necessarily file a suit challenging the said Sale Deed within three years from the date of the minors attaining majority.

16. According to the learned counsel for the appellant, admittedly, both the plaintiffs are aged (1st plaintiff -26 years) (2nd plaintiff -24 years) even on the date of filing of the suit in January 2009. According to the learned counsel for the appellant, Article 60 of the Limitation Act would alone be relevant and not Articles 59 or 65 of Limitation Act.

17. Article 60 of the Limitation Act, 1963, is extracted hereunder for



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easy reference:

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60.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.

From a careful reading of the above Article 60 of the Limitation Act, it is seen that if the property has been transferred by the guardian of a minor, then the period of limitation is three years and it begins to run from the date the minor attains the age of majority.

18.In this regard, I proceed to discuss the decisions that have been relied on by the learned counsel on either side.

(a) In *The State of Punjab and Another's* case, the Hon'ble Supreme



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Court held that when a prayer for declaration is found to be barred by limitation, it has to be noticed that the prayer that follows is only consequential to the relief of declaration.

(b) In *The State of Tamil Nadu represented by the District Collector, Thiruchirapalli* case, this Court held that when a prayer for injunction is consequential and it is found that the plaintiff is not entitled to get the main relief of declaration, the consequential relief also cannot be granted.

(c) In *Udhayakumar and Others'* case, this Court held that granting of permanent injunction after negating the larger relief of declaration could be granted only on facts of each case and not as a universal relief and held that the relief of injunction being consequential to the declaratory relief, and when the larger relief was negated, consequential relief cannot be granted.

(d) In *T.Arivanandam'* case, the Hon'ble Supreme Court held that the Court must read the plaint on meaningful basis and if it manifestly appears vexatious and meritless then the Court should exercise its power under Order VII Rule 11 of Code of Civil Procedure and should not be carried away by



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clever drafting which may have created an illusion of the cause of action and that the Court must nip such vexatious litigation in the bud.

(e) In *Vishwambhar and Others'* case, the Hon'ble Supreme Court held that alienation by the guardian of minor was a voidable document and Article 60 of Limitation Act would apply.

(f) In *Dahiben's* case, the Hon'ble Supreme Court held that the Court has to find out whether the plaint discloses a real cause of action or whether an illusory cause of action has been created by clever drafting and the Court must be vigilant against camouflage or suppression and if the suit is found to be vexatious or an abuse of process, the Court, should exercise its drastic power under Rule 11 of Order 7 of CPC to reject the plaint.

(g) In *Karuppaiah's* case, this Court held that when the alienation by the guardian was only voidable at the instance of the minor and unless the alienation is set aside, the plaintiff cannot get his title declared and was also not entitled to a consequential relief of recovery of possession.



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(h) In *Malatilata Mishra and Another's* case, the High Court of Orissa held that when a transfer made by a guardian is sought to be set aside it is only a voidable transfer and Article 60 of Limitation Act would come into play.

(i) In *Narayan's* case, the Hon'ble Supreme Court again reiterated that alienation by a guardian was voidable and Article 60 of Limitation Act would apply to the suit by the minor to set aside alienation of his property and limitation for the same was three years from the date of the minor attaining majority.

(a) In *Saleem Bhai's* case, the Hon'ble Supreme Court held that the only the averments in the plaint and not pleas taken in the written statement would be germane to decide the application under Order 7 Rule 11 of CPC to reject the plaint.

(b) In *Kamala and Others's* case, the Hon'ble Supreme Court held that Order 7 Rule 11(d) of CPC has limited application and it must be shown that the suit is barred under any law and such a conclusion must be drawn from



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the averments made in the plaint and no amount of evidence can be looked into.

(c) In ***R.Arumugam'*** case, this Court held that the plaint alone has to be looked into while deciding an application under Order 7 Rule 11 of CPC.

(d) In ***Kum. Geetha's*** case, the Hon'ble Supreme Court dealing with Order 7 Rule 11 of CPC, held that the true test is to read the plaint meaningfully and as a whole and after taking it to be true and if upon such a reading, if the plaint discloses the cause of action then the application under Order 7 Rule 11 of CPC must fail and if it does not disclose any cause of action, the plaint shall be rejected. The Hon'ble Supreme Court also held that since the plaintiffs had pleaded in the said case that the Sale Deeds were nominal Sale Deeds and the property was belonging to the joint family, the Hon'ble Supreme Court held that it was a matter for trial and Hon'ble Supreme Court also held that the plaint cannot be rejected in part.

(e) In ***Baljinder Singh's*** case referred supra, the Hon'ble Supreme Court discussed what is “void” and “voidable” and held that “void” has a



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relative rather than absolute meaning and it conveys the idea that the order is invalid or illegal and on the contrary “voidable” is something which is required to be set aside and it cannot be avoided until such time it is set aside. However, in the said case, the Hon'ble Supreme Court was dealing with the genuineness of a Will and under those circumstances, the discussion regarding “void” and “voidable” document was required and I do not find this decision applying to the facts of the present case.

(f) In ***Rameshwar Babasaheb Paul's*** case, the High Court of Bombay held that the sale by the mother, when the natural guardian, father was alive was void and therefore, the prayer for declaration to set aside the Sale Deed would not be necessary.

(g) In ***Madhegowda's*** case, the Hon'ble Supreme Court held that alienation of minor's property including his undivided interest in a joint family property by the defacto guardian of the minors was *void ab initio*. Applying Section 11 of the Hindu Minority and Guardianship Act, 1956, the Hon'ble Supreme Court held that sale by the defacto guardian was per se invalid and the existence or otherwise of legal necessity was not relevant in



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the case of such invalid transfer and the transferee does not acquire any interest in the property.

(h) In ***Smt.Kamala Kumari Bohara's*** case, the High Court of Orissa referring to Section 8(2) of Hindu Minority and Guardianship Act, 1956, held that when the mother had sold the property for herself as well as on behalf of the minor, for legal necessity and permission had not been obtained under Section 8 of Hindu Minority and Guardianship Act, 1956, the transfer was not binding on the minor.

(i) In ***Kali Charan Naskar's*** case, the High Court of Calcutta, held that transfer of minor's property by the defacto guardian without legal necessity would be *void ab initio* and therefore, not required to be set aside by the minor within three years after his attaining majority.

(j) This Court in ***T.S.Bellieraj's*** case, held that when the transfer of property by the guardian being *void ab initio*, suit for possession by the minor on attaining majority, Article 60 of the Limitation Act would not apply and only Article 65 of the Limitation Act would apply and the suit filed



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within twelve years was held to be not barred by limitation.

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(k) In ***Commissioner, H.R and C.E and Others*** case, this Court held that with regard to plea of Article 60 of Limitation Act it would apply only where it is alienated and when the document in question did not purport to make any transfer of the suit land, this Court held that Article 60 would not apply and the suit was not barred by limitation.

(l) In ***Prasanna Kumar Sarmah's*** case, the High Court of Assam and Nagaland, held that transfer of guardian was void for want of registration and suit by the minors to set aside the said document was not hit by old Article 44 (new Article 60) of the Limitation Act.

(m) In ***Mahomed Raza Ahmad's*** case, the High Court of Allahabad dealing with the old Limitation Act, 1908, Section 44 (Corresponding to Article 60 of the 1963 enactment), held that the sale of minor's property by the certified guardian without sanction and possession not being delivered claim would not be time barred under the said Article 44 as possession had not been transferred from the transferer to the transferee. The Division Bench of the Allahabad Court further held that only when a suit for possession is



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brought, it would be barred by limitation and it would not affect the sale transaction where the certified guardian of the two minors had sold the minors' share without the sanction of the Court and despite such sale, the minors continued to be in possession and when they brought a suit, more than three years after the elder had attained majority seeking partition and also declaration that the Sale Deed executed by the guardian was void as against the minors, it was in time.

19. Applying the ratio laid down by the Courts in the various decisions relied and discussed herein above, to the facts of the present case, it is clear that the property of the minor under a registered Will executed by their grandfather was alienated by their father. Admittedly, no Court permission has been obtained and there is also nothing on record at least as on date to show that the sale was for legal necessity. Admittedly, the case has not gone for trial yet and an application to reject the plaint was filed and as against the same, the present Second Appeal has been preferred by the defendant who was unsuccessful in his application to reject the plaint under Order 7 Rule 11 of CPC.



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20. Unless the parties lead evidence during trial, the Sale Deed executed by the father of the plaintiffs can be tested and decided whether it is a void or voidable document. Moreover, in the plaint, the plaintiffs specifically allege that they are in peaceful possession of the suit property and they have also sought for relief of permanent injunction to restrain the defendants from in any manner interfering with the plaintiffs' possession of the suit property. These are factual matters that can be decided only during the course of trial. Also as the Division Bench of Allahabad High Court, the sale need not be necessarily questioned by the minor within a period of three years from the date of attaining majority, if it is shown that possession continues to remain with the minors, even though there was alienation by the guardian. The fact whether the possession was given to the appellant/defendant or continues to remain with the plaintiffs is again a matter for evidence and cannot be decided in an application under Order 7 Rule 11 of CPC. Thus, I find that the prayer for declaration of title and consequential permanent injunction would stand independently and in fact, it would have a bearing on the relief seeking cancellation of the Sale Deed also, which again can be decided only on evidence, to be a void or voidable document.



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21.First and foremost, it has to be decided whether the Sale Deed is a void document or a voidable document. If it is a void document then, as the ratio laid down by the Courts in various decision which as been extracted herein above, then Article 60 of the Limitation Act may not apply and the suit filed by the minors even after expiry of three years from the date of their attaining majority would be maintainable. In other words, in such a case, Article 60 of the Limitation Act itself would have no application.

22.It is seen that the plaintiffs claim title under a Will executed by their grandfather, B.K.Jevana Gowder on 07.02.1985 under a registered Will, Document bearing Regn.No.1 of 1985 on the file of the Sub Registrar, Kothagiri. The said B.K.Jevana Gowder died on 19.03.1986 and on his demise, the Will came into effect and the property vested and belonged to the minors. It is also alleged in the plaint that testamentary guardian had been appointed under the Will and he had taken possession of the property on behalf of the minors and on their attainment of majority, the plaintiffs have taken possession of the property and they have been in possession of the same, mutating revenue records also in their names. It is the further case of the plaintiffs that only in the last week of August 2008, they came to know



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about the alleged sale by their father, the 2nd defendant in favour of the 1st defendant, when the 1st defendant attempted to trespass into the suit property.

23.It is also alleged in the plaint that their father, the 2nd defendant had only sought for a loan of Rs.50,000/- from the 1st defendant and only in order to secure the same, the Sale Deed purported to convey the suit property was executed. According to the plaintiffs, it is categorically asserted that the guardian had no legal authority to effect sale of the property, without prior permission of the Court of competent jurisdiction. It is specifically alleged by the plaintiffs that the Sale Deed is *void ab initio* document and would not bind them.

24.In view of the above, the plaintiffs have to establish the truth and genuineness of the Will of their grandfather, their Will taking effect and subsequently, the plaintiffs having taken possession of the suit property on their attaining majority etc., which are all matters in respect of which parties have to necessarily lead evidence before the Trial Court. The issue cannot be summarily decided in an application under Order 7 Rule 11 of CPC, since it would take away the valuable rights of the plaintiffs who alleged that their



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property has been alienated against their interest and also un-lawfully.

Therefore, in such circumstances, I do not find any illegality or perversity in the findings arrived at by the First Appellate Court and the issue of limitation is certainly a mixed question of fact and law and the parties have to necessarily undergo the strict rigour of a full fledged trial.

25.In the result, the Second Appeal is dismissed. There shall be no order as to costs.

28.03.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

- 1.The Subordinate Court, Coonoor.
- 2.The District Munsif Court, Kothagiri.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.B.BALAJI, J.

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Pre-delivery judgment made in
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