CASE NO.:
Appeal (civil) 5652-5653 of 1998

PETITIONER:
MADHEGOWDA (D) BY LRS

Vs.

RESPONDENT:
ANKEGOWDA (D) BY LRS & ORS.

DATE OF JUDGMENT: 20/11/2001

BENCH:
D.P. Mohapatra & Doraiswamy Raju

JUDGMENT:

D.P.MOHAPATRA,J.

One Ninge Gowda was the original owner of the property in dispute. He died leaving two daughters namely Smt.Sakamma, respondent no.10 herein, and Smt.Madamma, respondent no.11 herein. When Smt.Sakamma was a minor, her sister Smt.Madamma purportedly acting as her guardian, sold her share of the property left by Ninge Gowda to Madhegowda, appellant herein by a registered Sale Deed dated 24.4.1961. It is the case of the appellant that the share of the minor Smt.Sakamma was sold to collect funds for her marriage. The appellant was put in possession of the property and he continues in possession of the same till date. Smt.Sakamma attained majority sometime in 1961-62. She sold her share of the property to Ankegowda, predecessor of respondent nos.1 to 9 herein, by the registered Sale Deed dated 1.7.1967. Since there was a dispute regarding possession of the property, Ankegowda initiated a proceeding under Section 145 of the Criminal Procedure Code before the Sub-Divisional Magistrate, Srirangapatna which was registered as Criminal Misc.7/67-68. In the said proceeding, the learned Magistrate held that the appellant was in possession of the property on the date of the preliminary order and he would continue to remain in possession of the same till dispossessed by the competent Court. Thereafter Ankegowda (plaintiff) filed Original Suit No.69/69, in the Court of the Munsif, Srirangapatna seeking a declaration of title, for partition of the share of his vendor Smt.Sakamma and for delivery of possession of the same to him citing Smt.Sakamma (defendant no.1), Smt.Madamma (defendant no.2) and S.Madhegowda (defendant no.3) as parties. The learned Munsif dismissed the suit. The appeal filed by Ankegowda, Regular Appeal No.44/78, in the Court of the Civil Judge, Srirangapatna proved unsuccessful. The learned Civil Judge concurred with the findings of the learned Munsif and dismissed the appeal by his judgment dated 24.7.1979.

The trial Court and the First Appellate Court
dismissed the suit on recording the concurrent finding that
Smt.Sakamma (Defendant No.1) had no valid title in the
property on 1.7.1967, the date on which she executed the
registered sale deed in favour of the plaintiff, since her
interest in the suit property had already been sold in
favour of S.Madhegowda (Defendant No.3) by the
registered sale deed dated 24.4.1961 executed by her
sister Smt.Madamma (Defendant No.2). The Courts
further held that Smt.Sakamma could not have validly
sold the suit property to the plaintiff without getting the
sale deed dated 24.4.1961 annulled by filing a suit within
three years of attaining majority. The decisions were
based on the notion that the sale deed executed by
Smt.Madamma in favour of Madhegowda was not void
but voidable only.

Respondent nos.1 to 9, successors-in-interest
of Ankegowda, filed Regular Second Appeal No.1134/79
in the High Court of Karnataka challenging the
judgment/decree of the trial Court as confirmed by the
First Appellate Court. The High Court by its judgment
rendered on 11th January, 1993 allowed the second
appeal, set aside the judgment/decree of the Courts
below and held that the respondents 1 to 9 are entitled to
half-share in the suit property, ordered for partition and
delivery of possession of their share out of the same.
The application filed for review of the judgment CP (FR)
No.937/97 was dismissed by the order dated 8.9.1997.
Hence, these appeals by the defendant.

The question that falls for determination in the
case relates to competence of Smt.Madamma to sell the
interest of her minor sister Smt.Sakamma in the property
as her guardian. If the question is answered in the
affirmative and it is held that Smt.Madamma was
competent to alienate the share of her minor sister as her
guardian, then the trial Court and the first Appellate Court
were right in holding that the transaction of sale was
voidable one and Smt.Sakamma having failed to
repudiate the sale within the prescribed period of three
years after attaining majority, the sale in favour of the
appellant stood confirmed. If, on the other hand, it is held
that Smt.Madamma had no competence to alienate the
share of her minor sister in the property, then the
transaction was a void one which was not required to be
repudiated by Smt.Sakamma by filing a suit within the
prescribed period. Then the judgment of the High Court
holding the sale to be void is to be confirmed.
The answer to the question formulated above
depends on the interpretation of Section 11 of the Hindu
Minority and Guardianship Act, 1956 (hereinafter referred
to as the Act) and its interaction with other relevant
provisions of the Act.

In Section 4 clause (b) the expression
guardian is defined to mean a person having the care of
the person of a minor or of his property or of both his
person and property, and includes :

(i) a natural guardian;
(ii) a guardian appointed by the will of the
minors father or mother,
(iii) a guardian appointed or declared by a

court, and
(iv) a person empowered to act as such by
or under any enactment relating to any
Court of Wards;

In clause (c) the term natural guardian is defined to mean any of the guardians mentioned in Section 6.

In Section 6 of the Act provisions are made regarding natural guardians of a Hindu minor in respect of the minors person as well as in respect of the minors property. The Section reads as follows :

The natural guardians of a Hindu minor, in respect of the minors person as well as in respect of the minors property (excluding his or her undivided interest in joint family property), are

(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 has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl the mother, and after her, the father;
Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section
(a) if he has ceased to be a Hindu, or
(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

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

In this connection it is relevant to consider the power of a natural guardian to alienate the property of the minor, provision regarding which is made in Section 8 of the Act. In Sub-section (1) of Section 8 it is declared that the natural guardian of a Hindu minor has power, subject to the provisions of the 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 minors estate; but the guardian in no case can bind the minor by a personal covenant.

In Sub-section (2) of Section 8 it is laid down that 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.

In Sub-section (3) in which the consequences
of contravention of sub-section (1) or sub-section (2) are
provided it is laid down that 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.
In Sub-section (4) of Section 8, a provision is
made that No court shall grant permission to the natural
guardian to do any of the acts mentioned in sub-section
(2) except in case of necessity or for an evident
advantage to the minor.

In Sub-section (5) of Section 8, it is provided
that the Guardians and Wards Act, 1890 (8 of 1890),
shall apply to and in respect of an application for
obtaining the permission of the Court under sub-section
(2) in all respects as if it were an application for obtaining
the permission of the Court under Section 29 of that Act.
Section 11 of the Act reads as follows :

De facto guardian not to deal with
minors property After the
commencement of this Act, no person
shall be entitled to dispose of, or deal
with, the property of a Hindu minor
merely on the ground of his or her being
the de facto guardian of the minor.

This Section brings about a material change in the law
relating to de facto guardians or de facto managers of a
Hindu minors estate by enacting in express terms that
after the commencement of the Act, no person has the
right or authority to do any act as a de facto guardian of
such minor. Although the expression de facto guardian
is often used in judgments, there is in law nothing like a
de facto guardian. The statute recognises a natural
guardian or a testamentary guardian or a guardian
appointed by the Court. In law a person who is not a
guardian as aforementioned who takes interest upon
himself, the general management of the estate of a minor
can be more appropriately described as de fecto
manager. Before enforcement of the Act some confusion
prevailed over the powers of de facto guardian or
manager for alienating the property of his/her ward. It
was held by the Privy Council in Hunooman Persuad
Pandeys case, 6 MIA 393, that a de facto guardian had
the same power of alienating the property of his ward as a
natural guardian. Section 11 has done away with the
authority of any person to deal with or dispose of any
property of a Hindu minor on the ground of his being the
de facto guardian of such minor. Any alienation by a de
facto guardian will be governed by the provisions in
Section 11 of the Act. The alienation, being against the
statutory prohibition, would be void ab initio and the
alienee would not acquire any title to the property.

Section 12 of the Act reads as follows :

Guardian not to be appointed for minors

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.

From the statutory provisions noted above, it is clear that with the avowed object of saving the minors estate being mis-appropriated or squandered by any person, by a relation or a family friend claiming to be a well-wisher of the minor, Section 11 was enacted to prohibit any such person from alienating the property of the minor. Even a natural guardian is required to seek permission of the Court before alienating any part of the estate of the minor and the Court is not to grant such permission to the natural guardian except in case of necessity or for an evident advantage to the minor. So far as de facto guardian or de facto manager is concerned, the statute has in no uncertain terms prohibited any transfer of any part of minors estate by such a person. In view of the clear statutory mandate, there is little scope for doubt that any transfer in violation of the prohibition incorporated in Section 11 of the Act is ab initio void.

The Federal Court in the case of Kondamudi Sriramulu vs. Myneni Pundarikakshayya etc., AIR (36) 1949 FC 218, explaining the phrase de facto guardian used in Hanooman Persaud Pandeys case (supra), made the following observations :

Before concluding my observations about the scope of the decision in Hanuoomnapersaud Pandays case, 6 M.I.A. 393: (18 W.R.81 P.C.), I would like to make a few observations about the phrase de facto guardian. In my opinion, it is a loose phraseology for the expression de facto manager employed in Hanoomanpersaud Pandays case, 6 M.I.A. 393: (18 W.R.81 P.C.); their Lordships in different parts of the judgment used the words, guardian, curator and de facto manager. This phrase is certainly not known to any text of Hindu law, but it aptly describes the relations and friends who are interested in the minor and who for love and affection to him assume superintendence over his estate. A father may not necessarily be the guardian of an illegitimate child, but his de facto guardianship cannot be repudiated. Such is the case of the natural father of an adopted son, cf. Ganga Prasad v. Hara Kanta Chowdhury, 7 KI.C. 234:(15 C.W.N.558). A person who is not attached to the minor by ties of affection or other reasons of affinity and remains in charge of his estate is in truth a mere intermeddler with his estate. In order to come within the scope of the rule in Hanoomanpersaud Pandays case, 6 M.I.A.

393: (18 W.R.81 P.C.), it is necessary that there is course of conduct in the capacity of a manager.

The Federal Court took the view that in law there is nothing like a de facto guardian. There can only be a de facto manager, although the expression de facto guardian has been used in text books and some judgments of Courts. That is the correct description of a person generally managing the estate of a minor without having any legal title to do so.

This Court in the case of Sri Narayan Bal & Ors. vs. Sridhar Sutar & Ors., (1996) 8 SCC 54, construing the provisions of applicability of Section 8 to a case of transfer of the undivided interest of a Hindu minor in a joint family property held that 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 and that 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. In that connection, this Court made the following observations :

......Each provision, and in particular Section 8, cannot be viewed in isolation. If read together the intent of the legislature in this beneficial legislation becomes manifest. Ordinarily the law does not envisage a natural guardian of the undivided interest of a Hindu minor, 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 minors undivided interest in the joint family property, as provided under Sections 6 and 12 of the Act, the previous permission of the court under Section 8 for disposing of the undivided interest of the minor in the joint family property is not required......"

This Court, in the case of Ganayya & Anr. Vs. Radhabai & Ors., (1997) 11 SCC 332, considering the question of applicability of the provisions of Section 11 of the Act, held :A bare reading of Section 11 goes to show that it explicitly provides that after the commencement of the said Act no person shall be entitled to dispose of or deal with the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor. In that case the case of the appellants was that their father, who was blind from birth, died on 16.2.1957 leaving behind him the appellants who were minors. The appellants uncle Nagayya was cultivating the land in question as Manager even during the life time of their father as he was blind and the appellants were minors. One Balayya, husband of appellants mothers sister, leased out the lands in dispute to the said Nagayya, the real uncle of the appellants. On the basis of that lease made by the de facto guardian of the appellants Nagayya, the uncle of the appellants, made the application for conferral of ownership rights of the land in dispute and for determination of purchase price of the said land under Section 48 read with Sections 46 and 49-A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. The Addl. Tahsildar allowed the application which was upheld by the Sub-Divisional Officer in appeal and the Revenue Tribunal in revision. The High Court also dismissed the appellants application filed under Article 227 of the Constitution. The High Court held that the provisions of Section 11 of the Act were not attracted to the facts of the case and, therefore, dismissed the petition. This Court, allowing the appeal, held that the High Court fell into a patent error in taking the view that Section 11 was not attracted to the facts of the case.

A Division Bench of the Patna High Court in the case of Nathuni Mishra & Ors. vs. Mahesh Misra & Ors., AIR 1963 Patna 146 (V 50 C 42), took the view that Section 11 does not deal with the disposal of the undivided interest of a minor in a joint Hindu family governed by the Mitakshara School of Law. The Court further held that the said Section cannot be pleaded as a bar for disposal of joint family property by the Manager or the Karta of the family for legal necessity.

A Division Bench of the Madras High Court in the case of Dhanasekaran vs. Manoranjithammal & Ors., AIR 1992 Madras 214, construing Section 11 of the Act, held, inter alia, that the property of a Hindu minor referred to in Section 11 will include all his properties, including his undivided interest in the joint family property and consequently that the sale by the de facto guardian of the minors interest in the joint family property was void ab initio. The Division Bench approved the decision of the single Judge in this regard. However, the Division Bench did not agree with the view taken by the single Judge that the sale by a de facto guardian of the minors interest in the joint family is void and held Section 11 renders the sale voidable only.

We have carefully considered the principles laid down in the aforementioned decisions so far as relevant for the purpose of adjudication of the issue arising in the present case. It is to be kept in mind that this is not a case of alienation of minors interest in a joint

family property. As noted earlier, Ninge Gowda died leaving his two daughters, namely Smt.Sakamma and Smt.Madamma. It is not the case of any of the parties that the suit property was a joint family property in the hands of Ninge Gowda or that the alienation by Smt.Madamma, who is the sister of the minor, was a transfer of the minors interest in the joint family property. Therefore, the question whether the provision in Section 11 is applicable in the case of transfer of minors interest in a joint family does not arise for consideration here. Section 11 includes all types of properties of a minor. No exception is provided in the Section. Undoubtedly Smt.Madamma, sister of the minor, is not a guardian as defined in Section 4(b) of the Act. Therefore, she can only be taken to be a de facto guardian or more appropriately de facto manager. To a transfer in such a case Section 11 of the Act squarely applies. Therefore, there is little scope for doubt that the transfer of the minors interest by a de facto guardian/manager having been made in violation of the express bar provided under the Section is per se invalid. The existence or otherwise of legal necessity is not relevant in the case of such invalid transfer. A transferee of such an alienation does not acquire any interest in the property. Such an invalid transaction is not required to be set aside by filing a suit or judicial proceeding. The minor, on attaining majority, can repudiate the transfer in any manner as and when occasion for it arises. After attaining majority if he/she transfers his/her interest in the property in a lawful manner asserting his/her title to the same that is sufficient to show that the minor has repudiated the transfer made by the de facto guardian/manager.

In the case in hand there is no finding recorded by the trial Court or the First Appellate Court that Smt.Sakamma, the minor, after attaining majority, had ratified the invalid transfer, even assuming that the flaw in the transfer could be cured by ratification. On the facts of the case the High Court was justified in setting aside the judgment of the trial Court which was confirmed by the First Appellate Court and was right in decreeing the suit for partition and separate possession. Thus, these appeals, being devoid of merit, are dismissed. However, in the circumstances of the case, there will be no order as to costs.

............J.
(D.P.Mohapatra)

........J.
(Doraiswamy Raju)

November 20, 2001