

(1956) 11 AP CK 0018

In the Andhra Pradesh High Court

Case No : Second Appeal No. 504/4 of 1357

Arvapalli Ramakrishnayya

APPELLANT

Vs

Pasumarthi Peerayya and others

RESPONDENT

Date of Decision : 13-11-1956

Acts Referred:

Majority Act, 1875 — Section 3

Citation : AIR 1958 AP 766

Hon'ble Judges : Ahmed Ansari, J

Bench : Single Bench

Advocate : J.V. Narasinga Rao, C. Sriramulu, V.K. sicya, K.M. Reddy, V. Madhava Reddy and sicharrao Jagirdar, for the Appellant; Sadashiv Rao, for the Respondent

Judgement

Ahmed Ansari, J.—The appellant is the purchaser of land in Khammam town, measuring 700 yards, and a suit against him for the cancelled of the sale deed as well as for possession of (sic)roperty has been decreed by the Sadar Adalat, (sic)ngal, in exercise of its appellate jurisdiction.

2. The following set of facts in the case are (sic) dispute. One Suryanarayana was the adopted father of the plaintiff-respondent, and had (sic)ased the land measuring 800 sq. yards. He (sic)on Farwardi 23, 1345 F. (February 25, 1936), (sic)ig behind a widow, Nagarathnamma, and (sic)alli Ramakrishnaiah, the adopted son. While adopted son was still a minor, having been (sic)on Thir 13, 1332 F. (March 19, 1923). the (sic) as his guardian sold 700 sq. yards of the (sic)ty purchased by her husband to the appellant Farwardi 22, 1349 F. (February 24, 1940). (sic)he father-in-law of the adopted son started (sic)dings in Court for the appointment of the (sic)an of the person and property of the minor (sic)rwardi 25, 1349F. (February 27. 1940) and guardian was appointed. The widow appellate the High Court against the appointment of (sic)ardian and filed a revision petition also. But the pendency of the appeal, she and the (sic)d son agreed to an arbitration and on the of the award, a decree was passed. After (sic)ad so adjusted their dispute, they filed an (sic)tion in the High Court praying

for the consignment of the appeal by the widow, termination of the guardianship proceeding, and for release of the properties in favour of the adopted son.

On Bahman 12, 1351 F. (December 15, 1941), the High Court terminated the proceedings on the basis of the compromise. Prior to the order of the High Court, the plaintiff had reached the age of 18 years on Thir 13, 1350 F. (May 18, 1941); but the suit giving rise to the appeal was filed on Bahman 13, 1354 F. (December 15, 1944).

3. In the plaint it is stated that the widow and the purchaser had conspired together; that the property in dispute had been taken under a fictitious sale deed and the transaction is without any consideration and legal necessity. The suit was against six persons, the purchaser being the first defendant, his tenants defendants Nos. 2 to 5 and the widow defendant No. 6. In, addition to the several pleas raised in the written statement, the purchaser claimed the sale to be genuine, supported by legal necessity and for the benefit of the minor's estate.

He also stated that he had built a house on the land worth more than Rs. 60,000/- and the suit was beyond the jurisdiction of the Court in which it was filed. The trial Court dismissed the suit on the question of limitation alone, deciding other issues in favour of the plaintiff. It held that the suit should have been filed on Thir 13, 1353F. (May 17, 1944) within three years of the appellant's having completed the age of 18.

The appeal which was filed against the purchaser alone, the widow apparently having died during the pendency of the suit in the trial court, was decreed by the lower appellate Court on the ground that it was within three years of plaintiffs having completed the age of 21; that it was with in three years of the order by the High Court terminating the guardianship proceeding; that it was within twelve years of the sale-deed; and that, therefore, the suit was within limitation.

4. The main contention before me is that the order appointing the guardian having been discharged by this Court, the plaintiff-respondent cannot file a suit within three years of his having completed the age of 21; that he was bound to file the claim within three years of having completed the age of 18 and the lower appellate Court has erred in holding the suit to be within limitation. Admittedly, the Article applicable to the suit is 44 of the Indian Limitation Act, which had a corresponding Article No. 35 in the Hyderabad Limitation Act.

If the plaintiff is allowed to file a suit within three years of his completing 21 years, the suit would be within limitation: for he had, attained that age on Thir 13, 1353 F. (May 17, 1944), and the suit has been filed on Bahman 13, 1354 F. (December 15, 1944). On the other hand, if he is not allowed that period the suit would be admittedly time barred. I might as well mention that the question is not free from difficulty as there is conflict of authorities on the point.

Under S. 3 of the Indian Majority Act, every person of whose person or property

or both a guardian, other than under O. 32, Civil Procedure Code, has been appointed by a Court of justice before he has attained the age of 18 years, is deemed to attain the age of majority on his completing the age of 21. There is no conflict where the order appointing the guardian subsisted till the ward completed his 21 years. A suit by such a ward is within limitation if filed within 3 years of completion of his 21 years. The conflict of the authorities arises where the order appointing the guardian is discharged. Some High Courts are of the view that discharge of a guardian appointed by the Court does not affect the extended age of the majority. This has been held in *Sadho Lal v. Murlidhar*, ILR 29 All 672 (FB) (A), *Mohd. Yusuf and Another Vs. Abdul Wahid, Jagon Ram Marwari v. Mahadeo Prosad Sahu*, ILR 36 Cal 768 (C), *Harihar Prasad Singh v. Edul Singh*, 57 Ind Cas 333 : AIR 1921 Pat 69 (D), *Abdul Rahim v. Mt. Barira*, 61 Ind Cas 807 : AIR 1921 Pat 166 (2) (E).

The authorities of the Bombay High Court are not consistent; for in *Gordhandas v. Harivalubhdas*, ILR 21 Bom 281 (F), the view taken was that notwithstanding discharge of the guardian at the time of the note sued upon, the executant was a minor not having completed his 21 years; but in *Jaysingh Devsingh Vs. Pratapsingh Gopalsingh and Another*, it has been held that if the appointment of the guardian is conditional on his giving security and he fails to do so, then there is no appointment within the meaning of S. 3 of the Majority Act.

The Madras High Court in *Subramantan Chetty v. Doraisingha Tevar*, 24 Mad LJ 49 (H), followed the Bombay view in ILR 21 Bom 281 (F); but in *In re Venkatesa Perumal*, AIR 1927 Mad 36 (FB) (I), it held that no guardian is appointed if there be failure to comply with condition of furnishing security in the appointment order. The Lahore High Court in AIR 1924 Lahore 157, has held that once the guardianship is terminated the minor cannot avail himself of the provisions of S. 3. There is, however, a later case of the same Court in AIR 1933 600 (Lahore) which adopts the view taken by the Allahabad, Calcutta and Patna High Courts.

It appears to me that the reasoning of the High Courts in favour of the extended period are cogent. For once a period of limitation begins to run from the existence of certain circumstances, it cannot be varied by occurrence of subsequent events. It, therefore, follows that when once the order is made under the Guardians and Wards Act, the variation of the order by the appellate Court should not affect the right of a minor to institute a suit on completion of his 21 years. The case of conditional order is different, because on the failure of the condition, there is no order at all.

5. The position, however, so far as Hyderabad is concerned, is further complicated by the fact that at the time when the suit was instituted, there was no Hyderabad enactment similar to S. 3 of the Indian Majority Act. There were, however, two Acts containing the definition of the word "minor". One was the Hyderabad Guardians and Wards Act, which said that the minor is one who has not completed twenty one years, and the other was the General Clauses Act, wherein the word was defined to mean one who has not reached the age of 18.

It was argued by the advocate of the appellant that the word "minor" in Art. 35 of the Limitation Act should be interpreted to mean minor according to the definition of the word in the Hyderabad General Clauses Act in absence of any provision similar to S. 3 of the Indian Majority Act and the authorities on the aforesaid section should not be followed. It is obvious that the difficulties which have caused the divergence of views referred to earlier, are not different to that arising in this appeal.

The advocate of the appellant does not go to the extent of arguing that even where there be a guardian under the Hyderabad Guardians and Wards Act, and the order had not been discharged, the minor would not get three years from the date he had completed the age of 21. In other word the learned advocate concedes the proposition the a valid subsisting order enlarges the period of limitation notwithstanding absence of any provision similar to S. 3 of the Indian Majority Act.

It follows that the word "minor" in Art. 35 the Hyderabad Limitation Act is not interpreted always to mean one who has completed 18 yea and circumstances may arise where it should (sic) held to mean a person having. completed 21 year Such circumstances arise where a guardian h(sic) been appointed under the Guardians and War Act, and the reason for holding the position r(sic) to be different if the order under the aforesaid Act is cancelled, is obvious. It is that the discharge should not work to the prejudice of the minor, a this reason is similar to those which have led to majority of the Indian High Courts to hold to the cancellation of the order does not affect (sic) period of limitation.

The majority view should, therefore, be followed. Thus the period of limitation in this case three years of the date when the respondent (sic) completed the age of 21, and the suit is admitted within such three years. As the question of limitation has been the only point argued before (sic) which is now held against the appellant, the appeal is dismissed with costs throughout. But being point of law, I allow the appellant permission file Letters Patent Appeal.