

(1993) 03 SC CK 0056

In the Supreme Court Of India

Case No : Civil Appeal No. 4792 of 1984

G. Annamalai Pillai

APPELLANT

Vs

District Revenue Officer and Others

RESPONDENT

Date of Decision : 17-03-1993

Acts Referred:

Hindu Minority and Guardianship Act, 1956 — Section 8(2), 8(3)

Citation : (1993) 1 DMC 586 : (1993) 4 JT 113 : (1993) 2 LW 15 : (1993) 2 SCALE 78 : (1993) 2 SCALE 75 : (1993) 2 SCC 402 : (1993) 2 SCR 397

Hon'ble Judges : N. M. Kasliwal, J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—The short question for consideration in this appeal is whether lease-deed in dispute, which was voidable in terms of Section 8(3) of the Hindu Minority and Guardianship Act, 1956 (the Act) when validly avoided, was effective from the date of the lease-deed so as to make the transaction void and unenforceable from the very inception.

2. It is not disputed before us that the land in dispute was owned by Janarthanan resnondent-5 before us. His father Purushothaman by a registered deed dated December 12, 1971 leased the land in dispute for a period of five years to G. Annamalia Pillai. On the date when the lease deed was executed Janarthanan was a minor, his date of birth being September 27, 1957. Claiming to be a cultivating tenant, on the basis of the lease deed, Annamalai Pillai filed an application before the Tehsildar under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 praying that he be registered as a tenant in the tenancy records. Janarthanan contested the said proceeding on the ground that the land was his property, his father had no right or title to deal with the same and the lease deed executed by his father was contrary to the provisions of Section 8 of the Act. He further contended that he had no knowledge of the execution of the lease deed by his father and on

attaining majority he avoided the same on September 15, 1978. The Tehsildar held that there was no valid lease and as such he dismissed the application of Annaraalia Pillai. On appeal the Revenue Divisional Officer reversed the findings of the Tehsildar and came to the conclusion that Annamalia Pillai was a contractual tenant and as such was entitled to be registered as a cultivating tenant. Janarthanan preferred a revision before the District Revenue Officer who set aside the order of the Appellate Authority and restored the order of the Tehsildar holding that the Annamalai Pillai was not a cultivating tenant. The writ petition and the writ appeal filed by Anamalai Pillai were dismissed by the Madras High Court. This appeal by way of special leave is against the judgment of the Division Bench of the High Court dated September 14, 1984 rendered in writ appeal.

3. Sub-sections (2) and (3) of Section 8 of the Act which are relevant are reproduced hereunder:

(2) The natural guardian shall not, without the previous permission of the court,

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of Sub-section (1) or Sub-section (2), is voidable at the instance of the minor or any person claiming under him.

4. Respondent-5 was to attain majority on September 27, 1975 and the lease was to subsist upto December 11, 1976. Since the tenure of the lease in this case was to go more than one year beyond the date on which the minor was to attain majority the provisions of Section 8(2)(b) were attracted.

5. We have heard learned Counsel for the parties. We have been taken through the orders of the Revenue Authorities, judgment of the learned single Judge and of the Division Bench of the High Court in writ appeal. The Division Bench of the High Court, in a lucid judgment, answered the question - posed by us in the beginning - in the affirmative and against the appellant-Annamalai Pillai on the following reasoning:

We have already seen that Clause (3) of Section 8 of the Hindu Minority and Guardianship Act, 1956, specifically makes the transaction voidable. The lease executed by the guardian in this case is prohibited and in that sense it was without any authority. On the legal efficacy and the distinction between valid, void and voidable agreements, we find the following passage in Salmond on Jurisprudence, Twelfth Edition at page 341:

A valid agreement is one which is fully operative in accordance with the intent of

the parties. A void agreement is one which entirely fails to receive legal recognition or sanction, the declared will of the parties being wholly destitute of legal efficacy. A voidable agreement stands midway between these two cases. It is not a nullity, but its operation is conditional and not absolute. By reason of some defect in its origin it is liable to be destroyed or cancelled at the option of one of the parties to it. On the exercise of this power the agreement not only ceases to have any efficacy, but is deemed to have been void ab initio. The avoidance of it relates back to the making of it. The hypothetical or contingent efficacy which has hitherto been attributed to it wholly disappears, as if it had never existed. In other words, a voidable agreement is one which is void or valid at the election of one of the parties to it.

This distinction has also been judicially noticed in the Privy Council judgment reported in AIR 1932 89 (Privy Council) and in the Division Bench judgment in S.N.R. Sundara Rao and Sons, Madurai Vs. Commissioner of Income Tax, Madras, . The Division Bench held, following the Privy Council Judgment as follows:

When a person, who is entitled to dissent from the alienation, does so, his dissent is in relation to the transaction as such and not merely to the possession of the alienee on the date of such dissent.

The effect of the evidence is, therefore, to get rid of the transaction with the result that in law it is as if the transaction had never taken place.

We have, therefore, no doubt that when the fifth respondent avoided the lease executed by his father, the fourth respondent, the lease became void from its inception and no statutory rights, could, therefore, accrue in favour of the appellant herein.

6. we agree with the reasoning and the conclusions reached by the Division Bench of the High Court and as such this appeal has to be dismissed.

7. The judgment of this Court in G. Ponniah Thevar Vs. Nalleyam Perumal Pillai and Others, relied upon by the learned Counsel for the appellant is not relevant in the facts and circumstances of this case. In G. Ponniah Thevar's case a lease deed was executed by a life estate-holder. On the cessation of the life estate the successor claimed that the lease executed was not binding on him and as such the tenant could not claim the benefit of the Tenants Protection Act. This Court held that the life estate-holder was entitled to create a valid tenancy and the tenant was entitled to take the benefit of the Tenants Protection Act. It was further held that the right accrued to the tenant could legally extend beyond the life time of the life estate-holder and would bind the successor. The reason is obvious. The life estate-holder has a right to lease the property. He does not deal with the property on behalf of the successor. Though the lease itself may be valid only during the life time of the life estate-holder, the authority to lease could not be questioned. If once initially there was a valid tenancy then the successor is bound by the tenancy rights acquired by the tenant during the period. In the

present case unlike life estate holder the father of respondent-5 had no authority to lease the property without complying with the provisions of Section 8(2)(b) of the Act. Because of the inherent illegality in the execution of the lease-deed it was liable to be cancelled at the option of the minor on attaining majority. On the exercise of option the lease became void ah initio.

8. We, therefore, dismiss the appeal. No costs.