

(1999) 09 KL CK 0004

In the High Court Of Kerala

Case No : S.A. No's. 552 and 567 of 1986

Gopala Krishnan Nair and Another

APPELLANT

Vs

Karthiyayani Nangeli Amma and Another

RESPONDENT

Date of Decision : 09-09-1999

Acts Referred:

Hindu Minority and Guardianship Act, 1956 — Section 11, 6, 8, 8(1), 8(2)
Travancore Nair Act, 1912 — Section 10

Citation : (2000) 2 RCR(Civil) 307

Hon'ble Judges : P.K. Balasubramanyan, J;K.A. Mohamed Shafi, J

Bench : Division Bench

Advocate : M.R. Parameswaran, for the Appellant; C.K. Aravindaksha Menon and S. Sreekumar, for the Respondent

Final Decision : Allowed

Judgement

Balasubramanyan, J.—S.A. 553 of 1986 is by the Plaintiffs and S.A. 567 of 1986 is by Defendant No. 2 in O.S. 68 of 1979 op the file of the Munsiffs Court of Perumbavoor. The Plaintiffs are the children of one Karthyayani Amma who died sometime in the year 1959 of 1960, after the coming into force of the Hindu Succession Act. The Plaintiffs originally sued Defendant No. 1 for redemption of a mortgage dated 3rd January 1958 executed by their mother in favour of Defendant No. 1. On the plea of Defendant No. 1 that subsequent to the mortgage the equity of redemption also had been sold on behalf of the Plaintiff, by their guardian to Defendant No. 2, Defendant No. 2 was also impleaded and an amendment sought challenging the alienation of the equity of redemption and seeking the setting aside of that document and for recovery of possession from Defendant No. 2 also. Defendant No. 1 resisted the suit essentially contending that the equity of redemption had been lost to the Plaintiffs by the assigning of the same in favour of Defendant No. 2 and hence the Plaintiffs were not entitled to relief. Defendant No. 1 also pleaded that subsequent to the sale of equity of redemption in favour of Defendant No. 2, Defendant No. 1 had surrendered the mortgagee's interest in favour of Defendant No 2 and Defendant No. 2 was in

possession. Defendant No. 2 pleaded that the assignment of the equity of redemption in her favour by the guardian of the Plaintiffs was valid and binding on the Plaintiffs and the Plaintiffs were not entitled to challenge the said assignment. Defendant No. 2 also pleaded that the suit by the Plaintiffs was barred by limitation.

2. The deed of mortgage was marked as Ext. A-1 and the sale deed executed by the father of the Plaintiffs acting as their guardian in favour of Defendant No. 2 was marked as Ext. B-1 and its copy was marked as Ext. A-2. The sale taken by the father of the Plaintiffs from one Ramakrishnan Nair on the date of sale Ext. B-1 was marked as Ext. B-2. This was to support the plea that utilising the consideration contained by the sale of the equity of redemption, father of the Plaintiffs had acquired Anr. property for the minors. The first Plaintiff was examined as P.W. 1, the second Plaintiff was examined as P.W. 2 and a stranger was examined as P.W. 3. The trial court held that the sale of equity of redemption by the father of the Plaintiffs acting as their guardian was void since no permission as envisaged by Section 8(2) of the Hindu Minority and Guardianship Act, 1956 was obtained prior to the sale, and hence the Plaintiffs could ignore the said sale and seek redemption of the mortgage since the suit for redemption of the mortgage was within time. The trial court found that Defendants were entitled to value of improvements and the quantum would be determined in the final decree proceedings. The trial court passed a preliminary decree for redemption. The Defendants went up in appeal. The appellate court held that the Plaintiffs were bound to seek the setting aside of the sale of the equity of redemption Ext. B-1 and the relief in that behalf was barred by limitation in view of the fact that Plaintiff No. 1, who would give a valid discharge had attained majority more than three years prior to the filing of the suit. But that court took the view that the share in the property inherited by Plaintiff No. 2 on the death of the mother could not be affected by the sale of the equity of redemption effected by the father as guardian of the Plaintiff and since the suit was instituted within three years of the attaining of majority by Plaintiff No. 2, that Plaintiff was entitled to redeem the mortgage and was entitled to have one out of six shares in the property delivered over to him on a division of the property. It is feeling aggrieved by this modification that the Plaintiff has filed S.A. 553 of 1986. Defendant No. 2 has filed S.A. 567 of 1986 by raising a contention that the Plaintiffs were bound to disgorge the benefit derived by them on utilising the consideration realised by the sale of the equity of redemption in favour of Defendant No. 2 and the appellate court erred in not providing for such an equity in favour of Defendant No. 2.

3. When these Second Appeals came before a learned Single Judge, the learned Judge thought that an authoritative pronouncement on the question of the effect of not obtaining sanction u/s 8(2) or the Hindu Minority and Guardianship Act was called for in the light of the doubt expressed by this Court regarding the earlier decisions in a subsequent decision and hence it was just and proper to refer the Second Appeals to a Division Bench. That is how these Second Appeals

have come up for hearing before the Division Bench. Before proceeding further it may be better to note some of the aspects relevant for the purpose of decision. According to the plaint the plaint schedule property was obtained by their mother as per a partition deed, document No. 248 of 1955 of Aikaranadu Registry. On 3rd January 1958 mother Karthyayani Amma for self and as guardian of her minor son Gopalakrishnan, Plaintiff No. 1 herein executed Ext. A-1 mortgage in favour of Defendant No. 1. Plaintiff No. 2 was not born on that day. The mother Karthyayani Amma died sometime in the year 1959 or 1960 just after the birth of Plaintiff No. 2. The father of the Plaintiffs Raghavan Nair executed a sale deed Ext. B-1 dated 3rd October 1960 for and on behalf of the Plaintiffs who were shown as being six years and two years old respectively as on that date. That sale of the equity of redemption was in favour of Defendant No. 2. The same day under Ext. B-2 Anr. item of property was purchased in the name of the minors by their father Raghavan Nair. The sale deed Ext. B-2 dated 3rd October 1960 indicates that the consideration for the same was paid out of the consideration obtained by the sale Ext. B-1. The plaint does not disclose when Plaintiff No. 1 attained majority. Nor does it disclose when Plaintiff No. 2 attained majority. But the plaint gives the age of Plaintiff No. 1 as 24 and the age of Plaintiff No. 2 as 19. The suit was filed on 22nd February 1979. Obviously the suit for redemption of Ext. A-1 mortgage was filed well within time. The question therefore is of the effect of the sale of the equity of redemption by the father of the Plaintiffs under Ext. B-1 and the consequences if any arising from that transaction. Though in the second appeal by Defendant No. 2 a claim has been raised regarding the disgorging of benefits by the Plaintiffs in view of the purchase under Ext. B-2 of Anr. property from out of the consideration obtained by the sale of the equity of redemption under Ext. B-1, it is to be stated that the Defendants have not laid sufficient foundation for enabling the court to give Defendant No. 2 any relief based on that claim. All that was done was to produce the document and the meagre evidence adduced suggests that the property was sold by the father of the minors immediately after the acquisition under Ext. B-2. The Defendants did not even seek the raising of an issue on that question in the trial court. They are not seen to have pursued that aspect before the lower appellate court. It may also be noted here that though in the plaint the plea raised by the Plaintiffs was that the plaint schedule property was obtained by their mother on a partition of the year 1955, the document of mortgage Ext. A-1 recits that the property was obtained under that partition by the mother Karthyayani and her minor son who had joined her in the mortgage. But this must be on the basis that the allotment to the mother under the partition of the year 1955 enured to the thavazhi of the mother since obviously Plaintiff No. 1 was also not born on the date of partition of the year 1955. The parties being marumakthayees, property allotted to the mother was obviously treated by the mother as an allotment to the thavazhi consisting of herself and her children subsequently born.

4. There was some controversy whether in respect of the properties thus obtained by Karthyayani in the partition of the year 1955 the father of the

minors could be considered to be the natural guardian in terms of Section 6 of the Hindu Minority and Guardianship Act or could only be understood as a de facto guardian within the meaning of Section 11 of that Act. This controversy had relevance in view of the provision in Section 6 of the Act which excluded the undivided interest in joint family property of a Hindu minor from the guardianship of a father or the mother. Here on the date of the sale of this equity of redemption under Ext. B-1 mother was no more and the only surviving natural guardian was the father. The argument that was attempted was that since the property was one obtained on partition from the tharwad by Karthyayani Amma who was a Marumakkathayi hailing from the erstwhile Travancore State, the property thus obtained in partition was excluded u/s 6 of the Act while naming the father as the natural guardian. If the father were only a de facto guardian within the meaning of the Act, in terms of Section 11 of the Act the sale effected by him of the equity of redemption ought to be treated as void since it was totally unauthorised and against the mandate of Section 11 of the Act. But if the father was the natural guardian of the minors and the property did not belong to the joint family, the father as natural guardian could deal with the property in terms of Section 8 of the Act. Since the property was one obtained on partition by Karthyayani Amma (presumably on a partition in her tharwad though it is not specified anywhere and that property was allotted to her while she was single), she could have disposed of that property by herself before any child was born to her. But on the arrival of the children, the property assumed the character of thavazhi property in her hands as is clear from the decision of the Full Bench in *Mary v. Bhasura Devi* 1967 KLT 430. In terms of Section 6 of the Act since the property could be treated only as the property of the thavazhi of Karthyayani Amma and her children, the Plaintiffs, and could not be treated as that of the tharwad, it is possible to find that the father was the natural guardian of the property including the plaint schedule property. It is clear that even under the Travancore Nair Act, the father would be the legal guardian of his minor children in respect of their person and property provided that the property did not belong to a tharwad and the minor children had only a right in the property of the tharwad. It is thus clear that in any view the father was the legal guardian of the minors when he executed Ext. B-1 sale deed in respect of the equity of redemption. A comparison of Section 10 of the Travancore Nair Act with Section 14 of the Madras Marumakkathayam Act would reinforce this position. While the Madras Marumakkathayam Act excluded from guardianship the right and interest of the children in respect of their tharwad or thavazhi properties, the Travancore Nair Act excluded from the guardianship the right and interest of the children in their tharwad property only. Therefore going by the provisions of the Travancore Nair Act and the Hindu Minority and Guardianship Act it has to be held that the father is the natural guardian of the minors and the sale of the equity of redemption effected by him on 3rd October 1960 cannot be held to be one in violation of Section 11 of the Hindu Minority and Guardianship Act. It has to be treated as an alienation by a natural guardian of the minors and its validity will have to be tested in the light of Section 8 of the Hindu Minority and Guardianship

Act.

5. It is admitted that the father Raghavan Nair had not obtained any permission of the court before effecting the sale of the equity of redemption under Ext. B-1. Thus the natural guardian had not complied with the requirement of Section 8(2) of the Act. Section 8(2) of the Act provides that the natural guardian shall not without the previous permission of the court mortgage or transfer by sale any part of the immovable property of the minor. Section 8(1) of the Act confers power on the natural guardian subject to the section to do all acts which are necessary or reasonable and proper for the benefit of the minor. But as noticed the power u/s 8(1) of the Act is subject to Section 8(2) of the Act. It is in this context that the question arose whether a sale by a natural guardian of the property of the minor without previous permission of the court as envisaged by Section 8(2) of the Act was void and could be ignored by the minors or whether the minors were obliged to set aside the transaction on the basis that it was binding on them until it is set aside. This Court in *Santha v. Cherukutty* 1972 KLT 1051 and in *Prabhakaran Pillai v. Kumara Pillai* 1971 KLT 32 took the view that the sale became a nullity on the unilateral act of the minors and the minor can avoid it by his mere conduct and there was no need for him even to file a suit for avoiding the transaction. Since Anr. learned Judge in *P.T. Chathu Chettiar v. Kuriyat Kunnu Kanaran* 1983 KLT 888 observed that in view of some other decisions on that question the matter may have to be re-examined when the occasion arises, the question earlier came before a Division Bench of this Court. The Division Bench on a survey of the authorities that were brought to its notice held in the decision in *Kunhiraman v. Vanaja* 1997 (2) KLT 5 that the sale without the previous permission contemplated by Section 8(2) of the Act was void and the quandom minor was not bound to seek the setting aside of the transaction or to sue for any particular relief regarding the transaction itself. Thus the ratio of the decision in *Santha v. Cherukutty* 1972 KLT 1051 was approved by the Division Bench.

6. Learned Counsel for Defendant No. 2 submitted that while rendering the decision in *Kunhiraman v. Vanaja* 1997 (2) KLT 5 this Court had not considered some of the decisions of the Supreme Court which had relevance and hence the correctness of the view taken in *Kunhiraman v. Vanaja* 1997 (2) KLT 5 had to be examined. Since we acceded to that request, decisions that were relevant according to counsel on both sides were brought to our notice. The question is being re-considered in the light of those decisions.

7. The first decision that was brought to our notice was the one in *Shri Manik Chand and Another Vs. Shri Ramchandra*, . In that decision referring to Section 8 of the Act it was stated as follows:

After the passing of Hindu Minority and Guardianship Act, 1956, the guardian of a Hindu Minor has power to do all acts which are necessary or reasonable and proper for the benefit of the minor or for realisation, protection or benefit of the minor's estate. This provision makes it clear that the guardian is entitled to act

so as to bind the minor if it is necessary or reasonable and proper for the benefit of the minor. The power thus conferred by the section is in no way restricted than that was recognised under Hindu Law. This applies even to a contract for purchase of immovable property. As it is within the competence of the guardian, the contract is entered into effectively on behalf of the minor and the liability to pay the money is the liability of the minor under the Transfer of Property Act. It cannot be said that in a contract for purchase of property, the guardian would be binding the minor by his personal covenant. Thus the contract entered into by the guardian on behalf of the minor is enforceable.

(Headnotes)

It may be noted that the said decision did not consider the effect of Section 8(2) of the Act and the case was essentially one on the question whether a contract entered into by the father was enforceable at the instance of the quondam minor. The question whether before sale of a property the natural guardian was obliged to have the previous permission of the court and what was the effect of the non-obtaining of such permission was not considered or decided in that decision. In *Amritham Kudumban v. Sarnam Kudumban* AIR 1991 S.C. 1256, the effect of non-compliance with Section 8(2) of the Act was not considered. What was involved in that case was whether the minor on attaining majority could validly assign his right to impugn the transaction and whether that assignee could file a suit to set aside the sale by the natural guardian effected on behalf of the minor. It may be noted that that was a case where the alienee from the minor within three years of the minor attaining majority had brought the suit to set aside the sale effected by the natural guardian of the minor and the question that arose for consideration was whether such an alienee could file a suit impugning the transaction. Their Lordships held that in view of Section 8(3) of the Act, a person claiming under the minor could also challenge the alienation of a natural guardian and hence was entitled to sue for setting aside the sale deed executed by the natural guardian of the minor. Though their Lordships while construing Section 8(3) of the Act indicated that the transaction was voidable at the instance of the minor or any person claiming under him, their Lordships did not consider the question whether the transgression of Section 8(2) of the Act made the transaction void or voidable and whether a minor was obliged to seek a setting aside of the transaction. In *G. Annamala Pillai v. District Revenue Officer* 1993 (2) S.C.C. 40 the Supreme Court quoted with approval the decision of the Division Bench of the Madras High Court to the effect that when the minor avoided the lease executed by his father the lease became void from its inception and no statutory rights could therefore accrue in favour of the Appellant thus indicating that the transaction in contravention of Section 8(2) of the Act was void and not merely voidable. We may notice here that in *Kunhiraman v. Vanaja* 1997 (2) KLT 5 the Division Bench had noticed the decision of the Madras High Court which was affirmed in this decision and which is reported as *G. Annamalai Pillai Vs. District Revenue Officer, Cuddalore and Others*, . The Division Bench has also noticed that in that Madras case avoidance by the minor was by filing an

objection to a proceeding initiated by the lessee before the Revenue Officer. It was that decision of the Madras High Court that was affirmed by the Supreme Court. In *Panni Lal Vs. Rajinder Singh and Another*, the Supreme Court has stated as follows:

Section 8 of the Hindu Minority and Guardianship Act sets out the powers of the natural guardian of a Hindu minor. The natural guardian of a Hindu minor has power, subject to the provisions of Section 8, to do all acts which are necessary or reasonable and proper for the benefit of the minor or his estate. The natural guardian, however, may not without the previous permission of the court sell any part of the immovable property of the minor. Any disposal of immovable property which is not necessary or reasonable and proper for the benefit of the minor or is without the previous permission of the court is voidable at the instance of the minor.

The court proceeded to hold:

The provisions of Section 8 are devised to fully protect the property of a minor, even from the depredations of his parents. Section 8 empowers only the legal guardian to alienate a minor's immovable property provided it is for the necessity or benefit of the minor or his estate and it further requires that such alienation shall be effected after the permission of the court has been obtained. It is difficult, therefore, to hold that the sale was voidable, not void, by reason of the fact that the mother of the minor Respondents signed the sale deed and the father attested it.

This also clearly indicates that the sale ought to be treated as void. The next decision that was brought to our notice was that of the Supreme Court in *Sreedharan v. Prasanna* 1996 (2) KLT 784 (S.C.). Therein the Supreme Court held:

It would be obvious that since the mandatory requirement of sanction from the court for alienating the property of the minor as required by Section 8 of the Hindu Minority and Guardianship Act had not been obtained, contract of sale to the extent of the half share of the minor is void and does not bind the minor.

In *Sree Narayan Bal v. Sreedhar Suthar* AIR 1996 S.C. 2371 the Supreme Court held that for alienation of Joint Hindu Family property by the Kartha, permission u/s 8(2) of the Act was not necessary. The question of the effect of absence of previous permission was not in issue in that case. While referring to Section 8 of the Act their Lordships stated that a transaction in contravention of Section 8(2) of the Act was voidable at the instance of the minors. In *Divya Dip Singh and others Vs. Ram Bachan Mishra and others*, it was stated that Section 8(3) of the Hindu Minority and Guardianship Act expressly provided that the disposal of immovable property by a natural guardian in contravention of Sub-Sections 1 and 2 of section was voidable at the instance of the minor. It was further stated that in view of the admitted position in that case that the minors had not challenged the sale within three years from their attaining majority, they had no

right to ignore the sale as void. We may say with respect that the court in that case was not considering the question of the effect of absence of previous permission u/s 8(2) of the Act. In fact the above decision was pressed into service and it was contended before a learned Single Judge of this Court in *Moidu. v. Santha* 1999 (1) K.L.J. 99 that the view taken in *Kunhiraman v. Vanaja* 1997 (2) KLT 5 had to be reconsidered. His Lordship after quoting the relevant portion of the judgment in *Divya Dip Singh and others Vs. Ram Bachan Mishra and others*, stated that a perusal of that decision showed that the question whether an alienation in violation of Section 8(2) was void or voidable had not come up for consideration before the Supreme Court and the Supreme Court had not considered the question whether a prayer should be made for setting aside the sale deed. His Lordship further observed that the facts of the case in *Divya Dip Singh and others Vs. Ram Bachan Mishra and others*, showed that the minors after attaining majority had actually accepted the action of their father. His Lordship also noticed that in the light of the observations of the Supreme Court in *Sreedharan v. Prasanna* 1996 (2) KLT 784 (S.C.) it had to be held that the transaction in violation of Section 8(2) of the Act was void and the minor was not obliged to seek a setting aside of the sale. The decision in *Geethd Hariharan v. Reserve Bank of India* M.R. 1999 S.C. 1149 also does not touch on this aspect. That case essentially related to the question whether a mother who was natural guardian in terms of Section 6 of the Act could act on behalf of the minor even while the father of the minor was alive.

7A. After the arguments had been completed and the judgment was reserved, counsel for Defendant No. 2 brought to our notice the decision in *Prasanna v. Sreedharan* 1995 (2) K.L.J. 287 to submit that there is a conflict between the ratio of that decision rendered by a Division Bench and the decision in *Kunhiraman v. Vanaja* 1997 (2) KLT 5. On going through the decision in *Prasanna v. Sreedharan* 1995 (2) K.L.J. 287 it is seen that that was a case of an agreement for sale entered into by a guardian. The question was whether u/s 8(1) of the Act the guardian could bind a minor with that agreement. The Division Bench referred to the decision of the Supreme Court in *Shri Manik Chand and Another Vs. Shri Ramchandra*, to which we have already adverted. The Division Bench also referred to the decision in *Santha v. Cherukutty* 1972 KLT 1051 and followed that decision. This is what the Division Bench stated in that regard:

This Court in *Santha v. Cherukutty* 1972 KLT 1051 held that transaction which has been entered into by a person with limited powers, as in Section 8 of the Hindu Minority and Guardianship Act, 1956, it is voidable at the instance of Anr. and that other can avoid the transaction or affirm it. It is not a void transaction. The alienation is voidable at the minor's instance.

According to us, this decision does not consider the question whether a sale in contravention of Section 8(2) of the Act is void and can be ignored by the quandom minor when he files a suit seeking substantial reliefs on the basis of his

right in the property. This was a case of an agreement for sale and the question was whether that was binding on the minor and the matter was covered by the decision in *Shri Manik Chand and Another Vs. Shri Ramchandra*, . The reference to *Santha v. Cherukutty* 1972 KLT 105 was only in terms of approval of that decision and not in terms of dissent. The mere existence of a sentence "it is not a void transaction" cannot be taken to be a decision on the question of the effect of absence of prior permission u/s 8(2) of the Act in respect of an alienation effected by a natural guardian. The decision does not touch the question that is involved in this case.

7B. During our research, we came across Anr. decision of the Supreme Court reported as *V. Lakshmanan v. B.R. Mangalagi and Ors.* J.T. 1995 (2) S.C. 105 . That was a case where the guardian had entered into an agreement for sale of an item of property. The minor, on attaining majority accepted the agreement entered into by his father and sold the property by himself by executing a sale deed. The question was whether such a sale was valid. The Supreme Court reiterated that for a sale of the property of the minor the guardian had to have permission u/s 8(2) of the Act. Referring to Section 8(3), the court observed that the transaction was validable at the instance of the minor. Their Lordships held that when the minor after attaining majority by himself sold the property apparently honouring the agreement for sale entered into by his natural guardian, there was no need to seek permission u/s 8(2) of the Act. The question posed here did not arise for consideration. In view of *Shri Manik Chand and Another Vs. Shri Ramchandra*, the father could enter into an agreement for sale. But, if the minor on attaining majority repudiated the obligation undertaken under the contract, the agreement had to be tested for its validity. A sale of property by a guardian stands on a different footing and Section 8(2) of the Act gets squarely attracted.

8. On an anxious consideration of the decisions above referred to, we have come to the conclusion that there is no reason to differ from the view expressed by this Court in *Kunhiraman v. Vanaja* 1997 (2) KLT 5. The observations in the various decisions referred to above regarding the nature of the transaction were generally made in the context of Section 8 of the Act. None of the decisions had directly considered the question whether a transaction in violation of the requirement of prior permission of court u/s 8(2) of the Act is void or the Plaintiff had to seek the setting aside of the transaction in question. It is in that context that the Division Bench in *Kunhiraman v. Vanaja* 1997 (2) KLT 5 following the view expressed in *Santha v. Cherukutty* 1972 KLT 1051 held that the minor was not obliged to seek a setting aside of the transaction of sale or mortgage and could sue for other substantive reliefs by seeking to ignore the transaction. We do not find anything in the decisions cited above which goes against the view expressed in *Kunhiraman v. Vanaja* 1997 (2) KLT 5. We are also in respectful agreement with the observations contained in *Moidu Vs. Santha*, in that regard.

9. Section 8(1) of the Act while recognising the power of a natural guardian to do

all acts which are necessary or reasonable and proper for the benefit of the minors or for the realisation, protection or benefit of the minor's estate has made that recognition subject to the provisions of Section 8. Section 8(2) provides that the natural guardian shall not without the previous permission of the court (emphasis supplied) mortgage or charge or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor. Section 8(3) indicates that any disposal of immovable property by the natural guardian in contravention of Sub-sections (1) and (2) of Section 8 is voidable at the instance of the minor or by any person claiming under him. This Court has already indicated in *Kunhiraman v. Vanaja* 1997 (2) KLT 5 the scope of Sub-Section 3 in relation to the provisions in Sub-section of Section 8 of the Act. We see no reason to differ from that conclusion. When a statute provides that an act shall not be done without the previous permission of the court and something is done in contravention of that, according to us the transaction has to be treated as invalid as a whole and this is the view taken by this Court in the decision in *Santha v. Cherukutty* 1972 KLT 1051 and in *Kunhiraman v. Vanaja* 1997 (2) KLT 5. On the scheme of the Act, we find no reason to differ from the view adopted in those cases.

10. The lower appellate court in the case on hand was substantially in error in law in holding that the Plaintiffs were obliged to seek the setting aside of the sale of the equity of redemption by the father and their rights have been lost in view of the fact that Plaintiff No. 1 had attained majority three years prior to the suit and only the right inherited by Plaintiff No. 2 from the mother would be available to him for being enforced. In our view the transaction of sale of the equity of redemption by the father without the previous permission of the court envisaged by Section 8(2) of the Act could be ignored by the Plaintiffs and they could seek the relief or redemption of Ext. A-1 mortgage on the basis that they continue to hold the equity of redemption. Admittedly the suit for redemption of the mortgage is in time and therefore the Plaintiffs would be entitled to redeem the mortgage Ext. A-1 and recover possession of the property ignoring the sale of the equity of redemption Ext. B-1 executed by their father in contravention of Section 8(2) of the Act. Thus the Second Appeal filed by the Plaintiffs has to be allowed.

11. As we have already noticed, though Defendant No. 2 has come forward with a Second Appeal of her own on the plea that the Plaintiffs were bound to disgorge the benefit of the transaction Ext. B-2 on principles of equity, we are not in a position to grant any relief in that regard to Defendant No. 2 in view of the fact that that aspect was not properly pursued before the courts below and in view of the further fact that there is no clear evidence of what has happened to the property covered by Ext. B-2 sale deed and who is in possession of that property. The trial court had found that the Defendants are entitled to value of improvements in their capacity as mortgagees and under the circumstances that would be the only equity available to them under law. We are therefore not in a position to grant any further relief to Defendant No. 2 in her Second Appeal.

We therefore dismiss S.A. 667 of 1986. We allow S.A. 553 of 1986. We set aside the judgment and Decree of the lower appellate court and restore the judgment and decree of the trial court. We direct the parties to suffer their respective costs.