

(1965) 07 MAD CK 0022

In the Madras High Court

Case No : Second Appeal No. 161 of 1962

Govindaswamy Chetty and Another

APPELLANT

Vs

Sakunthala Ammal and Others

RESPONDENT

Date of Decision : 01-07-1965

Acts Referred:

Succession Act, 1925 — Section 14

Citation : (1966) ILR (Mad) 414

Hon'ble Judges : Ramamurti, J

Bench : Single Bench

Advocate : M.S. Venkatarama Ayyar and V. Krishnan, for the Appellant; N. Suryanarayana, for the Respondent

Final Decision : Allowed

Judgement

Ramamurti, J.—Defendants 1 and 2, who failed in both the Courts, are the Appellants in this second appeal, which arises out of a suit, Original Suit No. 300 of 1957, on the file of the District Munsif's Court, Tiruvannamalai, brought by the first Respondent herein for cancellation of a registered deed of release, dated 27th November 1953, executed by her in favour of the Appellants 1 and 2 and one Abboy Chettiar, their junior paternal uncle, since deceased. The brief facts of the case may be stated.

2. The Plaintiff's husband, one Chakrapani Chettiar, and his brother Abboy Chettiar were members of a joint family (Defendants 1 and 2 are respectively the sons of Chakrapani Chettiar) aforesaid through his first and the second wives. The Plaintiff was married to Chakrapani as his third wife and a female child, Lalitha, was born to them in 1953. Chakrapani died in November 1953, at Tiruvannamalai and even before the completion of the 16th day funeral ceremony, the Plaintiff's brothers, natural brother one Aparanji Chettiar and a step-brother Sadasivam Chettiar and her sister's husband, Venkatachalam Chettiar insisted upon a partition to secure the one-sixth share of the Plaintiff in the family properties and also a provision for the marriage expenses of the minor

female child, Lalitha. The record shows that the aforesaid persons acting on behalf of the Plaintiff had gathered considerable strength and influence and a panchayat was convened to effect a family settlement. In addition to the aforesaid persons respectable disinterested third parties, D.W. 2, Purushothama Chetty, D.W. 3, Ramalinga Chettiar also participated in the panchayat, and as a result of the same, a settlement deed, exhibit B-3, dated 26th November 1953 was executed by Abboy Chettiar and Defendants 1 and 2, under which nanja lands of the extent of one acre 34 cents and punja land of the extent of one acre and 90 cents were settled upon the Plaintiff, along with a right of residence in the house in Sellakuppam village. Jewels which she was wearing were to be worn by the Plaintiff. The settlement deed also provides that when the minor daughter, Lalitha, reaches her marriageable age, Defendants 1 and 2 and their uncle would render every assistance in connection therewith and also provide the necessary expenses for the marriage. As part and parcel of the same family arrangement the Plaintiff executed a release deed, exhibit A-1, dated 27th November 1953 in favour of the two Defendants and their uncle, Abboy Chettiar, relinquishing all her right and interest in the family properties in consideration of the settlement deed executed in her favour. It may be mentioned that these two transactions formed part and parcel of one integral transaction of a family settlement. The brothers of the Plaintiff and her sister's husband took a prominent part in this settlement. The release deed has been attested by Aparanji Chettiar, the elder brother of the Plaintiff and Venkatachalam Chettiar, the sister's husband of the Plaintiff. The Sub-Registrar was sent for to the house at the time of the registration of the release deed and Aparanji Chettiar, the Plaintiff's brother, identified the Plaintiff as an identifying witness. The evidence also shows that the Plaintiff has been residing in the house allotted to her for residence and also obtained possession of the properties settled and has been receiving the income therefrom through her brother. It is significant to mention that the release deed recites that there were family debts to be discharged and that the release deed was executed by the Plaintiff in consideration of the settlement in her favour of the properties valued at Rs. 2,000 ; the Plaintiff was exonerated from any liability for the discharge of the family debts. Abboy Chettiar died in June 1955 leaving behind his minor son, Sriramulu, the third Defendant and his widow Rajambal, the fourth Defendant. The Plaintiff filed the suit for cancellation of the release deed on two grounds: (i) that on the date of the release deed on 27th November 1953 she was yet a minor as her date of birth was 4th December 1935 i.e., she was yet another one week to run before reaching the age of 18 ; (ii) her signature to the release deed was obtained as a result of a fraudulent misrepresentation that it was some document to facilitate the management of the Plaintiff's share of the family properties, and that the Plaintiff was not aware of the contents of the document either at the time when she signed the same or at the time of its registration. It may be mentioned that the Plaintiff has valued her one-sixth share in the family properties in the sum of Rs. 4,000 for purposes of court fees and jurisdiction and paid court fee thereon.

3. The Defendants resisted the suit on the ground that the Plaintiff was born on 1st December 1931 and, therefore, was very much a major on the date of the release deed. On the question of fraudulent misrepresentation in the matter of the execution of the release deed they relied upon the circumstances under which it came to be executed (as mentioned earlier) and also relied upon the arrangement as a valid family settlement binding upon both parties. The Courts below have declared the release deed as an invalid document accepting the Plaintiff's case that she was born on 4th December 1935, and therefore, a minor at that time. On the question as to whether the family arrangement (release deed and the settlement deed) was vitiated by any fraudulent misrepresentation the trial Court had no hesitation in coming to the conclusion that this plea was totally false and worthless and that the Plaintiff signed the document with full knowledge of the contents of the same and after fully realizing the implications of the document which she executed. In the appellate Court the Plaintiff did not canvass the correctness of the conclusions of the trial Court on this portion of the case. Learned Counsel for the first Respondent accepted this position and did not urge any arguments contra, with the result that it has been conclusively established that the Plaintiff executed the release deed with full knowledge of the contents of the same.

4. Even though the entire background of the case, and the circumstances under which the release deed came to be executed had been set out in the written statement and a plea of family settlement was not only raised in the written statement but evidence was also adduced touching that aspect, the Courts below have ignored the importance of this question and had decreed the Plaintiff's suit under the impression that the Plaintiff would be automatically entitled to a decree, once it was proved she was a minor on the date of the release deed.

5. Mr. M.S. Venkatarama Iyer, learned Counsel for the Appellants contended that the transaction evidences a bona fide, family settlement entered into in perfect good faith with a view to resolve the disputes in the family which arose immediately after the death of the Plaintiff's husband, and that at the family settlement the Plaintiff's brothers and Plaintiff's sister's husband took a prominent part on behalf of the Plaintiff, and that the same was concluded with the consensus and consent of all the members of the Plaintiff's family, including the Plaintiff's mother, and that so long as the essential conditions of a family settlement, namely, fair dealing, bona fides, good faith, honest disclosure without any suppression of material facts etc., are satisfied the arrangement had to be upheld despite the fact that the Plaintiff was a minor at that time.

6. On the other hand, it was contended on behalf of the Plaintiff that the suit is for a declaration that the release deed executed by the Plaintiff was invalid on the ground that she was a minor on that date, and that in such a suit considerations which apply to the binding nature of a family settlement have no application. Learned Counsel for the Plaintiff also urged that even otherwise, as the Plaintiff (a minor then) was not stated/or described ex-facie, as a minor, in

the document, and also was not represented by her legal guardian, it would not bind the Plaintiff, even if her brothers and her sister's husband brought about the same. He urged that the substance of the bilateral arrangement was that the Plaintiff has entered into a contract relinquishing her share in the family properties and that unless the transaction is for her benefit and was also entered into by her legal guardian purporting to do so on her behalf the Plaintiff's rights would not be affected in any manner.

7. On a careful consideration of all the aspects of the matter, I am of the opinion that the Appellant's contentions are well founded and must be accepted.

8. Before I proceed further it is necessary to observe that the Plaintiff is a mere tool in the hands of her designing and scheming brothers, and that this suit has been filed purely in a spirit of speculation and as a blackmail. The allegations made by the Plaintiff in the plaint, her evidence as well as the evidence of her brother, Sadasivam Chettiar, leave no room for doubt that they are unscrupulous persons and have no regard for truth whatsoever. Aparanji Chettiar (natural elder brother of the Plaintiff) and Venkatachalam Chettiar, the Plaintiff's sister's husband, who took a prominent part in the family arrangement, and who had attested the release deed have not been examined and deliberately kept back while Sadasivam Chettiar has been examined as a witness simply taking advantage of the fact that he has not attested the release deed. On the other hand an examination of the evidence adduced on the side of the Defendants shows that they are honest people and they made the arrangement in a perfectly bona fide manner without any idea of over-reaching but purely out of deference to the advice of the panchayatdars and in compliance with the demand made by the Plaintiff's party for securing the interest of the Plaintiff. The panchayatdars are all disinterested respectable people and taking the valuation of the properties the inference is clear that the Plaintiff has been given her legitimate share in the family properties. It must not be forgotten that out of the entire estate, Abboy Chettiar would be entitled to one half and it is the other half that has to be divided into three shares between Defendants 1 and 2 and the Plaintiff, after making an adequate and reasonable provision for the marriage expenses of the Plaintiff's minor daughter, Lalitha aforesaid. Taking the Plaintiff's valuation and the entire background of the case including the fact that the family had common family debts to be discharged the properties which had been allotted to the Plaintiff under the family settlement along with the right of residence in the house can by no means be said to be unfair or inequitable. The Plaintiff has been given her legitimate share under the Hindu Womens Rights to Property Act. In short the inference is irresistible that the suit has been filed taking advantage of the fact (possibly a subsequent accidental discovery) that the Plaintiff had yet a week to run before attaining the age of majority, when she executed the release deed.

9. Under the settlement deed a life estate had been given to the Plaintiff in consonance with the then state of Hindu law, but learned Counsel for the

Defendants, Mr. M.S. Venkatarama Iyer, very fairly conceded that that estate would get enlarged into an absolute estate in view of the provisions of Section 14 of the Succession Act. Even otherwise, he stated in open Court (after obtaining the consent of his clients) that his clients have absolutely no objection and are agreeable to the Plaintiff taking the properties comprised in the settlement absolutely with all powers of alienation. Learned Counsel also stated that his clients would provide for the marriage expenses of the minor female child, Lalitha and that this Court itself may fix a reasonable amount to avoid any future litigation and disputes concerning the same. In fairness to learned Counsel, Mr. M.S. Venkatarama Iyer, I must say that he was very fair, liberal and reasonable in his perspective of approach in the solution of the problem which has arisen for decision in the case.

10. It only remains for me to consider the legal contention urged on behalf of the Respondent that the release deed, exhibit A-1 is invalid as the Plaintiff was a minor at that time and she was not represented by her legal guardian in the transactions. There is also the further objection raised by him that this release, in pursuance of which the Plaintiff gave up her rights in the rest of the family properties is invalid and cannot possibly be upheld as for her benefit and necessity since it involves a relinquishment of her rights in the rest of the properties to her detriment. In support of his argument, learned Counsel placed considerable reliance upon the decision of the Privy Council in *Pratap Singh v. Sant Kaur* ILR (1938) Lah. 313 (P.C.). In that case one Sham Singh in occupation of four squares of land in the district of Lyallpur in the province of Punjab as a tenant under the Government died in 1901 before acquiring proprietary rights therein by paying the price to the Government for the acquisition of the ownership. His widow Jiwani paid the price and became the owner in 1910. On her death disputes arose about the right of her daughters, Sant Kaur and Basant Kaur, to inherit the property. Sham Singh's collaterals", Gujar Singh, Pratap Singh and Karaar Singh, claimed the entire property resisting the right of the daughters. A compromise evidenced by a deed of settlement was entered into in 1921, under which the estate was divided among all those claimants two squares were allotted to the two daughters, each a square, while the remaining two squares were allotted to all the collaterals. At that time Basant Kaur, one of the daughters, was a minor. She was represented by Gujar Singh one of the rival claimants in the dispute, who purported to act as guardian in the above arrangement. In August 1927 Sujar Singh made a gift of his share to the two girls and thereupon disputes arose between the two girls and the other two collaterals, Pratap Singh and Karaar Singh. In that litigation the validity of the settlement was questioned by the girls but the trial Court negatived their claim. In appeal to the High Court, however, they (the girls) succeeded and this decision of the High Court was confirmed by the Privy Council. The Privy Council held that the settlement was not binding on Basant Kaur as Gujar Singh who himself wanted a share in the estate and whose claim was, therefore, adverse to minor Basant Kaur could not possibly represent her as her guardian, especially

when he was not her legal guardian. Learned Counsel for the Respondent relied upon the following observations at page 317 as supporting his contention that a transaction which is otherwise invalid as against a minor cannot be validated and upheld by invoking the doctrine of a family arrangement:

Their Lordships, after examining the relevant material on the record, see no reason to dissent from the conclusion reached by the learned Judges of the High Court. It is not suggested that Gujar Singh or any other person even purported to act on her behalf as her guardian.

It is, however, argued that the transaction should be upheld, because it was a family settlement. Their Lordships cannot assent to the proposition that a party can, by describing a contract as a family settlement, claim for it an exemption from the law governing the capacity of a person to make a valid contract. It is true that if a compromise has been entered into in good faith by the manager of a joint Hindu family, or by a father in such a family, a minor member of the family cannot be allowed to disturb it on the ground of inequality of the benefit, unless there was fraud or some other ground which in law vitiates it. This rule proceeds upon the principle that the minor was properly represented by the father or the manager of the family and he was, therefore, a party to the compromise. The rule does not offend against any law governing a contract.

As regards the transaction for the distribution of squares in the present case, it is not proved that there was any person who had authority, either under the law of contract or under the personal law applicable to the minors, to make the compromise on their behalf, surrendering a moiety of their inheritance to persons who were not entitled to it.

11. This decision is clearly distinguishable and it must be confined to the facts of that particular case. In determining the validity or the legality of the release deed, over-emphasis should not be given to the label of the deed or the form in which the transaction takes place. It is the substance of the arrangement which will have an important bearing in the matter. As observed earlier both the transactions had to be viewed as forming part and parcel of one integral arrangement, as a result of which the joint family estate was divided and the Plaintiff was given her share (under the Hindu Women's Right to Property Act of 1937) representing her husband's share while the other parties to the arrangement remained joint as amongst themselves. Viewed in this light the release deed really represents a partition arrangement by which the male members of the joint family take the rest of the properties.

12. I may first refer to a Bench decision of this Court in Venkataraghava v. Rangamma ILR (1892) Mad. 498 rendered by Muttusami Ayyar and Parker JJ. In that case a person's adoption was disputed by his adoptive sister on the ground that the adoption was invalid. The adoptive mother, acting as the guardian of the minor adopted son, settled the dispute and the settlement took the form of a deed of gift in favour of the adoptive sister. The adopted son later on brought a

suit to recover possession of the property comprised in the deed of gift on the ground that the adoptive mother (and his guardian) had no authority to make a gift of these properties. The High Court took the view that the transaction was substantially not a mere voluntary gift but one concluded bona fide by the adopted son's mother and guardian with a view to adjust and settle the litigation then pending about this adoption, and the matter was remanded to the trial Court with a view to determine whether the arrangement was a bona fide one. The principle of this decision was followed and applied in a recent decision of this Court in *Palani Pillai Vs. Sengamalathachi and Others*, . In that case also a family settlement was questioned on the ground that it was in effect and in substance nothing but a gift of a minor's estate. But this plea was over-ruled. It was held that a family arrangement which was entered into to avoid a protracted and costly litigation that may prove ruinous to the interests of the minor, could be entered into by the guardian on behalf of a minor, and that considerations which apply to an alienation by a guardian would be relevant in judging whether the family arrangement is for necessity or benefit of the minor.

13. I may in this connection refer to the following statement of the law in *Story On Equity*, page 59, paragraph 132, regarding the correct perspective of approach while judging the validity of a family arrangement:

There tire cases of family compromises, where, upon principles of policy, for the honour or peace of families, the doctrine sustaining compromises has been carried further. And it has been truly remarked, that in such family arrangements the Court of Chancery has administered an equity, which is not applied to agreements generally. Such compromises, fairly and reasonably made, to save the honour of a family, as in case of suspected illegitimacy, to prevent family disputes and family forfeitures, are upheld with a strong hand; and are binding, when in cases between mere strangers the like agreements would not be enforced.

14. The validity of the arrangement has, therefore, to be judged with reference to the question whether a partition arrangement could be validly entered into even though one of the parties thereto is a minor and is not represented by his or her legal guardian, but by a de facto guardian or persons who are really vitally interested in safeguarding and protecting the interests of the minor and have also done so with the best of intentions and bona fides and in good faith.

15. In *Jakka Devayya and Sons, Tenali Vs. Commissioner of Income Tax, Madras*, the question came up for direct decision before a Bench of this Court, *Satyanarayana Rao and Rajagopalan JJ.* It was held that a partition of joint family properties cannot be impugned as invalid by the minor coparcener merely because he was not represented by a lawful guardian and that so long as the interests of the minor have not suffered it was open even to a person other than a natural guardian to represent the minor in the partition and it would be binding on him.

Reference may also be made to the following observations of the Supreme Court in *Pedasubhayya v. Akkamma* (1959) 1 M.L.J. 60, 65 (S.C.).

But it may happen that there is a division between the father and his own minor son, and in that case, the minor would normally be represented by his mother or some other relation, and a partition so entered into has been recognized to be valid and effective to bring about a severance in status. The minor has no doubt the right to have the partition set aside if it is shown to have been prejudicial to him but if that is not established, the partition is binding on him. (*italics ours*).

16. In *Dangal Earn v. Jaimangal Saran* ILR (1926) Pat. 480, 487 a Bench of the Patna High Court held that in order to sustain the validity of a family arrangement and the partition it was not necessary to establish actual legal necessity for such a course and that in order to successfully assail the transaction it must be made out that the course (namely, the family arrangement) adopted was so detrimental to the interests of those who were interested as minors that it would be inequitable to allow the transaction to stand. Foster J. put the matter thus at page 487:

The rule there is very clearly stated, that in the absence of proof of mistake, inequality of position, undue influence, coercion or like ground, a partition or family arrangement made in settlement of the disputed or doubtful claim is valid and binding arrangement which the parties thereto cannot deny, ignore or resile from; and this principle is applicable where some of the members of the family are minors, or where the settlement has been affected by a qualified owner whose acts in this respect will bind the reversioner.

17. Reference may also be made to the following statement of the law in XVII Halsbury, page 216, paragraph 357:

Principles governing family arrangements: Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.

18. The general principles relating to family arrangements equally apply to family arrangements to which minors are parties, subject to the only difference that where minors are parties in order to make the family arrangement binding on the minor, it must be proved that the interests of the minor affected by such family arrangement are sufficiently safeguarded and that the family arrangement is mainly for the benefit of the minor and no improper advantage was taken of the minor's position.

19. Learned Counsel for the Respondent relied upon the decision in Mohd. Amin and Others Vs. Vakil Ahmed and Others, as authority for the position that a de facto guardian has no power to convey to another any right or interest in immovable property under a deed of family settlement and that the same is void qua the minor. In this decision of the Supreme Court the principle of the decision of the Privy Council in Pratap Singh v. Sant Kaur ILR (1938) Lah. 313 (P.C.) referred to earlier and relied upon on behalf of the Respondent was followed. The decision of the Supreme Court has no application to the instant case as it is a case which arose under Mohammedan Law which does not recognize the doctrine of de facto guardian. The decision of the Privy Council in Imambandhi's case ILR (1918) Cal. 878 (P.C.) was followed. I am unable to accept this decision as authority for the position that under Hindu Law a family arrangement cannot be entered into by a de facto guardian acting on behalf of a minor.

20. I may next refer to the Bench decision of the Andhra Pradesh High Court in Kapila Annapurnamma Vs. Panchalavarupu Venkata Satya Seeta Ramanjaneyaratnam and Others, , rendered by Subba RAO C.J., and Manohar Pershad JJ. It was held that after the death of the husband his kins are the guardians of the childless minor widow, both in regard to her person and in regard to her property ; but if the husband's family be extinct or contain no male or be helpless the kind of her own father are the guardians of the minor widow. In the instant case the husband's brothers and uncle cannot act as the guardian as the partition dispute itself was between them ranged on the one side, and the widow on the other. In such a case I do not see any reason why the widow's near relations like her own brothers and her sister's husband should not act (presumably with the concurrence of her mother) as her guardian and represent her in the family arrangement. The rule that on the death of the husband, the husband's relations would be the guardian of the minor widow could not be applied in the abstract, regardless of all circumstances. After the consideration of relevant principles of Hindu Law it was observed that (under the Hindu Law) there was no distinction between the powers of a de facto and a de jure guardian and that a de facto guardian has undoubted power to enter into a family arrangement provided it was for the benefit of the minor and was brought about to resolve a family dispute. There too, considerable reliance was placed upon the decision of the Privy Council in Pratap Singh v. Sant Kaur ILR (1938) Lah. 313 (P.C.) but it was distinguished on the ground that the family arrangement that was entered into in that case did not satisfy the tests of necessity and benefit propounded in Hanoomanpersaud Pandey's case (1856) 6 M.I.A. 393 Vide observations at page 47.

21. At this stage it is necessary to refer to the Full Bench decision of the Andhra (Pradesh) High Court in Suryaprakasam v. Gangaraju AIR 1956 AP 33 (F.B.) in which Subba Rao C.J., delivering the judgment of the Full Bench observed as follows at page 36):

The Madras view appears to be more in consonance with the doctrine of Hindu

law and is a successful attempt to reconcile the principles of the English law of contracts transplanted in India with the well established doctrines of Hindu law, whereas the other High Courts, if I may say so with respect are guided only by the principles of English law without due regard to the conditions prevailing in India.

Pausing here for a moment let me restate the principles. A minor has no legal competency to enter into a contract or authorize another to do so on his behalf. A guardian therefore steps in to supplement the minor's defective capacity. Capacity is the creation of law whereas authority is derived from the act of parties. The limit and extent of his capacity are conditioned by Hindu law. He can only function within the doctrine of legal necessity or benefit. The validity of the transaction is judged with reference to the scope of his power to enter into a contract on behalf of the minor. Even the personal liability arising out of the guardian's contract is the liability of the minor's estate only.

22. From these decisions it will be clear that in the case of transactions and dealings relating to immovable property the guardian steps in to supplement the minor's defective capacity and the validity of the transaction is to be judged with reference to the test of necessity and benefit.

23. In *Kondamudi Sriramulu v. Myneni Pundarikakshayya : Tadavarti Bapayya and Ors. v. Myneni Pundarikakshayya* (1949) F.C.R. 65 Mahajan J., as he then was, adverted to the origin and the development of the doctrine of de facto guardian under the Hindu Law in the light of the principles of the Hindu Law and the judicial decisions bearing upon the point. The learned Judge observed thus at page 156 and 161:

So far as I am able to see, Hindu jurisprudence is based on principles of ethics and morality and whatever money has been taken or an act has been done which has benefited the real owner of the estate then that loan or act is not repudiated merely on the technical ground of want of authority in the person taking the loan or doing the act. The principle is that if the estate of a person, whether a minor or absentee, or a joint proprietor, has been benefited by the act of a person who does not hold proper authority but who is in management of the estate then that act must be respected by the true owner and not repudiated merely on the ground of want of authority. In my judgment therefore the rule laid down in *Hunoomanpersaud Panday's* case (1856) 6 M.I.A. 393 regarding the powers of a de facto manager of a minor's estate is based on Hindu system of jurisprudence and in this matter is different from Muhammadan law and other systems of law. Moreover this decision is now unquestionable even on the doctrine of stare decisis. As regards the scope of the rule I have no manner of doubt that it has application to cases of relations and friends, who assume management of the property of a minor and who have some connection" with the family and does not apply to utter strangers and intruders. Their acts of necessity performed to safeguard the minor's estate are binding on the minor's estate...The position therefore is that if such persons to whom the law including the statute shows

preference in the matter of appointment of guardianship without formally getting themselves appointed by the Court, assume out of affection, charge of the estate of a minor and take upon themselves management of it, pay the revenues, realize rents, locate tenants, maintain the minor and do all other acts of management and the Courts and other relations stand by and recognize them as such should they be treated as officious intermeddlers with the estate. Can they not be aptly and appositely described as de facto guardians of minor's person and de facto managers of his estate? It was the position of such managers that was recognized in Hunoomanpersaud Pandey's case (1927) ILR 51 Bom. 1040 and their acts in the management of the estate, provided they were for the protection of the estate or for the benefit of the minor's estate, were recognized as valid, the test being necessity and not the authority that they possessed.

24. It was next contended by learned Counsel for the Respondent that in the instant case the relations who represented the minor cannot be regarded as de facto guardians as there was no continuous course of conduct on their part constituting acts of management and that a fugitive or isolated act of the person with regard to a minor's property would not make him a de facto guardian of the minor. He contended that in the instant case the relations of the minor did not act whatsoever by way of management and that the only act they have done and that too within two weeks of the death of the husband of the Plaintiff, was to represent her in the family settlement, and that that was not sufficient to confer upon the relations the powers of a de facto guardian whatever they may be. He relied upon the following observations in the Bench decision of this Court in *Palani v. Vanjiakkal* ILR (1956) Mad. 1962 at page 1065.

A de facto guardian is one who is not a legal guardian in the sense that he is either a natural guardian or a testamentary guardian or a Court-guardian, but who being interested in the minor, though a stranger, takes charge of management of the minor's property. This rules out cases of a fugitive or isolated act of a person with regard to the minor's property and which would not make him a de facto guardian of the minor. In order to enable one to become a de facto guardian, there must be a continuous course of conduct as guardian of the minor in regard to his property the length of the period required to constitute one a de facto guardian being dependent upon the circumstances, of each case. The first act of intermeddling with the estate of a minor would not be the act of a de facto guardian, if he had not become one before that act ; nor would subsequent management of the estate of the minor by such person make the first act which is one of alienation of the minor's property, the act of a de facto guardian.

25. He also relied upon the following observations of Mortin C.J. in *Harilal Ranchhod v. Gordhan Keshav* (1927) ILR 51 Bom. 1040 at page 1044:

Now it is not necessary for us in the present case to define what particular circumstances must exist before a person can be described as a "de facto" guardian, or have such powers that may properly belong to a de facto guardian.

But speaking for myself I think there must be some course of conduct in that capacity before a person can be described as a guardian de facto. I am not prepared to extend, that expression to a guardian ad hoc. In other words, I am not prepared to say that a person who over many years has never intermeddled or acted as a guardian can then come forward and claim to be a guardian de facto and authorized to sell property on behalf of a minor. In the view I take such a person would be a guardian ad hoc and not a guardian de facto.

He also relied upon the following observations of crump J.

I must admit that I am not precisely enamoured of the term "de facto guardian" because it appears to me to be debatable in the extreme, and incapable of exact definition. I take it to mean, so far as it can be defined, a person, who, being neither a legal guardian nor a guardian appointed by Court, takes it upon himself to assume the management of the property of the minor as though he were a guardian. But if that be the real meaning of the term, I agree with the learned Chief Justice that it implies some continuity of conduct, some "management of the property beyond the isolated act of sale which comes into question in this suits Looking at the evidence here I can find nothing which would justify the Court in holding that Rangila acted as guardian of the minors on any occasion except that of the sale deed which is now attacked. And therefore whatever may be the inference that can legitimately be drawn as regards a de facto guardian, from the remarks of their Lordships of the Privy Council in Hunoomanpersaud's case (1855) 6 M.I.A. 393 those remarks will hardly apply to a case such as we have here.

26. In my opinion the principles of these decisions which dealt with alienations will have no application in the case of a family settlement. Family arrangements stand on an entirely different footing and if the condition of a prior continuous course of conduct and acts of a management were to be insisted it will create difficulties and no family settlement would materialize whenever a minor is involved, and the result will be inevitable litigation and Court proceedings. If a member of a joint family dies leaving male coparceners and a minor widow, and if the entire family Council decides to secure the share of the minor widow in the family estate I see nothing in principle why such an arrangement should be declared to be invalid on the ground that sufficient time has not lapsed for someone to acquire the status of a de facto guardian by acts of management. If such a condition were insisted upon in this case there may not be a de facto guardian at all as the surviving coparceners will be in possession of the entire joint family properties ; there won't be any decision for any person to exercise acts of management for any course of time. The acceptance of such a view would completely defeat the very purpose and object for which Hindu Law confers similar powers upon de facto guardian; this doctrine of continuity of course of management cannot be applied as a rule of thumb of universal application in all cases. While referring to Harilal Banchhod v. Gordhan Keshav ILR (1927) 51 Bom. 1040 and the Bench decision of this Court in China Alagumperumal

Karayalar Vs. Vinayagathammal and Others, Wadsworth J., made the following observations in Mukkamala Hanumayamma Vs. Kasineni Lakshmiddevamma and Another, at page 636

A de facto guardian is one who is already a guardian owing to something which has happened previously. To hold otherwise would be tantamount to admitting that a person buying property from a minor's estate or paying debts to the minor's estate can recognize anybody he likes with impunity as the guardian, provided that the person comes to be recognized as the guardian de facto of the minor subsequently. At the same time there are obvious difficulties in the way of the application of the dictum, as a literal statement of a rule of law, to such a case as the present. One can conceive of circumstances in which the first formal act of the de facto guardian would be one which the Courts might rightly recognize as binding on the minor. I refer to a case in which the position of the de facto guardian has been recognized in the family and by those mainly concerned before any intermeddling act of a formal nature affecting the minor has been, accomplished. Surely the question must be whether in the eyes of the family of the minor and those interested in the welfare of the minor, the person who makes an alienation or receives a payment is, at the time of the transaction impeached, regarded by common consent as the person who is entitled to act on behalf of the minor. If there is such a general recognition, then in my opinion, when once the person recognized has consented to act as guardian, it would not be necessary to wait for a series of transactions in the capacity of guardian in order to clothe that person with authority to represent that estate. The question is essentially one of fact. If the intermeddler is, as is contemplated in the case referred to in Harilal Ranchhod v. Gordhan Keshav ILR (1927) 51 Bom. 1040 a self constituted guardian who comes into being for no other purpose than to carry out an isolated transaction which transaction is of very doubtful advantage to the minor's estate, then there could be no such general recognition of the alleged guardian as would clothe him with authority and clearly there could be no such course of conduct as might take the place of or supplement the general recognition.

27. I am, therefore, of the opinion that in the case of a family settlement and a partition arrangement, distinguished from an act of alienation or an act of borrowing, it is not necessary that the de facto guardian of the minor should have managed the property of the minor for a continuous course of period ; the validity of this act in the case of a family settlement will have to be judged with reference to the particular facts of the case and the setting and background in which the family arrangement was entered into. For all these reasons, I am clearly of the opinion that the Plaintiff is bound by the family arrangement and her suit for the cancellation of the release deed is devoid of substance.

28. The result is that the second appeal is allowed and the Plaintiff's suit is dismissed.

29. As desired by me, learned Counsel for the Appellants has filed two affidavits,

one by Govindaswamy Chetti and the other by Pandurangan Chettiar (Defendants 1 and 2) in which they have stated that the property which had been settled upon the Plaintiff (first Respondent here) shall be taken by her absolutely with full powers of alienation. They have also agreed that they will provide a sum of Rs. 1,500 for the marriage expenses of minor Lalitha, their step-sister. At the time when her marriage is settled, the first Respondent shall give intimation to the Appellants, giving three weeks' time, so that they can make the payment of Rs. 1,500 to the first Respondent. If the Appellants commit default in paying the said sum, the first Respondent shall be entitled to recover the same in execution either before or after incurring the expenses. No costs.

No leave.