

(2012) 12 GUJ CK 0072
In the Gujarat High Court
Case No : Second Appeal No. 162 of 1994

Rajnikant Chhotabhai Patel	Vs	APPELLANT
Patel Kantibhai Fulabhai Bin Mathurbhai Decd. Thro Heirs and Others		RESPONDENT

Date of Decision : 24-12-2012

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63
Civil Procedure Code, 1908 (CPC) — Section 100
Hindu Minority and Guardianship Act, 1956 — Section 11, 12, 8, 8(2)
Registration Act, 1908 — Section 17

Citation : (2013) 2 GLR 1550

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : D.C. Dave, for the Appellant; Mayur Rajguru, Advocate for the Defendant(s) No. 1-1.5, 2 and Rule Served for the Defendant(s) No. 3, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice C.L. Soni

1. This appeal u/s 100 of the CPC is filed by the original defendant No. 1 against whom as well as against other defendants the respondent Nos. 1 and 2-original plaintiffs filed Regular Civil Suit No. 250 of 1968 seeking possession of the suit property. The case of the plaintiff in his suit is that, uncle of the defendant No. 1 named Patel Kalidash Desaibhai acting as his guardian illegally got sale deed executed on 2.3.1959 for consideration of Rs. 2,500/- in favour of the defendant No. 1 and on the same day he had executed a cross agreement as guardian of the defendant No. 1 as per which the suit property was to be reconveyed within 10 years after expiry of 5 years from the date of such deed by taking back Rs. 2,500/- from the plaintiffs. It is further case of the plaintiffs that the said document was contrary to the provisions of Fragmentation Act and, therefore, the defendant No. 1 did not acquire any right in the suit property. The defendant

No. 1 is thus in illegal possession of the suit property. The plaintiffs are ready and willing to pay Rs. 2,500/- to the defendant No. 1 and the defendant No. 1 therefore is under obligation to give back the possession of the suit property to the plaintiffs. The plaintiffs have also put alternative plea in their suit that even if the Court believes that by the said document the defendant No. 1 has become owner of the suit property then also since the cross agreement was entered into on the same date, such transaction could be said to be a transaction of mortgage and, therefore, the plaintiffs are entitled to redeem the mortgage and get back the possession by paying an amount of Rs. 2,500/- to the defendant No. 1. The plaintiffs have setup one more alternative plea in the suit that if the transaction is not believed to be of mortgage then the plaintiffs be held entitled to get back the suit property by construing the transaction as agreement between the parties for reconveying the property to the plaintiffs. On such basis the plaintiffs made three prayers in the suit, one is the plaintiffs being owner of the suit property the defendant No. 1 be directed to hand over the possession of the suit property to them, the second one is that if the Court finds that for any reason or circumstances it is not proper to grant such relief, then the transaction being in the nature of mortgage the Court may order for redemption of mortgage and direct the defendant Nos. 1 and 2 to hand over possession of the suit property to the plaintiffs and the third one is that, if the Court still believes for any reason that the relief for redemption of mortgage is not appropriate to be granted to the plaintiffs, then as per the agreement made by the guardian of the defendant No. 1 in favour of the plaintiffs, the Court may pass order for specific performance of the agreement and direct the defendant Nos. 1 and 2 to hand over possession of the suit property to the plaintiffs. The defendant No. 1 resisted the suit by filing Written Statement at Ex. 11 and stated that the plaintiffs and defendant Nos. 2 and 3 are not heirs of deceased Fulabhai, who was original owner of the suit property and, therefore, the plaintiffs have no right to file such suit. It is denied by the defendant No. 1 that the transaction was against the provisions of Fragmentation Act. The defendant No. 1 has stated that the transaction was of the absolute sale in his favour. By virtue of said transaction he has become owner of the suit property. The defendant No. 1 has denied that the transaction was in the nature of mortgage and, therefore, there was no question of redemption of the mortgage as claimed by the plaintiffs. The defendant No. 1 has further denied that as per the agreement for reconveyance he is liable to reconvey or resale the suit property to the plaintiffs. It is further stated that even if there was any right of reconveyance, the same was personal right of deceased Fulabhai, and the plaintiffs are not entitled to reconvey the suit property. It is lastly stated that the defendant No. 1 having paid full price of the suit property to deceased Fulabhai, the plaintiffs are not entitled to claim any right in respect of the suit property.

2. On the basis of pleadings the learned trial Judge framed issues at Ex. 14 as under:-

(1) Whether it is proved that the writing of sale deed dated 2.3.57 is in the

nature of mortgage ?

(1A) Whether plaintiffs are entitled for redemption of mortgage, if issue No. 1 is answered in affirmative ?

(2) Whether it is proved that the guardian of defendant No. 1 has executed an agreement in favour of the plaintiffs to hand over the suit land in Rs. 2,500/- as stated in para-2 of the plaint ?

(2A) Whether plaintiffs are entitled for the reconveyance of the suit land under the agreement of reconveyance, if issue No. 2 is answered in affirmative ?

(3) Whether it is proved that the document of sale deed dated 2.3.57 is in violation of the Prevention of Fragmentation And Consolidation of Holdings Act ?

(4) Whether the defendant No. 1 has got any ownership over the suit land ?

(5) Whether the plaintiff has a right to sue ?

(6) Whether the defendant No. 1 has tenant of the suit land and as such whether it is proved that he is a deemed purchaser ?

(7) Whether it is proved that the deceased Fulabhai Mathurbhai had got personal right under the suit agreement ? If yes, what is its effect upon the present suit ?

(8A) Whether plaintiff proves that they are agriculturists ? If yes.

(8B) What is its effect upon the document of reconveyance u/s 63 of the Bombay Tenancy and Agriculture Lands Act ?

(9) Whether the plaintiff is entitled to a possession of the suit land ?

(10) Whether the defendant is entitled to a compensatory costs of Rs. 500/- (rupees five hundred only) ?

(11) Whether the plaintiffs are entitled to the reliefs claimed ?

(12) What order ?

3. On appreciation of evidence the learned trial Judge came to the conclusion that the sale deed executed at Ex. 75 in favour of the defendant No. 1 was void as hit by the provisions of Fragmentation & Consolidation of Lands Holdings Act (hereinafter referred to as "Fragmentation Act" for short). The learned trial Judge further held that the transaction at Ex. 75 was not in the nature of mortgage and, therefore, no question of redemption of mortgage would arise. The learned trial Judge has further held and observed that the subsequent agreement at Ex. 68 was an agreement for reconveyance of the suit property, but since the sale deed at Ex. 75 is held to be void the question as regards the enforcement of reconveyance did not arise. The learned trial Judge also answered the issue of limitation in affirmative by holding that the suit of the plaintiffs was within time limit for enforcement of agreement at Ex. 68. The learned trial Judge also examined the issue as to whether the plaintiffs have any

right to file the suit, and came to the conclusion that the agreement did not give right only to deceased Fulabhai, but the plaintiffs were also entitled to ask for the enforcement of the agreement. The learned trial Judge ultimately allowed the suit by judgment and decree dated 1.8.1997 and held the plaintiffs entitled to recover possession of the suit property and directed the defendant No. 1 to hand over possession of the suit land to the plaintiffs on plaintiffs paying Rs. 2,500/- to the defendant No. 1.

4. The defendant No. 1 unsuccessfully carried the matter before the Appellate Court by filing Civil Regular Appeal No. 93 of 1987. The learned Appellate Court framed following points for determination;

(1) Whether the suit transaction is void, because of the provisions of Fragmentation & Consolidation of Lands Holdings Act ?

(2) Whether the counter agreement to retransfer the possession is enforceable ?

5. For the first point, the learned Appellate Judge held that in absence of any finding of the competent authority holding the suit land to be fragment the Civil Court lacks jurisdiction to give finding on this issue. As regards the second point, the learned Appellate Judge answered the same in negative and held th at the counter agreement to retransfer the property is not enforceable. However, the learned Appellate Judge came to the conclusion that the transaction of sale at Ex. 75 and of agreement at Ex. 68 was a transaction as a whole and the terms of such transaction cannot be separated and, therefore, such transaction as a whole is binding to the minor, provided the action of the guardian on behalf of the minor was not initially void. The learned Appellate Judge further considered the provisions of Section 11 of Hindu Minority and Guardianship Act and came to the conclusion that the uncle of the defendant No. 1 was de facto guardian and the property was purchased by money of minor-defendant No. 1 by his uncle and dealing of the property by de facto guardian was prohibited under the said provisions. The learned Appellate Judge further observed that if the minor could retain the benefit under the sale transaction entering into by de facto guardian on his behalf he had to accept the second transaction as the transaction as a whole was indivisible contract with the minor. The learned Appellate Judge further observed that considering from all angles, both the transactions were illegal and void and the minor does not get any right under the void contract in respect of the suit property and the ownership of the suit property cannot be said to have been transferred to the defendant No. 1. The learned Appellate Judge however observed that if under the sale transaction a minor could retain benefit then the minor defendant No. 1 was liable to reconvey the suit property to the plaintiffs as per the agreement of reconveyance. The learned Appellate Judge further observed that since the defendant No. 1 held suit property under void contract he could not put up plea of adverse possession. After making all the above observations, learned Appellate Judge further held in para-28 that the counter agreement to retransfer under Ex. 68, being an agreement made by the de facto guardian on behalf of the minor, was not enforceable in view of the

provisions of Section 11 of the Hindu Minority and Guardianship Act. On above conclusion, the learned Appellate Judge dismissed the Appeal by judgment; and decree dated 29.3.1994 which is under challenge before this Court in this Second Appeal.

6. This Appeal was admitted by order dated 2.9.1994 on following substantial questions of law:-

(i) In view of the findings recorded by the Lower Appellate Court that the suit transaction viz. The sale deed is not void, and in view of the further finding that the deed of reconveyance is not enforceable, would the plaintiff be entitled to a decree for possession of the suit land ?

7. I have heard learned advocates for the parties. Learned advocate Shri Jigar Patel, appearing for the appellants submitted that the Courts below have committed material error in holding the sale transaction as invalid being entered into by de facto guardian. He submitted that the learned Appellate Judge having held that the trial Court committed jurisdictional error in holding that the sale transaction was in contravention of the Fragmentation Act and thus void, could not have declared the sale transaction invalid on the ground that the de facto guardian had no right to enter into sale transaction in favour of the minor. Mr. Patel submitted that the learned Appellate Judge also committed serious error in holding that the transaction for sale of the property and the subsequent transaction for reconveying the property was the transaction as a whole and the defendant No. 1 was not entitled to take only the benefit of such whole transaction. Mr. Patel submitted that the declaration sought by the plaintiffs that the sale transaction was void, was only on the basis of Fragmentation Act and the learned Appellate Judge having found that the sale transaction was not void on account of breach of provisions of Fragmentation Act, it was not open to learned Appellate Judge then to declare the sale transaction invalid on another ground which was never the issue before the learned trial Judge. Mr. Patel submitted that since the father of the plaintiffs i.e. deceased Fulabhai had entered into reconveyance deed Ex. 68, the sale transaction was not open to challenge on any ground by the plaintiffs, being the heirs of the deceased Fulabhai. Mr. Patel submitted that by virtue of provisions of Sections 8 and 11 of Hindu Minority and Guardianship Act, the reconveyance deed was not enforceable at law and, therefore, the learned Appellate Judge ought not to have held the reconveyance deed to be part of same transaction. Mr. Patel submitted that when the Courts below have held that there was absolute sale by document Ex. 75 in favour of the defendant No. 1, the subsequent document Ex. 68 could not be taken as part of the same transaction because it was independent agreement between the parties for reconveyance of the property on different terms altogether. Mr. Patel submitted that the learned Appellate Judge having held that Ex. 68 is not enforceable at law, the learned Appellate Judge ought not to have confirmed the judgment and decree passed by the learned trial Judge especially when the learned Appellate Judge has also held that the Civil Court

has no jurisdiction to hold that the sale transaction was void under the provisions of Fragmentation Act. He thus urged to allow this appeal on the substantial questions of law framed by this Court at the time of admission of this Appeal. In support of his submission Mr. Patel relied on the following authorities:-

(1) O.G. Sankar and Another Vs. S. Veera Sameera Kumar Dev and Another, (2) Hari Satya Banerjee and Others Vs. Mahadev Banerjee and Others, (3) Talari Erappa Vs. Muthyalappa, (4) AIR 2002 215 (SC) .

8. As against the above submissions of Mr. Patel, learned advocate Mr. Sunit Shah, appearing for Mr. Mayur Rajguru, for the respondents-original plaintiffs submitted that the trial Court has on the basis of available material before it rightly held that the sale transaction was hit by the provisions of Fragmentation Act. He submitted that the learned Appellate Judge has also held that sale transaction was void under the provisions of Fragmentation Act. Mr. Shah submitted that the learned Appellate Judge has rightly come to the conclusion that the transaction of sale and of reconveyance was transaction as a whole and since the same was not separable, the defendant No. 1 was bound by such whole transaction. Mr. Shah submitted that since the transaction couched in both the documents was transaction as a whole it was not open for defendant No. 1-minor to take only benefit of transaction which was in his favour and not to act for reconveyance of the property. Mr. Shah submitted that the learned Appellate Judge has also rightly come to the conclusion that the uncle of the defendant No. 1 was just a de facto guardian and was not competent to deal with the property of minor and therefore sale transaction Ex. 75 for the minor was void transaction. He further submitted that if the defendant No. 1 has not acquired any right under such void transaction, the plaintiffs are entitled to recover possession of the suit property on the basis of their title to the suit property. He submitted that the learned Appellate Judge, therefore, has rightly held that the plaintiffs have become entitled to recover possession of the suit property on the basis of their title to the suit property.

9. Mr. Shah further submitted that when the defendant No. 1 minor was bound by the transaction as a whole he was equally under obligation to retransfer the suit property to the plaintiffs when the plaintiffs were ready and willing to repay the amount taken from the defendant No. 1 and when the plaintiffs had filed the suit within the period of 15 years by complying with the terms of the reconveyance deed. Mr. Shah submitted that even if the transaction is held not to be in violation of the Fragmentation Act then also the plaintiffs would still be entitled to recover possession of the suit property on the basis of their title to the suit property. Mr. Shah further submitted that the agreement Ex. 68 was like an agreement to sell the suit property to the plaintiffs as there are clear terms in the document Ex. 68 to transfer the suit property to the plaintiffs by taking Rs. 2,500/- from the plaintiffs. He submitted that the plaintiffs have already prayed for decree of specific performance of the contract and since the plaintiffs are ready to comply with their part of the contract they would be entitled to get

possession of the suit property by way of specific performance of the contract between the parties. Mr. Shah thus submitted that from all the angles the defendant No. 1 is not entitled to retain possession of the suit property and the Courts below have rightly held that the sale transaction was void in the eye of law and the plaintiffs are entitled to recover possession of the suit property. Such being the finding of fact recorded by the Courts below this Court while exercising powers u/s 100 of the CPC may not interfere with such finding of fact recorded by the Courts below. Mr. Shah also submitted that when the issue about the sale transaction being contrary to provisions of Fragmentation Act was raised before the trial Court on relevant materials available before the said Court, the trial Court was competent to come to the conclusion that the sale transaction was void. He submitted that the Civil Court's jurisdiction is not totally barred but by virtue of Section 36(A)(B) of Fragmentation Act the Civil Court is competent to call for finding on the issue as to whether the sale transaction is void under the provisions of Fragmentation Act. For this purpose, Mr. Shah has relied on the decision of Full Bench of this Court in the case of Dashrathlal M. Patel and Others Vs. State of Gujarat and Others, . Relying on the said decision of the Full Bench Mr. Shah submitted that the Courts below have rightly come to the conclusion that the sale transaction was void under the provisions of Fragmentation Act and this Court therefore may not interfere in such finding of fact recorded by the Courts below. Mr. Shah thus urged the Court to dismiss the appeal.

10. Having heard learned advocates for the parties and having perused the judgment and decree of the Court below with the records and proceedings, it appears that there is no dispute about the fact that the deceased Fulabhai-original owner of the suit property and father of the plaintiffs had executed sale deed on 2.3.1957 in favour of the defendant No. 1. The sale deed is produced at Ex. 75. By such sale deed, defendant No. 1 has become absolute owner of the property. There is no condition provided in the sale deed itself for retransfer or reconveyance of the suit property to the original owner. Thus, the sale Ex. 75 was absolute sale in favour of defendant No. 1. There is also no dispute about the fact that on that very same day an agreement of reconveyance Ex. 68 was entered into between the parties. This agreement is unregistered agreement. This agreement provides for reconveyance of property for the same amount for which defendant Nos. 1 through No. 2 purchased the suit property. This agreement provides that if the original owner of the property repays Rs. 2,500/- within a period of 10 years after completion of 5 years period from the date of execution of sale deed, defendant No. 1 would execute the sale deed with possession in favour of the original owner. Considering the contents of this document Ex. 68 it can neither be said to be a document of mortgage or document of agreement to sell. The Courts below have rightly construed the document Ex. 68 not to be a document of mortgage. Since by this document the suit property was not mortgaged against any amount, the same could not be construed to be document of mortgage. Not only this, but there was no condition provided in the original deed Ex. 75 for retransfer of the property and thus the

transaction between the parties could not be said to be a mortgage by conditional sale. Even otherwise, also the language of the document Ex. 68 does not reveal that the parties ever intended the transaction to be a transaction of mortgage. Thus, the transaction in deed Ex. 68 is not a transaction of mortgage.

11. The document Ex. 68 can also not be termed as document of agreement to sell because there is no recital in this document for an agreement between the parties for fixing the consideration of the suit property, for giving any amount by way of earnest money towards the consideration for the purpose of binding the original owner to execute the sale deed in future on payment of remaining amount of consideration. There is no other condition in this document reflecting the intention of the parties for sale of the property in future on any agreed consideration with other usual conditions, which are found in agreement to sell. Thus, this document Ex. 68 cannot be considered to be agreement to sell. In view of above, the plaintiffs were rightly held not entitled to decree for possession on the ground of redemption of mortgage or by specific performance of the contract. Therefore, if the plaintiffs are to succeed they have to prove that they have become entitled to recover possession of the suit property on the basis of title or on the basis of reconveyance agreement.

12. The learned Appellate Judge has not agreed with the findings recorded by the learned trial Judge that the sale transaction is void under the provisions of Fragmentation Act. The learned Appellate Judge has held that the Civil Court has no jurisdiction to decide such issue. For deciding such issue, the Civil Court had to have final order from the competent authority holding sale transaction to be void under Fragmentation Act. The Civil Court has mainly relied on the entry in the revenue record at Ex. 59 to come to the conclusion that the sale transaction was void under the provisions of Fragmentation Act. Except this there is no other material before the Civil Court. Mr. Shah has relied on the decision of Full Bench of this Court to point out that if any such issue arises before the Civil Court, the Civil Court retains the jurisdiction to decide the suit by calling for the finding on the issue as to voidness of the transaction under provisions of the Fragmentation Act. However, on reading the judgment in the case of Dashrathlal (Supra) it appears that the Full Bench has clearly held that the Civil Court has no jurisdiction to decide or settle or deal with any question which is by or under the Fragmentation Act required to be settled or decided or dealt with by the State Government or any officer or authority. In my view the jurisdiction of Civil Court is totally ousted to decide the issue arose under the provisions of Fragmentation Act. Even otherwise, there was no material before the Civil Court to come to the conclusion that the competent authority had already declared the sale transaction to be void under the provisions of Fragmentation Act. The Appellate Court has therefore rightly answered issue No. 1 in negative by holding that the Civil Court has no jurisdiction to give finding that the transaction was in contravention of the Fragmentation Act.

13. Then remains a question whether the transaction in documents Ex. 75 and

68 could be said to be a transaction as a whole. The learned Appellate Judge has held that the next agreement Ex. 68 is not separable agreement, but is part of the first transaction of sale and, therefore, the transaction contained in both the documents can be said to be transaction as a whole and the defendant is bound by sale transaction including the transaction in deed Ex. 68. The learned Appellate Judge has held that since de facto guardian was not authorised to enter into any of the transaction for minor, if the minor wants to take benefit of such transaction he should be equally ready to abide by the subsequent transaction. On this ground learned Appellate Judge has held that the defendant No. 1-minor cannot retain the suit property under the void transaction and he is under obligation to give back possession of the suit property to the plaintiffs. However, the learned Judge has also held that the document Ex. 68 is not enforceable in law because the same was executed by the uncle of the defendant No. 1 who was de facto guardian and not authorised to deal with the property of the defendant No. 1-minor. But then learned Judge came to the conclusion that since both the transactions were entered into by de facto guardian, the same were void and in these circumstances the plaintiffs are entitled to get decree for possession of the suit property on the basis of their title. In my view the learned Appellate Judge has materially erred in holding the sale transaction to be invalid on the ground that the de facto guardian had no authority to enter into sale transaction on behalf of the defendant No. 1 minor. It is required to be noted that deceased Fulabhai had taken said transaction as valid and, therefore, he had entered into subsequent transaction of reconveyance at Ex. 68. Even if de facto guardian was not competent to deal with the property of minor u/s 11 read with Section 8 of the Hindu Minority and Guardianship Act, the vital and important fact could not be ignored that the suit property was purchased by the de facto guardian for the benefit of minor. It was deceased Fulabhai, who with eyes opened sold the property to defendant No. 1 and it was the same person who entered into agreement for reconveyance wherein one of the condition was not to ask for reconveyance of property for 15 years. In such fact situation especially when the suit is filed after the period of 15 years from the date of reconveyance deed it could be said that deceased Fulabhai and the plaintiffs both had readily accepted the sale transaction made in favour of the defendant No. 1. Therefore, such sale transaction could not be said to be void or invalid at the instance of the plaintiffs who filed suit after the period of 15 years taking the base of reconveyance deed. Therefore, in my view even if the sale in favour of the defendant No. 1 was through his de facto guardian the same was taken to be a valid transaction by the original owner and the plaintiffs are not entitled to take up the plea that such sale transaction was void being entered into through the de facto guardian especially when such was never the plea before the trial Court. Therefore, if the sale transaction is not void transaction, in my view the plaintiffs are not entitled to recover the possession of the suit property on the basis of their title to the suit property. The learned Appellate Judge has thus committed grave error in holding and coming to the conclusion that the plaintiffs have become entitled to recover possession of the suit property on the basis of their

title to the suit property.

14. Then remains a question whether the plaintiffs were entitled to get reconveyance of the suit property on the basis of agreement Ex. 68. The agreement Ex. 68, as discussed above, is an agreement for reconveyance of the suit property. It is not a simple agreement to sell. By this agreement the defendant No. 1 was to be divested of his right and title to the suit property on getting the same amount which he paid when the sale transaction was entered into. Under the said agreement the plaintiffs were to become entitled to get back property by paying of Rs. 2,500/- within the prescribed time limit. Thus, if the plaintiffs pay Rs. 2,500/- as per the condition of this agreement Ex. 68 the plaintiffs can be held entitled to get back the suit property. No further document would be required to be executed except a formal deed of retransfer of suit property. Therefore, considering the nature of agreement Ex. 68 where under the suit property could be straightway retransferred in future on fulfillment of the condition, the same was required to be registered compulsorily under the provisions of Section 17 of the Registration Act and, since the agreement Ex. 68 was not registered the same was not enforceable in law at all. If we consider this agreement from another angle, this agreement was otherwise not enforceable in law because the same was executed by de facto guardian of defendant No. 1. Section 11 of the Hindu Minority and Guardianship Act specifically prohibits the de facto guardian from disposing of or dealing with the property of Hindu minor. The word "deal with" in the said provision would encompass in it agreement of reconveyance of the property of the minor. If Section 8 of this Act requires even the natural guardian not to deal with the property of minor without the permission of the Court, the provisions of Section 11 are required to be strictly construed so as to mean that the de facto guardian has got no right to deal with the property of minor to his prejudice in any manner.

15. As stated above, the defendant No. 1 had already become owner of the suit property by sale deed at Ex. 75. There is no condition provided in the sale deed for retransfer of the property. Therefore, if any subsequent agreement was to be entered into in respect of such property of minor defendant No. 1, only the natural guardian had authority with the permission of the Court. It has come in evidence that natural guardian was alive. Therefore, even on the ground that the de facto guardian had no authority to deal with the property of the minor, the agreement Ex. 68 was rendered void. Such agreement is, therefore, not enforceable in law. Therefore, on this ground also the plaintiffs are not entitled for reconveyance of the suit property. The learned Appellate Judge has already held that agreement Ex. 68 is not enforceable in law as being made by de facto guardian. Therefore, the plaintiffs have rightly not been held entitled to recover possession of suit property on the basis of agreement Ex. 68.

16. In the case of O.G. Sankar (Supra) Andhra Pradesh High Court has held and observed in para-19 as under:-

19. It is clear from such view expressed by the various High Courts including this

Court in the above cited decision in Ramender Reddy case (supra) that when the permission of the District Court as contemplated under Sec. 8(2) of the Hindu Minority and Guardianship Act is not obtained, the agreement of sale executed by the natural guardian of the minors cannot be enforced against the minors even if it is to be said that such an agreement is found to be for the benefit of the minors and that the question of considering the beneficial nature of the transaction does not arise when the validity and binding nature of such agreement is to be determined. In the present case, even though Ex. A-2 agreement is found to be for the benefit of the minors such agreement cannot be enforced against the minor defendants 2 and 3 inasmuch as the condition precedent of obtaining the permission from the District Court by the natural guardian of the minors is not fulfilled. Further, the second defendant on attaining majority had chosen to contest the suit by filing separate written statement of his own specifically avoiding the agreement of sale executed by his mother and contending that it is not valid and binding upon him and he does not choose to accept such alienation. It is now a well-established proposition of law that the minor can avoid such transaction by expressing his view and by his conduct without having the necessity of filing a suit for avoiding such alienation. Therefore, Ex. A-2 agreement of sale cannot be said to be enforceable against the defendants 2 and 3 as the prior permission of the District Court was not obtained and as such the plaintiff cannot be said to be entitled for the relief of specific performance as granted by the lower Court.

17. In the case of Hari Satya Banerjee (Supra) the Calcutta High Court has held and observed in para-12 as under:-

The position of a de facto guardian is materially different from that of a natural guardian or a guardian appointed by the Court. While the latter as the guardian in charge of the minor and his estate is clothed with the power to transfer subject to the limits prescribed by the law and as such there is no inherent lack of authority on the part of such a guardian to make the transfer, such is not the position of a guardian de facto who is none but a total outsider, who had imposed himself as a guardian. It was pointed out by the Federal Court in the case of AIR 1949 218 (Federal Court) , that a transfer effected by such a de facto guardian is really an ultra vires act but even then the law recognises such a transfer if it was for the benefit of the minor or to meet his legal necessity or where though not based on any such necessity it is ratified by the minor on his attaining majority. Such a transfer being in the nature of an ultra vires act it is open to the minor when he attains majority to repudiate it if it was not for his benefit or for his necessity. He can repudiate it by merely refusing to accept the transfer and continue to enjoy and possess the property so transferred in his own rights or by claiming recovery of possession thereof if he had been dispossessed. It is not necessary to have a judicial rescission of such a transfer because the transfer in substance being by an unauthorised person is not rendered valid except upon ratification. Here in the present case, though the sale dated Sept. 11, 1946 and not been rescinded by a suit or judicial proceeding, yet there is ample evidence

on record to show that the minor when he attained majority refused to recognise the transfer, continued to remain in possession and enjoyment of the lands transferred and then transferred the same in favour of defendant No. 11 in exercise of his own rights by the sale deed dated April 7, 1949 (Ext. A/1). Therefore, it has been rightly contended by Mr. Mitter that the legal necessity for the sale not having been proved and the minor after attaining majority having repudiated the sale by refusing to accept the transfer as a valid one, it must be held that the plaintiff could acquire no title to these 3 plots by his purchase from Jalad Barani acting as the guardian for the minor defendant No. 2.

18. In the case of Talari Erappa (Supra), Mysore High Court has held and observed in para-7 as under:-

As the law stands after the coming into force of the Act under no circumstances a de facto guardian can transfer the minor's property merely on the ground of his being a de facto guardian. If in those circumstances, defendant-5 claiming himself to be a de facto guardian alienated the properties of the minor plaintiff after coming into force of the Act, the transfers are void and if that be so, the question is whether void transactions could be ratified by a minor after he attains majority. The effect of the transaction being void is that no title passes to the alienee and the minor continues to be the owner of the property even after such transfer. Under Exhibit D-5, according to Mr. Srinivasan, the plaintiff agreed to purchase item No. 1 from defendant 2 for a sum of Rs. 2,510/-, being the amount defendant 2 is said to have paid under Exhibit D-4 as consideration. The position is that the plaintiff by entering into such an agreement was intending to buy his own property. In that event, it cannot be said that the agreement is supported by consideration much less such an agreement could validate the alienation made by a de facto guardian during the minority of the plaintiff. A ratification in law implies that the person who ratifies had the authority when the transfer took place to authorise the transaction and being a minor he was not competent to authorise such an act and if that be so, he cannot validate it by ratifying it subsequently when he attains majority. The view taken by us is supported by the Full Bench decision of the Lahore High Court in AIR 1935 561 (Lahore) , wherein it was held that subsequent ratification by a person on attaining the age of majority of a transaction which was originally null and void by virtue of the fact that he entered into it while still a minor, does not form a valid contract on which a suit can be maintained; since the contract entered into by the minor during his minority is a nullity and unenforceable at law, no question therefore, of its ratification arises and the consideration which passed under the earlier contract cannot be imported into the contract into which the minor entered on attainment of majority. Therefore, whatever may be the position before the Act came into force, there cannot be any doubt that after the coming into force of the Act, in view of the provisions of Section 11 of the Act, a minor on attaining majority cannot validate a sale by a de facto guardian by ratification.

19. In the case of Madhegowda (D) by L. Rs. (Supra), the Hon"ble Supreme Court in para 15 and 16 has observed as under:-

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

Section 11 of the Act reads as follows:

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

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

Section 12 of the Act reads as follows:-

Guardian not to be appointed for minor's undivided interest in joint family property where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest :-

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

16. From the statutory provisions noted above, it is clear that with the avowed object of saving the minor's estate being misappropriated or squandered by any person, by a relation or a family friend claiming to be a well-wisher of the minor Section 11 was enacted to prohibit any such person from alienating the property

of the minor. Even a natural guardian is required to seek permission of the Court before alienating any part of the estate of the minor and the Court is not to grant such permission to the natural guardian except in case of necessity or for an evident advantage to the minor. So far as de facto guardian or de facto manager is concerned, the statute has in no uncertain terms prohibited any transfer of any part of minor's estate by such a person. In view of the clear statutory mandate, there is little scope for doubt that any transfer in violation of the prohibition incorporated in Section 11 of the Act is ab initio void.

20. In light of the above, in no way the plaintiffs are entitled to recover possession of the suit property from the defendant No. 1.

21. For the reasons recorded above, the appeal is required to be allowed and judgment and decree passed by the Courts below are required to be quashed and set aside. In the result, the appeal is allowed. The judgment and decree passed by the Courts below are quashed and set aside.