(1978) 12 MAD CK 0025

In the Madras High Court

Case No : Appeal No. 914 of 1974

Theagaraya Reddiar APPELLANT

Vs

Vedachala Gounder and Others RESPONDENT

Date of Decision : 20-12-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12
Hindu Minority and Guardianship Act, 1956 — Section 11, 6, 8, 8(1), 8(2)

Citation : (1980) ILR (Mad) 450

Hon'ble Judges : Varadarajan, J;Gokulakrishnan, J

Bench : Division Bench

Advocate : N.S. Varadachari and K. Ramachandran, for the Appellant; T. Rangaswami Iyengar and A. Venkatesan, for the Respondent

Final Decision : Allowed

Judgement

Varadarajan, J.—The Plaintiff in Original Suit No. 41 of 1967 on the file of the Sub-Court, Chengleputtu is the Appellant. He is the son of one Sriapathy Reddiar and Meerabai Ammal, P.W. 3. He has filed the suit in forma pauperis for setting aside the alienations of the suit A to G Schedule properties made by Sriapathy Reddiar and P.W 3, the latter acting as his guardian during his minority, is favour of the seven Defendants in this case, for the recovery of possession of those properties, and renditions of accounts regarding the income from the properties from the dates of the various alienations and also for the recovery of future mesne profits. His allegation in the plaint is that he and his father Sriapathy Reddiar owned joint family properties in Thonnadu village, Madurantakam taluk. Sriapathy Reddiar was leading a wayward life and had incurred a number of debts as a result of which there was considerable pressure from the creditors for the discharge of those liabilities which had not been incurred by Sriapathy Reddiar either for any family necessity or for any benefit of the joint family. Sriapathy Reddiar and P.W. 3 the latter acting as the Plaintiff''s guardian during his minority, sold the joint family properties of Sriapathy Reddiar and the Plaintiff to one Krishna Reddiar for a sum of Rs. 31,000 under the sale deed of which exhibit A-1 is the registration copy, in order to discharge the various debts incurred by Sriapathy Reddiar. At the time of the execution of that sale deed, it was the intention of all interested parties to save at least some money from the sale proceeds for the benefit of the Plaintiff and, therefore, a sum of Rs. 14,000 was retained in the hands of the purchaser Krishna Reddiar so that from that amount some other properties could be purchased for the benefit of the Plaintiff. Sriapathy Reddiar agreed that the sum of Rs. 14,000 belonged exclusively to the Plaintiff as and by way of family arrangement at the time of the said sale and the Plaintiff became entitled to that sum lying in the hands of the purchaser Krishna Reddiar. Subsequently, under the sale deed exhibit A-3, dated 1st September, 1948, properties were purchased in Mathur village, Madurantakam taluk in the name of the Plaintiff, then a miner represented by the mother P.W. 3 as guardian. The said sale was in respect of the suit A to G Schedule properties for a consideration of Rs. 13,000 which was received by the vendors Kothandarama Reddiar and another from Krishna Reddiar out of the said sum of Rs. 14,000 (sic) by him. The properties purchased by that sale deed belonged exclusively to the Plaintiff, and his father Sriapathy Reddiar did not have any interest is all those properties. Since the date of that sale, P.W. 3 was in possession and enjoyment of those properties on behalf of the Plaintiff.

2. Sriapathy Reddiar, who was leading a wayward life and was addicted to many vices found that, he should have funds for the extravagant and illegal habits and, therefore, he appeared to have forced the Plaintiff s mother P.W. 3 to sell all the A to G Schedule properties to the Defendants between the years 1960 and 1967 in order that he could receive the consideration for those sales for being utilised for his illegal requirements. The properties purchased under the original of exhibit A-3 yielded large income for the maintenance and other expenses of the Plaintiff and there was no need to sell those properties. The Defendants had taken advantage of the need of Sriapathy Reddiar and purchased those properties for low sums. The (sic) in the various sale deeds are not true and have been made in the sale deed presumably to give a colour of bona fides to the transactionr of sale. The Plaintiff finds in some of the sale deeds that there is a recital to the effect that the properties have been sold for purchasing other properties in Nelvoy village. The sale of Mathur properties purchased under exhibit A-3 to the Defendants for the alleged purpose of purchased properties in Nelvoy village is not valid as the Mathur village properties are more valuable than the Nelvoy properties purchased under the Original of exhibit B-23, The consideration for the sales of the suit A to G Schedule properties is much larger than the alleged consideration of Rs. 7,000 for the purchase of the properties in Nelvoy village. The Plaintiff has never been in possession and enjoyment of Nelvoy properties and has disclaimed all interest in those properties. The sale of A to G Schedule properties is not binding on the Plaintiff and he called upon the Defendants to deliver possession of the properties. Some of the Defendants have sent reply with false allegations contending that the suit properties were the joint family properties of the Plaintiff and his father Sriapathy Reddiar and that the

sales are binding on the Plaintiff. Even, if the properties are joint family properties, the alienations are not binding on the Plaintiff as they had not been made by the manager of the joint family for any necessity or for the benefit of the Plaintiff: The Plaintiff prayed in those circumstances for setting aside the various alienations made in favour of the Defendants and for other reliefs mentioned above.

3. The Plaintiff claimed to have been born on 15th July, 1945 and has alleged that the suit had been filed within three years from the date of his attainment of majority.

4. Defendants 2 and 6 remained ex parte. Defendants 3, 4, 5 and 7 in their joint written statement contended that the Plaintiff has been set up by his parents to come forward with the unrighteous claim for black-mailing the Defendants and compelling them to pay some moneys in addition to the large accounts for which they had purchased the suit properties. The Plaintiff and his farther Sriapathy Reddiar continued to be the members of the joint Hindu family. Even then their family owned debts to the extent of Rs. 17,000 in or about 1948 and the joint family properties situated in Thonnadu village were sold by the Plaintiff''s father Sriapathy Reddiar and the Plaintiff''s mother, the latter acting as the Plaintiff''s guardian for a sum of Rs. 31,000. The Plaintiff''s father was not leading a wayward life. The suit A to G Schedule properties situate in Mathur village were purchased out of the balance of considerations from the sale of the joint family properties situate in Thonnadu village remaining after the discharge of the pressing family debts which were binding even on the Plaintiff. The family arrangement set up in the plaint is neither true nor valid. The purchase of suit A to G Schedule properties in the name of the Plaintiff will not make those properties the separate properties of the Plaintiff and they will not cease to be the joint family properties of the Plaintiff and his father. The Plaintiff''s father was managing those properties after the date of the purchase, and in the course of the management for the purpose of incurring family and other necessary expenses including the education of the Plaintiff, the Plaintiff''s parents had to incur debts and to discharge those debts, they had to sell the Mathur properties. The sales of Mathur properties were effected by the father as the family manager in colleboration with the Plaintiff''s mother who, is described as the Plaintiff''s guardian in the (sic) deeds excuted for necessary family purpose and for the benefit of the family expenses. The properties in Mathur village were not yielding sufficient income for meeting the requirements of the family. There was, therefore, need for the parents of the Plaintiff to incur debts. The debts were not incurred for meeting any illegal expenses of the Plaintiff''s father who was a prudent manager and was maintaining the family and getting the Plaintiff educated. After the sale of the properties in Mathur, the Plaintiffs parents and the Plaintiff considered it advantageous and prudent to purchase the lands in Nelvoy village which are better and more yielding and valuable than the Mathur properties. Therefore, for the purpose of purchasing those properties and shifting their family to Nelvoy, where there were better facilities for the education of the

Plaintiff, the Mathur lands were sold by the parents of the Plaintiff to these Defendants. The lands purchased in Nelvoy village were purchased for more than twice the sum of Rs. 7,000 mentioned as sale consideration in the sale deed though for ulterior purposes, the parties to the transaction of sale put down the sum of Rs. 7,000 as consideration in the sale deed. The Nelvoy properties have been in the possession and enjoyment of the joint family, and it is not open to the Plaintiff to disclaim interest in those properties for the purpose of defrauding the Defendants. The only course open to the Plaintiff is to implead his father as a party to the suit and bring the Nelroy properties also in the plaint and pray for partition of his share in the properties. These Defendants are bona fide purchasers for value after making due and proper enquires from the Plaintiff''s parents and others and satisfying themselves about the truth of the representations made by the paraents regarding the family debts contracted for family purposes binding on the Plaintiff. The sales of the suit properties are not viodable and the Plaintiff cannot avoid them, and in any event, he is bound to make the properties in Nelvoy available for making restitution to the Defendants. The allegation in the plaint that the sale deeds were executed by the Plaintiff''s mother under coercion or influence of her husband is false. The age of the Plaintiff given in the plaint is not admitted. The suit to set aside the alienation made by the guardian is barred by limitation. Thus the contesting Defendants opposed the claim of the Plaintiff for any of the reliefs.

5. On the above pleadings, nine issues including an additional issue were framed. Issue No. 1 and the additional issue relate to the correct date of birth of the Plaintiff and the question whether the suit is in time. The learned Addtional Subordinate Judge who tried the suit found, on the basis of the school transfer certificate exhibit A-2 and the application exhibit B-1 made for the admission of the Plaintiff in the Board High School at Uttiramerur where the Plaintiff had studied upto the year 1960, that the Plaintiff was born on 15th July 1945 as alleged in the plaint and that suit has been filed within three years after the attainment of majority of the Plaintiff and hence the suit is in time. Issues Nos. 2, 3, 5, and 6 relate to the questions whether the suit properties are the exclusive properties of the Plaintiff or the joint family properties of the Plaintiff and his father whether the family arrangement set up in the plaint is true and valid whether the suit in its present form is not maintainable without a prayer for partition of the Plaintiff''s share in the properties and whether the suit is bad for non-joinder of the Plaintiff''s parents as parties to the suit. The learned Additional Subordinate Judge found that the family arrangement as spoken to by P. Ws. 2 and 3 is true and valid, that the suit properties are the exclusive properties of the Plaintiff and not the joint family properties, that the suit as framed is maintainable and that the Plaintiff''s parents are not necessary parties. On the issue Nos. 4 and 7 relating to the questions whether the alienations of the suit "A" to "G" Schedule properties to various Defendants are true and binding on the Plaintiff and whether the sales to all or any of the Defendants are liable to be set aside in whole or in part, the learned Additional Subordinate Judge found that

the sales are not liable to be set aside either in whole or in part and that the alienations cannot be questioned. On these findings, the learned Additional Subordinate Judge dismissed the suit with costs of the contesting Defendants.

6. It is common ground that the properties that had been sold by the Plaintiff''s father Sriapathy Reddiar and the Plaintiff, represented by his mother P.W. 3 as guardian, to one Krihsna Reddiar under exhibit A-1, dated 29th April, 1948 for a consideration of Rs. 31,000 were joint family properties of the Plaintiff, and his father. Out of the consideration of Rs. 31,000, a sum of Rs. 17,000 had gone, according to the recitals of the sale deed, exhibit A-1, for the discharge of the debts of the joint family of the Plaintiff and his father and the balance of Rs. 14,000 had been left with the purchaser for being invested in the acquisition of suitable unencumbered properties for the benefit of the Plaintiff. There is evidence to show that out of the said sum of Rs. 14,000, the properties in Mathur village had been purchased from one Kothandarama Reddiar and another m the name of the Plaintiff for a sum of Rs. 13,000 under exhibit A-3, dated 1st September, 1948. These properties had been sold subsequently to the Defendants by the Plaintiff''s father Sriapathy Reddiar, acting for himself, and by P.W. 3, acting as guardian of the Plaintiff, under the sale deeds exhibits B-4 to B-9 original of exhibits A-4 and some other documents. We shall go into the validity and binding nature of these alienations on the basis that the suit properties were the separate properties of the Plaintiff before going into the question, whether the suit properties are the separate properties of the Plaintiff or the joint family properties of the Plaintiff and the Plaintiff''s father Sriapathy Reddiar.

7. Item No. 1 of the A Schedule properties had been Bold to the first Defendant for a sum of Rs. 4 000 under exhibit B-4, dated 25th September, 1957. The consideration of Rs. 4.000 is made up of Rs. 440 said to have paid for obtaining reconveyance of the properties which had been sold in execution of the decree obtained by one Veeraswami Reddiar in Suit Case No. 160 of 1951, on the file of the District Munsif Court, Changlepattu, on the basis of a receipt passed by P.W. 3, Rs. 1010 paid to one N.S. Varadachari Counsel for the Krishna Reddiar for the discharge of the debt due under the decree in Original Suit No. 160 of 1951 on the file of the same court Rs. 1,000 paid by the purchaser for discharging the debt due to one Krishna Reddiar on a promissory note, dated 22nd June 1965, Rs. 500 retained by the purchaser to discharge the debt due under a promissory note from the Plaintiff and his father to one Ranganayaki Ammal, Rs. 600 retained by the purchaser to discharge the subsidy loans borrowed on the security of the properties sold under exhibit B-4 Rs. 175 retained by the purchaser to discharge sulphate varam loan due from the Plaintiff and his father and Rs. 275 said to have been received for the family expenses and agricultural expenses of the Plaintiff and his father. The first Defendant has produced the suit register extract exhibit, B-15 which shows that a decree had been passed in Original Suit No. 160 of 1951 on the file of the District Munsif''s Court, Chengalpattu against the Plaintiff''s father and mother, P.W. 3. No. other record

has been produced to show that any property belonging to the joint family had beens old in execution of the decree obtained by Veeraswami Reddiar in Suit Case No. 160 of 1951 on the file of the District Munsif''s Court, Chengalpattu on a receipt passed by P.W. 3 or that the said property had been re-purchased for a sum of Rs. 440. Therefore, we find that the first Defendant has not proved the passing of this portion of consideration viz., Rs. 440. The first Defendant has not produced any receipt either from N.S. Varadachariar or from Krishna Reddiar for the payment of Rs. 1,010 or any other amount due to him from the Plaintiff and his father under the decree in Original Suit No. 160 of 1951. Exhibit B-15, the suit register extract, shows that the decree had been obtained only by Krishna Reddiar in Original Suit No. 160 of 1951. No copy of the decree or suit register extract relating to Suit Case No. 160 of 1951 on the file of the District Munsif''s Court, Chengalpattu is filed. We therefore, find that the first Defendant has not proved the passing of consideration to the extent of Rs. 1,010.

8. The first Defendant has not produced any promisory notes, dated 22nd June, 1955 executed in favour of Krishna Reddiar or any receipt for the discharge of the debt due under the promissory note by the payment of Rs. 1,000. We, therefore, find that the first Defendant has not proved the passing of the consideration to the extent of Rs. 1,000.

9. The first Defendant has produced the promissory note, exhibit B-11, dated 28th June, 1965 executed by the Plaintiff''s father and mother in favour of one Ranganayaki Ammal for Rs. 500. Though this promissory note, which has been defaced does not bear any endorsement of payment. We find that the purchaser under exhibit B-4 should have paid the sum of Rs. 500 to the promisee Ranganayaki-Ammal having regard to the fact that the promissory note, which should have been in the custody of Ranganayaki Ammal,has been produced by the first Defendant defaced. The first Defendant has produced the chalans exhibits B-16 and B-17, dated 29th February, 1958 for the payment Rs. 500 and Rs. 100 respectively due to the Government in respect of two subsidy loans. We, therefore, find that the first Defendant has proved the payment of this item of consideration of Rs. 600.

10. The first Defendant has not produced any receipt to show that a sum of Rs. 175 was paid by him for the discharge of any sulphate loan due from the Plaintiff and his father. There is no evidence to show that the family had to meet any family expenses or agricultural expenses at the time of the sale under exhibit B-4. Therefore we find that the first Defendant has not proved the binding nature of the consideration to the extent of these two sums of Rs. 175 and Rs. 275. Hence, the first Defendant has proved passing of consideration only to the extent of Rs. 1,100 covered by exhibits B-11, B-16 and B-17 out of the total consideration of Rs. 4,000 recited in exhibit B-4. Since he has not proved the passing of consideration for the major extent, we hold that the alienation under exhibit B-4 is not binding on the Plaintiff.

11. Item No. 2 of in "A" Schedule properties has been sold by the Plaintiff''s

father and P.W. 3, acting as the guardian of the Plaintiff, under exhibit B-6 dated 15th July 1959 for a consideration of Rs. 7,000. The consideration of Rs. 7,000. is made up, according to the recitals in exhibit B-6 of Rs. 450 retained by the purchaser for discharging the balance of well waragam loan said to be due from the Plaintiff and his father, Rs. 490. retained by the purchaser for discharging the balance due from the Plaintiff and his father under two cattle loans, Rs. 1,000 stated in the document to be paid before the Sub-Registrar at the time of the Registration of the sale deed, exhibit B-5 for paying advance for the purchase of the properties in Nelvoy village and Rs. 5,060 agreed by the first Defendant to be paid to the Plaintiff''s father and P.W. 3, guardian of the Plaintiff, at the time of the purchase of the Nelvoy properties. No document has been produced to show that a sum of Rs. 450 was paid by the first Defendant for the discharge of any well waragan loan due from the Plaintiff and his father or for the discharge of Rs. 490 said to be due under two cattle loans from the Plaintiff and his father. Though the recital in exhibit B-5, regarding the sum of Rs. 1,000 is that it should be paid in the presence of the Sub-Registrar at the time of the registration of the sale deed for paying the advance for the purchase of Nelvoy properties, there is no registration endorsement to that effect. But an endorsement has been made in the document itself that on account of the urgent necessity the sum of Rs. 1,000 had already been received by the Plaintiff''s father and P.W.3 as the guardian of the Plaintiff in the house itself. Similarly, though the recital in exhibit B-6 is that, the sum of Rs. 5,060 should be paid by the first Defendant in the presence of the Sub-Registrar at the time of the purchase of the properties in Nelvoy Village, there is no such endorsement in the sale deed exhibit B23 relating to those properties. On the other hand, the rectal in exhibit B-23 is that out of the consideration of Rs. 7,000 a sum of Rs. 6,000 was received from the Plaintiff''s guardian P.W. 3 and the balance of Rs. 1,000 was retained by the first Defendant to be paid to the Co-operative Land Mortgage Bank, Mudurantakam on behalf of the Plaintiff and his father. No document has been produced to show that a sum of Rs. 1.000 was paid by the first Defendant to the said Co-operative Land Mortgage Bank on behalf of the Plaintiff and his father. Therefore, we find that the first Defendant has not proved the passing of any portion of the consideration of Rs. 7,000 for the sale under exhibit B-5 and that the sale under exhibit B-5 is therefore, not binding on the Plaintiff.

12. Exhibit B-8 dated 27th July, 1960 is the sale deed executed by the Plaintiff''s father and P.W. 3 as the Plaintiff''s guardian in respect of item No. 3 of the suit "A" Schedule properties for a consideration of Rs. 1,000 which, according to the recitals in exhibit B-8, had been retained by the first Defendant himself for discharging the debt due from the Plaintiff''s father to one Mannarswamy Naidu of Madurantakam. The said Munnarswamy Naidu has not been examined to show that any debt was due to him from the Plaintiff''s father or that a sum of Rs. 1,000 was paid by the first Defendant to wards the same to him on behalf of the Plaintiff''s father. Nor is any receipt produced to show any such payment. We, therefore, find that the first Defendant has not proved the passing of

consideration of Rs. 1,000 for the sale of item No. 3 of the "A" Schedule properties to the first Defendant and the sale of item No. 3 of "A" Schedule properties is, not binding on the Plaintiff.

13. The "B" schedule properties are said to have been sold to the second Defendant for a sum of Rs. 4,000. The "F" schedule property is said to have been sold on 27th July, 1960 to the sixth Defendant for a sum of Rs. 1,500 Defendants 2 and 6 have remained experts. No document has been produced to show the sale of the "B" and "F" Schedule properties to Defendants 2 and 6 respectively or the passing of consideration of Rs. 4,000 and Rs. 1,500 respectively from those Defendants or the binding nature of those sales. We, therefore, hold that the sale of the "B" and "F" Schedule properties to Defendants 2 and 6 respectively are not binding on the Plaintiff.

14. The "C" Schedule property is said to have been sold to the third Defendant under exhibit B-6, dated 15th July, 1959 for a sum of Rs. 1,000 which according to the recital in exhibit B-6, has been left with the third Defendant himself to be paid in the presence of the Sub-Registrar at the time of the purchase of the Nelvoy properties as part of the consideration for the same. There is no such endorsement in the sale deed exhibit B-23 relating to the Nelvoy Properties. On the other hand, there is an endorsement on the sale deed, exhibit B-6 itself that the Plaintiff''s father and mother have received the entire consideration of Rs. 1,000 in the house itself on account of urgent necessity. The third Defendant has not proved what the urgent neceessity was and he has not offered any satisfactory explanation as to why, when the recital in exhibit B-6 is that the amount should be paid in the presence of the Sub-Registrar as part of the consideration for the purchase of Nelvoy properties, it became necessary to pay it earlier in the house itself to the Plaintiffs father and mother, P.W. 3. In these circumstance, we find that the third Defendant has not proved satisfactorily the passing of consideration for the sale of the "C" Schedule property to him and the binding nature of that sale on the Plaintiff.

15. The "D" Schedule property has been sold to the fourth Defendant under the original of exhibit A-4 dated 10th February, 1960 for a sum of Rs. 2,500 out of which, according to the recitals in the document exhibit A-4, a sum of Rs. 2,300 is said (sic) have been received to ''purchase the Nelvoy properties and the talance of Rs. 200 is said to be paid in the presence of the Sub-Registrar at the time of registration of the sale deed. There is an endorsement in exhibit A-1 to the effect that Rs. 200 was paid to the Plaintiff''s father and P.W. 3 at the time of registration of that sale deed. As already stated, the recital in the sale deed exhibit B-23 relating to the properties in Nelvoy village is that Rs. 6,000 was paid at the time of the purchase of those properties and a sum of Rs. 1,000 was retained by the purchaser to discharge the vendors'' debt due to the Co-operative Land Mortgage Bank, Madurantakam. The sale exhibit B-23 had come into existence on 10th August, 1960 six months after the date of the execution of the sale deed exhibit A-4. There is no satisfactory evidence to show that the sum

of Rs. 6000 paid at the time of the purchase under exhibit B-23 includes a sum of Rs. 2,300 which is stated in exhibit A-4 to have been already received for the purpose of purchasing the Nelvoy properties. In these circumstances, we find that the fourth Defendant has not proved satisfactorily the passing of consideration to the extent of Rs. 2,300 out of Rs. 2,600 for the sale of the "D" Schedule property and that the sale is therefore not binding on the Plaintiff. The "E" Schedule property is said to have been sold to the fifth Defendant under exhibit B-7, dated 27th July. 1960 for a consideration of Rs. 1,500 which, according to the recitals in the document exhibit B-7, is made up of Rs. 750 paid by the purchaser to N.S. Varadachariar the vendor of Nelvoy properties under exhibit B-3 and Rs. 750 said to have been received in cash for purchasing the properties in Nelvoy which had been purchased under exhibit B-23 about 15 days later on 10th August, 1960. The fifth Defendant has produced a receipt exhibit B-21 given by N.S. Varadachariar for the payment of Rs. 750 which is said to be due to N.S. Varadachariar on account of the lands purchased from him by the Plaitniff''s father Sriapathy Rcddiar. There is no evidence to show that any land was purchased in the name of the Plaintiff''s father from N.S. Varadachariar. Since the properties in Nelvoy Village had been purchased within 15 days from the date of the sale under exhibit B-7 it is probable that the sum of Rs. 750 had gone into the sum of Rs. 6,000 paid at the time of the sale under exhibit B-23. However, this sale also could not be held to be binding on the Plaintiff.

16. The "C" Schedule of properties are said to have been sold to the seventh Defendant under exhibit B-9, dated 27th July, 1960 for Rs. 3,000 which according to the recital in exhibit B-9, is made up of Rs. 450 retained by the seventh Defendant for discharging the balance of waragam loan obtained on the security of other lands and Rs. 2,550 stated to have been paid to the Plaintiff''s father and P.W. 3 as the Plaintiff''s guardian on the date of the sale for purchasing the properties in Nelvoy. No document has been produced by the seventh Defendant to show that he has paid Rs. 450 to the Government for any waragam loan obtained on the security of other properties belonging to the joint family of the Plaintiff and his father. Since the Nelvoy properties had been purchased under exhibit B-23 on 10th August, 1960 within about 15days from the date of the sale under exhibit B-9, it is probable that the sum of Rs. 2,550 received from the seventh Defendant under exhibit B-9 had gone into make up the sum of Rs, 6,000 paid at the time of the purchase under exhibit B-23. However, this sale also could not be held to be binding on the Plaintiff.

17. We shall now proceed to consider the question whether the suit "A" to "G" Schedule properties were the separate properties of the Plaintiff as contended by him or the joint family properties of the Plaintiff and his father as contended by the contesting Defendants. P.W. 2, who is related to the Plaintiff, and P.W. 3. the Plaintiff''s mother have spoken to about the family arrangement. P.W. 3 has stated that her husband Sriapathy Reddiar had incurred certain debts for his immoral purposes and that he wanted to sell all the ancestral properties situate in Thonnadu village for which she was not willing and that since her husband

began to prosecute, her, she informed the fact to her father who also was- not willing for the alienation of the properties. However, her husband was making arrangements to sell away the properties to Krishna Reddiar, who was interested in purchasing the entire properties and not her husband''s half share alone. Therefore, in the presennce of her father Vedachala Reddiar and her paternal uncle, Paramananda Reddiar, P.W. 2, a panchayat was held and it was agreed in that panchayat that the half share of the sale amount due to the Plaintiff, then a minor, should be ear-marked for his benefit and that it was only on that understanding that she agreed to her husband selling the family properties under the original of exhibit A-1. She has further stated that it was agreed in those circumstances that her husband should take Rs. 17,000 and the Plaintiff should take Rs. 14,000 and the sum of Rs. 31,000 belonging to the Plaintiffs share should be retained by the purchaser Krishna Reddiar himself for the purpose of purchasing lands in Mathur village for the benefit of the Plaintiff. This evidence of P.W. 3 is corroborated by the evidence of P.W. 2. The following recital in exhibit A-1 should be noticed in assessing the evidence of P. Ws. 2 and 3 regarding the arrangement:

These recitals in exhibit A-1 would probablies the case of the Plaintiff that at the time of the sale under exhibit A-1, a family arrangement was arrived at and a sum of Rs. 14,000 out of the consideration of Rs. 31,000 for the sale of the family properties was reserved as the Plaintiff''s share with the purchaser himself for the acquisition of properties for the benefit of the Plaintiff.

18. Mr. M.R. Narayanaswamy, learned Counsel for the Defendants 2, 3, 5 and 6, submitted that the arrangement under exhibit A-1 would not amount to partition, that there is no plea that there was any partition as such between the Plaintiff and his father and that the properties purchased under exhibit A-3 for Rs. 13,000 out of the sum of Rs. 14,000 reserved with the purchaser under exhibit A-1 would still be the joint family properties of the Plaintiff and his father. In this connection, he invited our attention to the decision in Shambhu Prasad Singh Vs. Mst. Phool Kumari and Others, . In paragraph 10 of this decision we find thus:

The arrangement under challenge has to be considered as a whole for ascertaining whether it was made to allay dispute, existing or apprehended, in the interest of harmony in the family or the preservation of property. It is not necessary that there must exist a dispute, actual or possible in the future, in respect of each and every item of property and amongst all members arrayed one against the other. It would be sufficient if it is shown that there were actual or possible claims and counter-claims by parties in settlement whereof the arrangement as a whole had been arrived at, thereby acknowledging title in one to whom a particular property falls on the assumption (not actual existence in law) that he had an anterior title therein.

The facts of the present case discloses that several debts to the extent of Rs. 17,000 had been incurred by the Plaintiff''s father while the joint family properties of the Plaintiff and his father were valued at that time only at Rs.

31,000. The parties interested in the welfare of the Plaintiff then a minor, had thought it prudent to bring about an arrangement whereby the Plaintiff''s father should, out of the consideration of Rs. 31,000, take for his share a sum of Rs. 17,000 and that the balance of Rs. 14,000 should belong to the Plaintiff for his share and should be retained by the purchaser under exhibit A-1 himself to be utilised for the acquisition of other properties in Mathur village for the benefit of the Plaintiff. No doubt, there is no evidence to show that there was any dispute as such at the time of that arrangement. But the parties interested in the Plaintiff and the Plaintiff''s father thought that by arrangement any future dispute which may be raised by the Plaintiff with regard to the family properties should not be avoided, if this arrangement was not made for selling the entire joint family properties of the Plaintiff and his father, utilising a sum of Rs. 17,000 out of the sale consideration for discharging the debts of the Plaintiff''s father and investing the balance of Rs. 14,000, for the benefit of the Plaintiff in acquiring other properties for him. In these circumstances we do not agree with the learned Counsel for the Defendants 2, 3, 5 and 6 that it is not possible to infer any family arrangement from exhibit A-1 and the evidence of P. Ws 2 and 3.

19. The next decision relied on by the learned Counsel for the Defendants 2, 3, 5 and 6 is of the Supreme Court in M. Pulliah v. M. Narasimhan (1967) 1 S.C.J. 848 where the question for consideration was whether exhibit B-1 in that case was valid as a family arrangement. The learned Judges have extracted a brief summary of the nature of family arrangements from Halsbury Laws of England, third edition, valume XVII, at pages 215--216:

A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by comprising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour. The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term ''family arrangement'' is applied.

The learned Judges proceeded and observed:

The principles the courts should bear in mind in appreciating the scope of such family arrangement are stated thus:

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. This passage indicates that even in England Courts are averse to disturb family arrangements but would try to sustain them on broadest considerations of the family peace and security This concept of a ''family arrangement'' has been accepted by Indian Courts but has been adopted to suit the family set up of this country which is different in many respects from that obtaining in England. As in England so in India, Court have made every attempt to sustained a family arrangement rather than to avoid it, having regard to the broadest considerations of family peace and security.

After making the above observations, the learned Judges have extracted the observations made by Boss. J., in Sahu Madho Das v. Pandit Mukand Ram (1955) 2 S.C.J. 417

It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. But in our opinion, the principle can be carried further and so strongly do the courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all, that we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all (sic) to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gift pure and simple from him or her, or as a conveyance for consideration when consideration is present.

The learned Judges proceeded further and observed:

These observations show how strongly courts lean in favour of a family arrangement that brings about harmony in the family. The decisions cited at the Bar are only illustrations of the passage quoted from Halsbury''s Laws of England in its application to the peculiar circumstances of our country.

Briefly stated, though conflict of legal claims in presents or in future is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it.

On the facts of the present case, we find that this arrangement as can be gathered from exhibit A-1 and the evidence of P Ws. 2 and 3 that has been entered into or brought about in order to avoid possible disputes which may be raised at the instance of the Plaintiff on his attuning majority in the event of all the properties being alienated by the Plaintiff''s father who had incurred debts to the extent of Rs. 17,000 when all the properties belonging to the joint family of the Plaintiff and his father were worth only Rs. 31,000 and that they thought it fit that Rs. 17,000 should be allotted to the share of the Plaintiff''s father and the balance of Rs. 14,000 out of the consideration of Rs. 31,000 should be secured for the Plaintiff for the acquisition of other properties for his benefit. In these circumstances, we are of the opinion that the arrangement is in the nature of a family arrangement which has to be upheld by the Court.

20. The next decision relied on by Mr. M.R. Narayanaswamy is of the Supreme Court in S. Shanmugam Pillai and Others Vs. K. Shanmugam Pillai and Others, . It is suffice to extract the head note in that case:

Although conflict of legal claims in prasenti or in future is generally a condition for the validity of family arrangements, it is not necessarily so. Even bone fide disputes present or possible, which may not involve legal claims would be sufficient. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, either into such a family arrangement. In such an agreement is entered into bona fide and the terms there to are fair in the circumstances of a particular cases, the courts would more readily give assent to such an agreement than to avoid it.

21. The terms of the agreement wherein Rs. 17,000, out of the consideration of Rs. 31,000 for the sale of the joint family properties under exhibit A-1 should go to the Plaintiff''s father for the discharge of the debts incurred by him and the balance should go for the benefit of the minor Plaintiff, were fair to both the parties and in any event, had been accepted by the Plaintiff''s father and P.W. 3 who represented the Plaintiff and was assisted by close relations. Therefore, there can be no difficulty in finding that the arrangement made under exhibit A-1 is a family arrangement. We find that there was a family arrangement and it is not valid.

22. It is not possible to agree with Mr. M.R. Narayanaswamy that there is no partition arrangement in the transaction, when the entire family properties belonging to the Plaintiff and the father were worth only Rs. 31,000 and the Plaintiff''s father had incurred debts to the extent of Rs. 17,000 and it was agreed that out of the sale proceeds of Rs. 31,000 a sum of Rs. 17,000 should be taken by the Plaintiff''s father for the discharge of debts and the balance of Rs. 14,000 should be reserved for the benefit of the Plaintiff. The division of the sale proceeds of the entire joint family properties of the Plaintiff and his father, would in fact, amount to partition of the joint family properties between the Plaintiff and his father. Therefore, we are of the opinion that the arrangement is in the nature of a partition arrangement and it has to be upheld. The properties purchased under exhibit A-3 for Rs. 13,000 out of the sum of Rs. 14,000 reserved with the purchaser under exhibit A-1 would be the separate properties of the Plaintiff and not the joint family properties of the Plaintiff and his father as has been found by the learned Additional Subordinate Judge. The alienation of

those properties by the Plaintiff''s father and P.W. 3 cannot, therefore, be held to be binding on the Plaintiff.

23. u/s 6 of the Hindu Minority and Guardianship Act, 1956 the natural guardian of a Hindu minor, in respect of the minor''s person as well as in respect of the minor''s property in the case of a boy or an unmarried (sic) is the father, and after him alone the mother. The father of the Plaintiff, who joined in excuting the various sale deeds, originals of exhibits B-4 to B-9 and A-4 and other sale deeds, said to have been executed in favour of the ex parte Defendants 2 and 6 had joined in executing those sale deeds in his individual capacity. It is not possible to agree with Mr. M.R. Narayanaswamy that since the father is the natural guardian as per Section 6 of the Hindu Minority and Guardianship Act, 1956, the Plaintiffs father must be deemed to have joined in the execution of the sale deeds as the Plaintiff''s guardian notwithstanding the fact that it is specifically mentioned in those sale deeds that the Plaintiff was represented by P.W.3, the mother, as his guardian. Since the sale deeds have not been executed by the Plaintiff''s father as the Plaintiff''s guardian, and P.W.3 alone has been specifically mentioned in those sale deeds as the guardian of the Plaintiff, it is not possible to agree with Mr. M.R. Narayanaswamy that the Plaintiff''s father must be deemed to have executed the sale deeds as the Plaintiff''s guardian merely because at the relevant time he happened to be the natural guardian of the Plaintiff. u/s 8(2) of the Hindu Minority and Guardianship Act, 1956 even the natural guardian is not entitled, without the previous permission of the court, to alienate the minor''s property by mortgage or sale, etc. No permission of the court has been obtained in the present case to alienate the properties of the minor. u/s 11 of the act, after the commencement thereof, 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. P.W.3 could not be said to have been the facto guardian of the minor Plaintiff, can at the time of the execution of the various sale deeds, the de juro natural guardian of the Plaintiff, viz., his father was alive and he had, in fact joined in the execution of the sale deeds though in his individual capacity.

24. Ismail, J., has observed in Ranganatha Gounder and Another Vs. Kuppuswami Naidu and Others, thus:

Under Section 6 of that act, the natural guaridian of a Hindu Minor, in respect of the minor''s person as well as in respect of the minor''s property (excluding his/her undivided interest in joint family property) are, in the case of a boy or an unmarried girl the father, and after him, the (sic) other. Therefore this provision makes it clean that it is the father, who is the natural guardian of the minors in the present case, and the mother will become the natural guardian only after the father, and not so long as the father is alive. Section 8(1) of the Act states:

The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor''s estate.

Sub-section (2) of Section 8 provides that the natural guardian shall not, without the previous permission, of the court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

Sub-section (3) of Section 8 states:

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

Sub-section (4) provides:

No court shall grant permission to the natural guardian to do any of the acts mentioned in Sub-section (2) except in case of necessity or for an evident advantage to the minor.

....

Section 11 provides-I:

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.

These provisions, therefore, provide that it is the father, who is the natural guardian of his minor children and the mother will become the natural guardian only after the death of the father. The Act also provides that it is only the natural guardian who has got the power to deal with the immovable properties of the minor''s and that too, with the permission of the court. The further effect of this act is that it has taken away the power of any de facto guardian to deal with the property of a Hindu minor, which power was available to a de facto guardian under the prior Hindu law in certain stated circumstances. As far as the present case is concerned it was admitted that on the date of exhibit A-2, the father Chinna Gopal Naidu was alive. Consequently he alone was the natural guardian of Respondents 1 to 5, and the mother (sixth Respondent) could not be the. natural guardian. If at all, the mother could be termed only as a de facto guardian, if it is established that the minor children were living only with the mother. Even if it is so established and the mother could be said to be the de facto guardian, u/s 11 of the act, she had no competency to deal with the immovable properties of the minors, and , therefore, the alienation effected by the mother, acting as the guardian of her minor children under exhibit A-2 is totally void.

Therefore, in view of Sections 6, 8 and 11 of the Hindu Minority and Guardianship Act, 1956, the alienations effected without obtaining the permission of the Court have to be held to be void and not binding on the Plaintiff who must be held to have avoided the same by filing the suit for setting aside the alienations and for recovering possession of the properties.

25. The learned Additional Subordinate Judge has found in paragraph 14 of his judgment that the Plaintiff''s mother, P.W.3 as his guardian, was in possession of the properties in Nelvoy village. Exhibit B-24, the Chitta copy, shows that the Nelvoy properties stood in the name of P.W.3 as guardian of the Plaintiff. The thandal extracts exhibit B-25 shows that the kist has been paid for the Nelvoy properties in the name of the Plaintiff. The evidence of D.W.4 shows that P.W.3 had executed a mortgage in favour of one Annammal, wife of John, in respect of several portions of the Nelvoy properties and that the property was being enjoyed by John, whose name also is found in the thandal extract, exhibit B-25. In these circumstances, the learned Additional Subordinate Judge had disbel eved the evidence of P.W.3 that she had nothing to do with the properties in the village of Nelvoy. We find on the basis of exhibit B-24 and B-25 and the oral evidence that P.W.2 as the guardian of the Plaintiff, had dealt with the Nelvoy properties. But that by itself would not be sufficient to hold that the alienations of the properties in Mathur village were for the benefit of the Plaintiff and are binding on him. The Plaintiff who challenges the validity of the alienations of the properties in Mathur village cannot have the benefit of the Nelvoy properties. Since the Nelvoy properties have been purchased out of the sale proceeds of the Mathur properties and the sale deed exhibit B-23 has been obtained in respect of the Nelvoy properties in the name of the Plaintiff the Defendants would in equity be entitled to have those Nelvoy properties substituted in the place of Mathur properties. They are hereby declared to be entitled to those properties and they are entitled to either share those properties or the sale proceeds of those properties in proportion to the consideration recited in the respective sale deeds executed in their favour by the Plaintiffs father and P.W. 3, the latter acting as the guardian of the Plaintiff. For the foregoing reasons, we hold that the Plaintiff is entitled to have the sales in favour of the Defendants set aside and to recover possession of the suit A to G Schedule properties and for rendition of accounts regarding the income from those properties from the date of various sales in favour of the Defendants and also for future mesne profits of. The relief of accounting in respect of the past mesne pre (sic) and the question of future mesne profits is relegated in separate proceedings under Order 20 Rule 12 of the Code of Civil Procedure. This appeal is accordingly allowed with costs throughout. The Defendants shall pay the court fee due to the Government on the plaint and the memorandum of grounds of this appeal.