

MURUGAN & ORS.

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v.

KESAVA GOUNDER (DEAD) THR. LRS. AND ORS.

(Civil Appeal No. 1782 of 2019)

FEBRUARY 25, 2019

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**[ASHOK BHUSHAN AND K. M. JOSEPH, JJ.]**

*Limitation Act, 1963 – Arts.60 and 65 – Suit property belonged to one ‘PG’, who had two sons, ‘K’ and ‘B’ and three daughters – ‘PG’ executed Will in 1971 bequeathing life interest to his sons ‘K’ and ‘B’ and thereafter to the two male heirs of his sons – ‘PG’ died – ‘B’ on his behalf and on behalf of his minor son ‘P’ sold certain portion of the suit property to defendants-respondents in 1981-82– ‘B’ died in 1983, his minor son ‘P’ died on 11.02.1986 – B’s wife executed registered Release Deed in 1986 in favour of the plaintiffs-appellants (sons of ‘K’) for consideration – Plaintiffs filed suit in 1992 on the ground that ‘B’ had no authority to execute the Sale Deeds on behalf of his minor son ‘P’ and the same were void – Defendants inter alia contended that the suit was barred by limitation as it was not filed within 3 years from the death of ‘P’, i.e. 11.02.1986 – Suit decreed – Defendants filed appeal – Allowed – Plaintiffs filed second appeal in the High Court – Dismissed – Held: Part IV of the Limitation Act, dealing with suits relating to “Decrees and instruments”, contains Art.60 – Art.60 although provides for limitation of a suit but also clearly indicates that to set aside a transfer of property made by the guardian of a ward a suit is contemplated – Art.60(b)(ii) refers to a suit when a ward dies before attaining majority – Present is a case where ‘P’ died before attaining majority – Limitation to avoid instrument made by guardian of the ward is 3 years from the death of ward when he dies before attaining majority – Sale deeds by ‘B’ on his behalf and on behalf of his minor son ‘P’, executed without the permission of the Court were in contravention of s.8(2), 1956 Act and hence voidable – Sale deeds being voidable and not void, plaintiffs cannot rely on Art.65, period for limitation under which is 12 years – High Court rightly held that limitation for suit was governed by Art. 60 and the suit was barred by time – Alienations being voidable, were required to be set*

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A *aside before relief for possession can be claimed by the plaintiffs – Suit filed by the plaintiffs without seeking prayer for setting aside the sale deeds was, thus, not properly framed and could not have been decreed – Sale deeds executed by ‘B’ were not repudiated or avoided within the period of limitation as prescribed by law – Hindu Minority & Guardianship Act, 1956 – s.8.*

B *Hindu Minority & Guardianship Act, 1956 – s.8(3) – Right under – Of the minor or any person claiming under him – Discussed.*

*Words & Phrases - “Vested Right” and “Contingent Right” – Distinction between – Held: Vested right is the subject matter of s.19 of the 1882 Act while contingent interest is dealt with u/s.21 of the 1882 Act – Transfer of Property Act, 1882 – ss.19, 21.*

#### **Dismissing the appeal, the Court**

**HELD: 1.1 Part IV of the Limitation Act, 1963 which deals with suits relating to “Decrees and instruments” contains Articles 59 and 60. Article 65 is contained in Part V (suits relating to immovable properties). Article 60(b)(ii) refers to a suit when a ward dies before attaining majority. The present is a case where ‘P’ died on 11.02.1986 before attaining majority, his date of birth being 16.07.1978, the limitation to avoid instrument made by guardian of the ward is 03 years from the death of ward when he dies before attaining majority. [Paras 7, 8 and 9][366-G; 367-D; 360-A-B]**

**1.2 The period of limitation under Article 65 is available when suit is filed for possession of immovable property on any interest therein based on title. The present is a case where by registered sale deeds the property was conveyed by the father of the minor. Thus, when sale deed was executed by Balaraman he purported to convey the right of the minor also. The sale deeds being voidable and not void, plaintiffs cannot rely on Article 65. First Appellate Court and the High Court rightly held that limitation for suit was governed by Article 60 and the suit was clearly barred by time. [Para 11][369-D, E]**

**1.3 In the present case, there is no dispute that sale deeds executed by ‘B’ on behalf of himself and his minor son ‘P’ were executed without obtaining permission of the Court. Sale deed in violation of Section 8(1) and 8(2) of the Hindu Minority &**

Guardianship Act, 1956 is a voidable sale deed. The alienations, which were voidable, at the instance of minor or on his behalf were required to be set aside before relief for possession can be claimed by the plaintiffs. Suit filed on behalf of the plaintiffs without seeking prayer for setting aside the sale deeds was, thus, not properly framed and could not have been decreed. [Paras 13, 14, 20] [370-F; 372-A; 375-G-H]

1.4 The release deed dated 24.03.1986 has been brought on the record as Annexure P-1. A perusal of the release deed does not indicate that there is any reference of alienation made by 'B' favour of the defendants. There being no reference of the alienation made by 'B' on behalf of minor, there is no occasion to read release deed as repudiation of the claim on behalf of the minor. Section 8(3), 1956 Act gives a right to the minor or any person claiming under him, the relevant words in Section 8(3) are "at the instance of the minor or any person claiming under him." Thus, alienation made on behalf of the minor can be avoided by minor or any person claiming under him. In event, minor dies before attaining majority, obviously, his legal heirs will have right to avoid the alienation. Sub-section (3) of Section 8 refers to a disposal of immovable property by a natural guardian in contravention of sub-section (1) or sub-section (2) as voidable. When a registered sale deed is voidable, it is valid till it is avoided in accordance with law. The rights conferred by a registered sale deed are good enough against the whole world and the sale can be avoided in case the property sold is of a minor by a natural guardian at the instance of the minor or any person claiming under him. A document which is voidable has to be actually set aside before taking its legal effect. [Paras 21, 24] [376-A-C; 376-F-G]

1.5 Supreme Court time and again held that setting aside of a sale which is voidable under Section 8(3) is necessary for avoiding a registered sale deed. Court may, however, not to be understood that it is holding that in all cases where minor has to avoid disposal of immovable property, it is necessary to bring a suit. There may be creation of charge or lease of immovable property which may not be by registered document. It may depend on facts of each case as to whether it is necessary to bring a suit for avoiding disposal of the immovable property or it can be done

A in any other manner. The Limitation Act, 1963 has been enacted by the Parliament after the enactment of Hindu Minority and Guardianship Act, 1956. Article 60 of the Limitation Act, 1963 which provides for limitation “suits relating to decrees and instruments”. The Limitation Act contemplates suit to set aside a transfer of property made by the guardian of a ward for which  
 B limitation is contemplated as three years. Article 60 of the Limitation Act although provides for a limitation of a suit but also clearly indicates that to set aside a transfer of property made by the guardian of a ward a suit is contemplated. [Paras 28, 29] [378-E-H; 379-A]

C 1.6 Section 11 of the 1956 Act contains a statutory prohibition on “de facto guardian” of the minor from disposing of the property of the minor. The transfer made by de facto guardian is, thus, void and can be repudiated in any manner. It is well settled that it is not necessary for a minor or any person claiming under  
 D him to file a suit for setting aside a void deed. A void deed can be ignored. [Para 31] [379-G]

E 1.7 In the present case there having been no repudiation of sale deed on behalf of minor, the question of voidable sale deed becoming void does not arise. In the present case it was necessary for the person claiming through minor to bring an action within a period of three years from the date of the death of the minor to get sale deed executed by ‘B’ set aside. The sale deeds executed by ‘B’ were not repudiated or avoided within the period of limitation as prescribed by law. [Paras 34, 35] [382-B, C]

F *Madhukar Vishwanath v. Madahav and Others* (1999) 9 SCC 446; *Narayan v. Babasaheb and Others* (2016) 6 SCC 725 : [2016] 2 SCR 948; *Nangali Amma Bhavani Amma v. Gopalkrishnan Nair and Others* (2004) 8 SCC 785; *Gorakh Nath Dube v. Hari Narain Singh and others* (1973) 2 SCC 535 : [1974] 1 SCR 339 – relied  
 G on.

*Dhurandhar Prasad Singh v. Jai Prakash University and Others* (2001) 6 SCC 534 : [2001] 3 SCR 1129; *Vishwambhar and Others v. Laxminarayan (Dead) Through LRs. and Another* (2001) 6 SCC 163;  
 H *Madhegowda (dead) by LRs. v. Ankegowda (dead) by*

*LRs. and Others* (2002) 1 SCC 178 : [2001] 5 Suppl. SCR 290; *Amirtham Kudumbah v. Sarnam Kudumban* (1991) 3 SCC 20 : [1991] 2 SCR 389; *Madhegowda (Dead) by LRs. v. Ankegowda (Dead) by LRs. and others* (2002) 1 SCC 178 : [2001] 5 Suppl. SCR 290; *G. Annamalai Pillai v. District Revenue Officer and others* (1993) 2 SCC 402 : [1993] 2 SCR 397 – referred to.

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**Case Law Reference**

(1999) 9 SCC 446	relied on	Para 9	C
[2016] 2 SCR 948	relied on	Para 10	
[2001] 3 SCR 1129	referred to	Para 16	
(2001) 6 SCC 163	referred to	Para 17	D
[2001] 5 Suppl. SCR 290	referred to	Para 18	
(2004) 8 SCC 785	relied on	Para 19	
[1974] 1 SCR 339	relied on	Para 24	E
[1991] 2 SCR 389	referred to	Para 25	
[2001] 5 Suppl. SCR 290	referred to	Para 30	
[1993] 2 SCR 397	referred to	Para 32	F

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1782 of 2019

From the Judgment and Order dated 21.04.2010 of the High Court of Judicature at Madras in S.A. No. 644 of 2000.

V. Prabhakar, Ms. Jyoti Parasher, N. J. Ramchandar, R. Chandrachud, Advs. for the Appellants.

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Ms. V. Mohana, Sr. Adv., B. Ragunath, Mrs. N. C. Kavitha, C. D. Singh, Vijay Kumar, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

**ASHOK BHUSHAN, J.** 1. This is the plaintiff's appeal challenging the judgment of Madras High Court dismissing the second appeal filed by the plaintiffs-appellants.

2. Brief facts of the case are:-

B 2.1 The suit property belongs to one Petha Gounder. Petha Gounder had two sons namely Kannan and Balaraman and three daughters. Sengani Ammal was wife of Petha Gounder. On 17.05.1971 Petha Gounder executed a Will bequeathing life interest to his sons Kannan and Balaraman and thereafter to the two male heirs of his both the sons, who were to take the property absolutely. Will further stipulated that in event, there is no male heir to one of his sons, the male heirs of other son will take the property. Petha Gounder died on 28.11.1971 leaving behind his wife, two sons Balaraman and Kannan and three daughters. Petha Gounder's wife Sengani Ammal died on 02.02.1982. Balaraman had one son namely Palanivel.

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G 2.2 Balaraman on his behalf as well as on behalf of his minor son had sold Item Nos.1 to 3 of the suit properties by registered Sale Deed dated 15.12.1981. Balaraman also sold Item No.6 and a portion of Item No.7 by two Sale Deeds dated 30.03.1981 and 31.03.1981 in favour of the first defendant. Balaraman had sold Item No. 6 in favour of the second defendant by registered Sale Deed dated 29.03.1982. Balaraman died in 1983 and Kannan died on 02.12.1984. Balaraman's wife was Lakshmi. The plaintiffs are sons of Kannan. Palanivel, the son of Balaraman died on 11.02.1986 while still a minor. Palanivel's mother Lakshmi Ammal executed a registered Release Deed dated 24.03.1986 in favour of the plaintiffs for a consideration. The plaintiffs filed suit No.229 of 1992 praying for following reliefs:-

"VI. The plaintiffs therefore pray that the Hon'ble Court may be pleased to:-

(a) Declare that the plaintiffs are entitled to the suit properties;

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- (b) Direct the Defendants to deliver possession of the suit properties failing which order delivery of possession through process of court; A
  - (c) Direct the Defendants to pay the cost of the suit and
  - (d) Grant such other reliefs as the Hon'ble Court may deem fit in the circumstances of the case." B
- 2.3 The plaintiffs' case in the plaint was that Balaraman had no authority to execute Sale Deed on behalf of his minor son Palanivel and the Sale Deeds executed by Balaraman were void. The plaintiffs being sons of Kannan are entitled for declaration and possession of the properties from the defendants. It was further pleaded that validity of the Will dated 17.05.1971 has been upheld by the Subordinate Judges Court, Cuddalore in O.S. No. 447 of 1973. C
- 2.4 The defendant filed written statement. The defendant's case was that Balaraman, in order to discharge his debts and for family necessity executed sale deed for himself and on behalf of his minor son on 15.12.1981. The sale deed binds the minor Palanivel. The release deed executed by Lakshmi Ammal on 24.03.1986 will confer no right to the plaintiffs. The suit is barred by limitation since the suit has not been filed within 03 years from the date of death of Palanivel i.e. 11.02.1986. The suit as framed is not maintainable. The defendants are not in illegal possession. The defendants are bonafide purchasers for value. The plaintiffs cannot file suit for declaration without praying for setting aside the sale deeds. D  
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- 2.5 The trial court framed ten issues. Issue No.7 was "Whether the suit is barred by limitation?". Issue No.8 was "Whether the plaintiffs are entitled to seek for declaration of title in respect of suit properties?". Issue No.9 was "Whether the plaintiffs are entitled to seek for recovery of possession?". G  
The trial court while deciding Issue No.7 held that suit is not barred by limitation. Trial court held that plaintiff having filed the suit as reversioner, Article 65 of the Limitation Act will apply. As per Article 65, period for limitation is 12 years, hence suit was within time. The Will dated H

- A 17.05.1971 was held to be a valid Will. The sale deeds executed by Balaraman are voidable. On release deed, the trial court held that Lakshmi Ammal had no right in the suit properties, as such the plaintiffs do not derive any new right from the release deed. Trial court held that it is not necessary to decide the truth and validity of the release deed dated 24.03.1986. The trial court further held that there was no necessity to file the suit seeking a prayer to set aside the sale deeds separately since those sale deeds are voidable and they can be ignored. It was held that plaintiffs are competent to recover possession from the defendants.
- B Trial court vide its judgment and decree dated 13.08.1997 decreed the suit.
- C 2.6 The defendants aggrieved by the judgment of the trial court filed appeal. The Principal District Judge vide its judgment dated 31.08.1999 allowed the appeal dismissing the suit. Appellate Court held that since Palanivel died on 11.02.1986, the suit should have been filed to set aside the sale deeds and for possession within 03 years from his death. The suit filed in 1992 was barred by limitation. The Appellate Court relied on Article 60 of the Limitation Act. Aggrieved against the judgment of the First Appellate Court, the plaintiffs filed second appeal in the High Court. High Court vide its judgment dated 21.04.2010 dismissed the second appeal. High Court had framed following substantial questions of law for consideration:-
- D “i) Whether the Learned First Appellate Judge is correct in holding that the release deed Ex.A-15 dated 24.03.1986, is not avoiding the transfers by sales under Exs. A-9=B-9, A-10=B-7, A-11=B-2 and A-12=B-9, executed by the natural guardian late Balaraman, of the properties belong to the deceased minor Palanivel?
- E ii) Whether the sale deeds executed by late Balaraman, the natural guardian of minor Palanivel, of the properties of the minor are valid in law when the said sale deeds were executed in gross violation of Section 8(2)(a) of the Hindu Minority and Guardianship Act, especially
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when the mother, who claimed under the minor avoided the sale immediately on the demise of the minor? A

iii) Whether first appellate Judge is correct in holding that the suit is not maintainable, since the suit was not filed to set aside the sales within three years from the date of demise of minor Palanivel? B

2.7 The High Court held that alienations made by Balaraman can be construed only as a voidable alienations and not void alienations. High Court held that plaintiffs suit ought to have been filed within 03 years as per Article 60 of the Limitation Act. All substantial questions of law were decided in favour of the defendants-respondents. High Court dismissed the second appeal. Aggrieved against the judgment, this appeal has been filed. C

3. Shri V. Prabhakar, learned counsel for the appellants in support of the appeal contends that Article 60 of the Limitation Act shall not apply and the suit was rightly held to be governed by Article 65 by the trial court, which was well within time. It is submitted that the option to repudiate the action on behalf of the minor having been exercised by mother of the minor, the sale deed executed by Balaraman become void from its inception. Sale deeds executed by Balaraman were without permission of the Court and were without legal necessity, hence was rightly repudiated by his mother Lakshmi Ammal. On the strength of repudiation of the alienation by Lakshmi Ammal, the sale deeds become void and there was no necessity for praying for setting aside the sale deeds and suit for declaration and possession was fully maintainable. Article 60 would have been applicable only if the suit was filed for setting aside the sale deeds. D  
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4. Ms. V. Mohana, learned senior counsel appearing for the respondents refuting the submissions of the counsel for the appellants contends that suit was clearly barred by time, it having been not filed within 03 years from the date of death of the minor. It is further submitted that release deed dated 24.03.1986 cannot be accepted as repudiation of the sale deeds. It is submitted that without praying for setting aside the sale deeds, the decree of possession could not have been claimed by the plaintiffs. Limitation was governed by Article 60 of the Limitation Act. G  
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A 5. Learned counsel for the parties have relied on various judgments, which shall be referred to and considered while considering the submissions in detail.

B 6. From the submissions of the learned counsel for the parties and pleadings on record, following are the issues, which arise for consideration in this appeal:-

- (i) Whether the suit filed by the plaintiffs-appellants was barred by limitation?
- (ii) Whether without praying for setting aside the sale deeds executed by Balaraman, the suit for declaration and possession was maintainable?
- C (iii) Whether the plaintiffs can successfully contend that by execution of release deed dated 24.03.1986 by Lakshmi Ammal, sale deeds executed by Balaraman were successfully repudiated?

D **Issue No. 1**

E 7. The trial court has held that suit has been filed within time relying on Article 65 whereas the Appellate Court as well as the High Court relied on Article 60 and held that suit was barred by time. Part IV of the Limitation Act, which deals with suits relating to “Decrees and instruments” contains Articles 59 and 60. Article 60 is as follows:-

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Description of suit	Period of Limitation	Time from which period begins to run
<p><b>60</b> To set aside a transfer of property made by the guardian of a ward-</p> <p>(a) by the ward who has attained majority.</p> <p>(b) by the ward's legal representative-</p> <p>i) When the ward dies within three years from the date of attaining majority.</p> <p>ii) When the ward dies before attaining majority.”</p>	<p><b>Three years</b></p> <p><b>Three years</b></p> <p><b>Three years</b></p>	<p><b>When the ward attains majority.</b></p> <p><b>When the ward attains majority.</b></p> <p><b>When the ward dies.</b></p>

8. Article 65 is contained in Part V (suits relating to immovable properties), which is as follows:- A

“65. For possession of immovable property or any interest therein based on title. Twelve Years When the possession of the defendant becomes adverse to the plaintiff.

Explanation.- For the purposes of this article-

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(a) Where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;

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(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;

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(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.”

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A 9. Article 60(b)(ii) refers to a suit when a ward dies before attaining majority. The present is a case where Palanivel died on 11.02.1986 before attaining majority, his date of birth being 16.07.1978, the limitation to avoid instrument made by guardian of the ward is 03 years from the death of ward when he dies before attaining majority. This Court had occasion to consider Articles 60 and 65 of the Limitation Act in reference to alienation made by a de-facto guardian of a minor. In the case of **Madhukar Vishwanath Vs. Madahav and Others, (1999) 9 SCC 446**, the maternal uncle of the appellant has executed a sale deed. The appellant after becoming major on 22.08.1966 filed a suit on 07.02.1973 praying that transferors be required to deliver the possession of the property. On behalf of appellant, Article 65 was relied for the purposes of limitation. This Court held that it is Article 60 and not Article 65, which is applicable. Paragraph No. 4 and 5 of the judgment are relevant, which are quoted as below:-

“4. XXXXXXXXXX

D That the defendant, Baburao Madhorao Puranik, was the appellant's de facto guardian had been established and, therefore, the disposal by him of the said property was void. Being void, it was open to the appellant to file the suit for possession of the said property and the period for limitation for such suit was prescribed by Article 65.

E 5. .... Even if the suit was entertained as pleaded, no decree for possession could have been passed without first finding that the alienation was not for legal necessity and was, therefore, bad in law. To such a suit the provisions of Article 60 apply. Article 60 relates to a suit to set aside a transfer of property made by the guardian of a ward by the ward who has attained majority and the period prescribed is three years commencing on the date on which the ward attains majority.....”

G 10. This Court in **Narayan Vs. Babasaheb and Others, (2016) 6 SCC 725** again had occasion to consider Article 60 of the Limitation Act. In the above case, this Court held that a suit by minor for setting aside the sale of his property by his guardian is governed by Article 60 of the Limitation Act. In Paragraph Nos. 25 and 26, following was laid down:-

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“25. A close analysis of the language of Article 60 would indicate that it applies to suits by a minor who has attained majority and further by his legal representatives when he dies after attaining majority or from the death of the minor. The broad spectrum of the nature of the suit is for setting aside the transfer of immovable property made by the guardian and consequently, a suit for possession by avoiding the transfer by the guardian in violation of Section 8(2) of the 1956 Act. In essence, it is nothing more than seeking to set aside the transfer and grant consequential relief of possession.

26. There cannot be any doubt that a suit by quondam minor to set aside the alienation of his property by his guardian is governed by Article 60. To impeach the transfer of immovable property by the guardian, the minor must file the suit within the prescribed period of three years after attaining majority.”

11. Now, coming to Article 65, on which reliance has been placed by learned counsel for the appellants. The said period of limitation is available when suit is filed for possession of immovable property on any interest therein based on title. The present is a case where by registered sale deeds the property was conveyed by the father of the minor was eonominee party. Thus, when sale deed was executed by Balaraman he purported to convey the right of the minor also. The sale deeds being voidable and not void, plaintiffs cannot rely on Article 65. We, thus, are of the view that first Appellate Court and the High Court has rightly held that limitation for suit was governed by Article 60 and the suit was clearly barred by time.

12. It is important to find from the sale deed what was conveyed. This we say, as appellant has a case that the father of the minor was given a life estate and after his death alone the minor was to get a right. In this regard we may notice the distinction between a vested right and a contingent right. Vested right is the subject matter of Section 19 of the Transfer of Property Act whereas a contingent interest is dealt with Section 21 of the Transfer of Property Act. Since the life estate followed by an absolute right is created by a will, the relevant provision is Section 119 of the Indian Succession Act, 1925. Section 119 reads as follows:

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- A **“119. Date of vesting of legacy when payment or possession postponed.**—Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the Will, become vested in the legatee on the testator’s death, and shall pass to the legatee’s representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator’s death said to be vested in interest.
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- C Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.”
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It is relevant that we notice illustration No.(iii) which reads as follows:

“(iii) A fund is bequeathed to A for life, and after his death to B. On the testator’s death the legacy to B becomes vested in interest in B.”

- E Therefore, the absolute right bequeathed in favour of Palanivel became vested in him upon the death of Petha Gounder.

### **Issue No.2**

- F 13. In the present case, there is no dispute that sale deeds executed by Balaraman on behalf of himself and his minor son Palanivel were executed without obtaining permission of the Court. Section 8 of the Hindu Minority & Guardianship Act, 1956, which is relevant is as follows:-

- G **8. Powers of natural guardian.**- (1) 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; but the guardian can in no case bind the minor by a personal covenant.

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

- (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor or A
- (b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.
- (3) Any disposal of immovable property by a natural guardian, in contravention of subsection (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him. B
- (4) 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. C
- (5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular- D
- (a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof.
- (b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and E
- (c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court. F
- (6) In this section, “Court” means the city civil court or a district court or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.” G

A 14. This Court time and again has considered the cases of alienation by natural guardian in contravention of Section 8 and Section 8(2) of the 1956 Act. This Court held that sale deed in violation of Section 8(1) and 8(2) is a voidable sale deed. Voidable has been defined in Black's Law Dictionary, Tenth Edition as under:-

B "Valid until annulled; esp., (of a contract) capable of being affirmed or rejected at the option of one of the parties. This term describes a valid act that may be voided rather than an invalid act that may be ratified."

C 15. Salmonds on Jurisprudence, Twelfth Edition has noticed the distinction between Valid, Void and Voidable in following passage:-

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

F 16. This Court in **Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, (2001) 6 SCC 534** had noted the distinction between Void and Voidable. In Paragraph No. 22, following has been laid down:-

G "22. Thus the expressions "void and voidable" have been the subject-matter of consideration on innumerable occasions by courts. The expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without

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being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.”

**17. In Vishwambhar and Others Vs. Laxminarayan (Dead) Through LRs. and Another, (2001) 6 SCC 163**, which was a case of challenge to alienation without Court’s sanction and without legal necessity, this Court held that the alienation by natural guardian was voidable. In the above case, the mother, natural guardian of two minors has executed the sale deed before they attained majority. Minors after attaining majority had filed suit pleading that sale deeds are not binding and operative on the legal rights of plaintiff, and prayed that the said sale deeds be set aside to the extent of their share and the suit for possession of the land be decreed. In the above case, after considering Section 8 this Court held that sale deeds were voidable at the instance of the plaintiff. This Court further held that if the plaintiffs were required to have the sale deeds set aside before making any claim in respect of suit properties sold then a suit without such a prayer was of no avail to the plaintiffs. Following was held in Paragraph No.9:-

“9. ....The question is, in such circumstances, are the alienations void or voidable? In Section 8(2) of the Hindu Minority and Guardianship Act, 1956, it is laid down, inter alia, that the natural guardian shall not, without previous permission of the court, transfer by sale any part of the immoveable

- A property of the minor. In sub-section (3) of the said section, it is specifically provided that any disposal of immoveable property by a natural guardian, in contravention of sub-section (2) is voidable at the instance of the minor or any person claiming under him. There is, therefore, little scope for doubt that the alienations made by Laxmibai which are under challenge in the suit were voidable
- B at the instance of the plaintiffs and the plaintiffs were required to get the alienations set aside if they wanted to avoid the transfers and regain the properties from the purchasers. As noted earlier in the plaint as it stood before the amendment the prayer for setting aside the sale deeds was not there, such a prayer appears to have
- C been introduced by amendment during hearing of the suit and the trial court considered the amended prayer and decided the suit on that basis. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold, then a suit without such a prayer was of no avail to the plaintiffs. In all probability, realising this difficulty the plaintiffs
- D filed the application for amendment of the plaint seeking to introduce the prayer for setting aside the sale deeds. Unfortunately, the realisation came too late. Concededly, Plaintiff 2 Digamber attained majority on 5-8-1975 and Vishwambhar, Plaintiff 1 attained majority on 20-7-1978. Though the suit was filed on 30-11-1980
- E the prayer seeking setting aside of the sale deeds was made in December 1985. Article 60 of the Limitation Act prescribes a period of three years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates
- F when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. Therefore, the trial court rightly dismissed the suit filed by Digamber. The judgment of the trial court dismissing the suit was not challenged by him. Even assuming that as the suit
- G filed by one of the plaintiffs was within time the entire suit could not be dismissed on the ground of limitation, in the absence of challenge against the dismissal of the suit filed by Digamber the first appellate court could not have interfered with that part of the decision of the trial court. Regarding the suit filed by Vishwambhar, it was filed within the prescribed period of limitation but without
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the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December 1985) by introducing such a prayer by amendment of the plaint the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances, the amendment of the plaint could not come to the rescue of the plaintiff.”

18. To the same effect is the judgment of this Court in **Madhegowda (dead) by LRs. Vs. Ankegowda (dead) by LRs. and Others, (2002) 1 SCC 178**, where in Paragraph No. 25, following has been held:-

“25.....The minor, on attaining majority, can repudiate the transfer in any manner as and when occasion for it arises. After attaining majority if he/she transfers his/her interest in the property in a lawful manner asserting his/her title to the same that is sufficient to show that the minor has repudiated the transfer made by the “de facto guardian/manager”.

19. This Court further held in **Nangali Amma Bhavani Amma Vs. Gopalkrishnan Nair and Others, (2004) 8 SCC 785** that the alienation made in violation of Section 8(2) is voidable, holding it to be void would not only be contrary to the plain words of the statute but would also deprive the minor of the right to affirm or ratify the transaction upon attaining majority. Following was held in Paragraph No.8:-

“8. In view of the express language used, it is clear that the transaction entered into by the natural guardian in contravention of sub-section (2) was not void but merely voidable at the instance of the minor. To hold that the transaction in violation of Section 8(2) is void would not only be contrary to the plain words of the statute but would also deprive the minor of the right to affirm or ratify the transaction upon attaining majority.....”

20. The alienations, which were voidable, at the instance of minor or on his behalf were required to be set aside before relief for possession can be claimed by the plaintiffs. Suit filed on behalf of the plaintiffs without seeking prayer for setting aside the sale deeds was, thus, not properly framed and could not have been decreed.

A        **Issue No.3**

21. The question is as to whether by execution of the release deed dated 24.03.1986 in favour of the plaintiffs, there was repudiation of the alienation made by Balaraman. The release deed has been brought on the record as Annexure P-1. A perusal of the release deed does not indicate that there is any reference of alienation made by Balaraman in favour of the defendants. There being no reference of the alienation made by Balaraman on behalf of minor, there is no occasion to read release deed as repudiation of the claim on behalf of the minor. Section 8(3) gives a right to the minor or any person claiming under him, the relevant words in Section 8(3) are “at the instance of the minor or any person claiming under him.” Thus, alienation made on behalf of the minor can be avoided by minor or any person claiming under him. In event, minor dies before attaining majority, obviously, his legal heirs will have right to avoid the alienation.

D        22. The submission raised by the learned counsel for the respondents is that for avoiding sale of immovable property of a minor as contemplated under sub-section (3) of Section 8, the minor or any person claiming under him has to bring an action i.e. to file a suit within the limitation prescribed.

E        23. Learned counsel for the appellants has refuted the submission and contended that the avoidance of a sale of immovable property by a minor can be in any manner. It is submitted that it is not necessary for minor or the person claiming on his behalf to bring a suit for avoiding a sale deed.

F        24. We have noticed above that sub-section (3) of Section 8 refers to a disposal of immovable property by a natural guardian in contravention of sub-section (1) or sub-section (2) as voidable. When a registered sale deed is voidable, it is valid till it is avoided in accordance with law. The rights conferred by a registered sale deed are good enough against the whole world and the sale can be avoided in case the property sold is of a minor by a natural guardian at the instance of the minor or any person claiming under him. A document which is voidable has to be actually set aside before taking its legal effect. This Court in **Gorakh Nath Dube vs. Hari Narain Singh and others, (1973) 2 SCC 535**, while making distinction between void and voidable document held:

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“5.....We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject-matter of consolidation proceedings.....”

25. In **Amirtham Kudumbah vs. Sarnam Kudumban, (1991) 3 SCC 20**, this Court had occasion to consider the provisions of Section 8(3) of the Hindu Minority and Guardianship Act, 1956. The facts of the case have been noticed in paragraph 5 which is to the following effect:

“5. The relevant facts are that the suit property belonged to one Veerammal. She had a daughter by name Kaliammal. Veerammal died shortly after she purchased the property in 1948. She left behind her husband Kandayya and their daughter Kaliammal. Subsequently, Kandayya married a second time when his daughter Kaliammal was a minor. She thereupon left her father’s house and resided with her maternal grandfather who protected and maintained her. During her minority, Kandayya sold the property on October 29, 1959 to Jainulavudeen. On April 25, 1966, Jainulavudeen in turn sold the property to the defendant-appellant. Subsequently, on May 26, 1966 the plaintiff obtained a deed of sale of the suit property in his favour from Kaliammal who had by then attained majority. The plaintiff thereafter instituted the present suit (O.S. No. 491 of 1968) against the appellant to set aside the transfer of property made by Kandayya and for recovery of its possession.”

26. One of the questions which came for consideration in the above case was that “whether a transferee from a minor after he attained majority, can file a suit to set aside the alienation made by the minor’s guardian or the said right is one to be exercised only by the minor? A person entitled to avoid such a sale is either the minor or any person claiming under him. This Court held that either the minor, or his legal representative in the event of his death, or his successor-in-interest

A claiming under him by reason of transfer inter vivos, must bring action within the period prescribed for such a suit, i.e. three years. Following is laid down in paragraph 9:

B “9. The effect of this sub-section is that any disposal of immovable property by a natural guardian otherwise than for the benefit of the minor or without obtaining the previous permission of the court is voidable. A person entitled to avoid such a sale is either the minor or any person claiming under him. This means that either the minor, or his legal representative in the event of his death, or his successor-in-interest claiming under him by reason of transfer inter vivos, must bring action within the period prescribed for such a suit, i.e. three years from the date on which the minor died or attained majority, as the case may be. In the present case, the suit was brought, as found by the courts below, within three years after the minor attained majority.”

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D 27. In **Vishwambhar and others vs. Laxminarayan(Dead) through LRs. and another (supra)** this Court has observed that if in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold, then a suit without such a prayer was of no avail to the plaintiffs.

E 28. This Court time and again held that setting aside of a sale which is voidable under Section 8(3) is necessary for avoiding a registered sale deed. We may, however, not to be understood that we are holding that in all cases where minor has to avoid disposal of immovable property, it is necessary to bring a suit. There may be creation of charge or lease of immovable property which may not be by registered document. It may depend on facts of each case as to whether it is necessary to bring a suit for avoiding disposal of the immovable property or it can be done in any other manner. We in the present case are concerned with disposal of immovable property by natural guardian of minor by a registered sale deed, hence, we are confining our consideration and discussion only with respect to transfer of immovable property by a registered deed by a natural guardian of minor.

G 29. The Limitation Act, 1963 has been enacted by the Parliament after the enactment of Hindu Minority and Guardianship Act, 1956. Article 60 of the Limitation Act, 1963 which provides for limitation “suits relating to decrees and instruments”. The Limitation Act contemplates suit to set aside a transfer of property made by the guardian of a ward for

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which limitation is contemplated as three years. Article 60 of the Limitation Act although provides for a limitation of a suit but also clearly indicates that to set aside a transfer of property made by the guardian of a ward a suit is contemplated. A

30. We may notice a judgment of this Court reported in **Madhegowda (Dead) by LRs. vs. Ankegowda (Dead) by LRs. and others, (2002) 1 SCC 178**. This Court in the above case had occasion to consider Section 11 of the Hindu Minority and Guardianship Act, 1956. In the above case sister of a minor acting as guardian sold immovable property by registered sale deed. In the above reference this Court had made following observations: B

“25.....Undoubtedly Smt Madamma, sister of the minor, is not a “guardian” as defined in Section 4(b) of the Act. Therefore, she can only be taken to be a “de facto guardian” or more appropriately “de facto manager”. To a transfer in such a case Section 11 of the Act squarely applies. Therefore, there is little scope for doubt that the transfer of the minor’s interest by a de facto guardian/manager having been made in violation of the express bar provided under the section is per se invalid. The existence or otherwise of legal necessity is not relevant in the case of such invalid transfer. A transferee of such an alienation does not acquire any interest in the property. Such an invalid transaction is not required to be set aside by filing a suit or judicial proceeding. The minor, on attaining majority, can repudiate the transfer in any manner as and when occasion for it arises. After attaining majority if he/she transfers his/her interest in the property in a lawful manner asserting his/her title to the same that is sufficient to show that the minor has repudiated the transfer made by the “de facto guardian/manager”.” C D E F

31. The above observations were made by this Court in the context of Section 11 of the Act, 1956. Section 11 of the Act contains a statutory prohibition on “de facto guardian” of the minor from disposing of the property of the minor. The transfer made by de facto guardian is, thus, void and can be repudiated in any manner. It is well settled that it is not necessary for a minor or any person claiming under him to file a suit for setting aside a void deed. A void deed can be ignored. The above observations cannot be held to be applicable to transfer made by a natural guardian under Section 8(3) of the Act. G H

A        32. We may notice one more judgment of this Court relied on by the learned counsel for the appellants that is **G. Annamalai Pillai vs. District Revenue Officer and others, (1993) 2 SCC 402**. The question which arose for consideration in the said case has been noticed in paragraph 1 of the judgment in following words:

B        “1. The short question for consideration in this appeal is whether lease deed in dispute, which was voidable in terms of Section 8(3) of the Hindu Minority and Guardianship Act, 1956 (the Act) when validly avoided, was effective from the date of the lease deed so as to make the transaction void and unenforceable from the very inception.”

C        33. The land in dispute was owned by one Janarthanan. His father, Purushothaman executed a registered lease deed in favour of appellant on 12.12.1971 on which date the owner was minor. The appellant filed application before Tehsildar to be registered as a tenant which was contested by Janarthanan. Janarthanan contended that his father has no right or title to deal with land and lease by his father is in contravention of Section 8 of Hindu Minority and Guardianship Act, 1956. Tehsildar held that there was no valid lease which order was confirmed by the High Court against which judgment appeal was filed. In paragraphs 5 and 6 following has been laid down:

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

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

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

This distinction has also been judicially noticed in the Privy Council judgment reported in *Satgur Prasad v. Harnarain Das* and in the Division Bench judgment in *S.N.R. Sundara Rao and Sons, Madurai v. CIT*. The Division Bench held, following the said Privy Council judgment as follows:

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

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

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

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

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- A 34. Learned counsel for the appellants relying on the above decision contends that sale by Balaraman when has been avoided by release deed it became void from the very beginning. There can be no quarrel to the proposition laid down in **G. Annamalai Pillai vs. District Revenue Officer and others(supra)**. In the present case there having been no repudiation of sale deed on behalf of minor, the question of voidable sale deed becoming void does not arise.
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- C 35. We are, thus, of the considered opinion that in the present case it was necessary for the person claiming through minor to bring an action within a period of three years from the date of the death of the minor to get sale deed executed by Balaraman set aside. We, thus, conclude that the sale deeds executed by Balaraman were not repudiated or avoided within the period of limitation as prescribed by law. Issue No.3 is answered accordingly.

- D 36. In view of the foregoing discussions, we do not find any merit in this appeal. The appeal is dismissed accordingly.