APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Tyabji.

THAYAMMAL (DEFENDANTS NOS. 3 AND 4), APPELLANTS, 1914. July 17.

v.

KUPPANNA KOUNDAN (PLAINTIFF), RESPONDENT.*

Hindu Law—Guardian of a minor's person and property—Natural guardians, who are—Rights of parents, elder brother and direct male and female ancestors—Paternal aunt, not a natural guardian—King's rights, paramount—Resource to Court, necessary, if no natural guardian alive—Alienation by de facto guardian—Setting aside, if necessary—Suit for possession—Limitation Act (IX of 1908), art. 44 or 144, applicability of.

Under the Hindu Law, nobody else than the father and the mother of a minor (with probable exceptions in favour of the elder brother and the direct male and female ancestors) is entitled as a matter of natural right to be and to act as a guardian of a minor's person and property; consequently a paternal aunt is not a natural guardian of a minor.

Where there is no natural guardian alive, recourse must be had to the Court, as representing the rights of the King which are paramount to even the rights of the parents, for the appointment of a guardian.

Alienations without necessity, made by a *de facto* guardian, need not be set aside.

Article 44 of the Limitation Act (IX of 1908) does not apply to alienations by unauthorized guardians.

SECOND APPEAL against the decree of K. SRINIVASA RAO, the Subordinate Judge of Coimbatore, in Appeal No. 174 of 1911, preferred against the decree of S. NARAYANASWAMI AYYAR, the District Munsif of Udamalpet, in Original Suit No. 131 of 1910.

The plaintiff sued to recover possession of certain lands which originally belonged to him but had been alienated during his minority by his mother as his guardian and after her death by his paternal aunt acting as his guardian. The sale by the mother was made under Exhibit II, dated 27th June 1895, while the sale by the paternal aunt was made under Exhibit III, dated 26th May 1899. The plaintiff instituted the present suit in 1910. It was found by the Lower Courts that the plaintiff had attained majority more than three years prior to the suit. The lower Courts found that the alienations were not supported by necessity. The lower Appellate Court held that the suit in respect of the land

* Second Appeal No. 2497 of 1912.

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alienated by the mother as guardian was barred by limitation. As regards the lands sold by the paternal aunt acting as guardian of the plaintiff, the lower Appellate Court held, on appeal, that the paternal aunt was not a natural guardian and that the suit was not barred by limitation and decreed the claim in respect of the same in favour of the plaintiff. The lower Appellate Court observed that article 44 of the Limitation Act (IX of 1908) was not applicable to a suit to recover possession of lands sold without necessity by a person who was not a natural guardian or a guardian appointed by a Court, but that article 144 of the Limitation Act applied to the suit which was within twelve years of the alienation. The defendants appealed to the High Court.

T. Ramachandra Rao for the appellants.

T. M. Krishnaswami Ayyar for the respondents.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—Following *Kristo Kissor Neoghy* v. *Kadermoye Dossee*(1) and *Musst. Bhikuo Koer* v. *Musst. Chamela Koer*(2), I hold that under Hindu Law, nobody else than the father and mother of a minor (with probable exceptions in favour of the elder brother and the direct male and female ancestors of the minor) is entitled as a matter of natural right to be and to act as guardian of a minor's person and properties. Recourse must be had to the Court (representing the rights of the King which are paramount to even the rights of the parents) where there is no natural guardian alive.

The paternal aunt was therefore not the natural guardian of the plaintiff when she made the unauthorized alienation.

Assuming that she was the *de facto* guardian, her alienation for no necessity need not be set aside. Article 44 of the Limitation Act does not apply to alienations by unauthorized guardians—see *Mata Din* v. *Ahmed Ali*(3). The judgment of the lower Appellate Court is right in the main but in the decretal portion, it decrees possession of the entire lands covered by Exhibit III forgetting that so far as the portions covered by Exhibit II are concerned, the claim had been held to be barred by limitation.

The lower Court's decree will be modified accordingly, that is, by providing that the plaintiff's suit shall be decreed only as regards the portion or fraction of the lands covered by

(1) (1878) 2 C.L.R., 583. (2) (1897) 2 C.W.N., 191.
(3) (1912) I.L.R., 34 All., 213.

Exhibit III which is not included in Exhibit II and it will be confirmed in other respects. The appellants will pay half of respondent's costs in this Court and bear their own.

TYABJI, J.—No direct authority is cited to us showing that a paternal aunt is a natural guardian (as distinguished from a testamentary guardian or a guardian appointed by Court) of a minor under Hindu Law.

Mohamud Mondul v. *Nafur Mondul*(1) is however cited in which it is said that "it was not questioned and it could not very well be questioned" that a paternal grandmother of the minor who has acted as the manager of the minor's property "answered to the description of natural guardian in this case." It is argued for the appellants that this is a ruling that a paternal grandmother is a natural guardian and that therefore a paternal aunt may also be such and may therefore be clothed with the powers of a guardian without being appointed as such by competent authority. It may be that the remarks just preceding the statements I have cited may require reconsideration in view of what was said by their Lordships of the Privy Council in *Mir Sarwarjan* v. *Fakhruddin Mahomed Chowdhuri*(2). Apart from this, however, as my learned brother has said in his judgment, (which I have had the benefit of reading) a female in the direct line of ascent stands in Hindu Law on a totally different footing as regards rights of guardianships from a collateral like a paternal aunt.

The only other authorities cited for the appellant consists of passages from Macnaughton's Hindu Law and similar text books where it is said that paternal kinsmen have the right of guardianship. It is not quite clear whether female paternal kinsmen (not being in the direct line of ascent) are intended to be included amongst those relations who have the "natural" right of guardianship. Mayne's Hindu Law (8th edition), page 278, paragraph 211, on the other hand expressly refers to male kinsmen alone as having this right. And this view is supported by the decision in *Kristo Kissor Neoghy* v. *Kadermoye Dossee*(3) and by the view expressed by my learned brother in his judgment.

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(1) (1899) I.L.R., 26 Calc., 820 at p. 825. (2) (1911) I.L.R., 39 Calc., 233.
(3) (1878) 2 C.L.R., 283.

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I therefore agree in the order proposed by my learned brother.

The memorandum of objections is allowed with costs as Exhibit III was not executed for purposes binding on the plaintiff and it is not proved that Rs. 50 (the money recovered by the plaintiff's aunt) was spent for the plaintiff's benefit.

K.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Officiating Chief Justice, and Mr. Justice Kumaraswami Sastriyar.

1914. July 17 and 20.

SRI MEERJA RAJA SRI POOSAPATI VIJIARAMA GAJAPATHI RAJI MAHARAJ MANYA SULTAN BAHADUR, MAHARAJA OF VIZIANAGARAM (PLAINTIFF), APPELLANT,

v.

THE COLLECTOR OF VIZAGAPATAM AND SEVENTY OTHERS (DEFENDANTS NOS. 1—3 AND 5—63), RESPONDENTS.*

(*Madras*) *Assessment of Land Revenue Act* (*I of* 1876), *sec.* 2—"*Owner*" *under, meaning of—Permanent lessee, not an owner—Non-liability to separate registration and assessment—Proprietor or owner under Regulation* (*XXV of* 1802) *—Madras Hereditary Village Offices Act* (*III of* 1895).

Grantees, holding under perpetual grants subject to payment to the zamindar (the grantor) of a small rent under the name of jodi, kattubadi or poruppu, are not liable to have their lands separately registered and to have separate assessment imposed upon them, under the provisions of the Madras Act I of 1876.

A permanent lessee is not included in the term "owner" as used in section 2 of the Madras Assessment of Land Revenue Act (I of 1876).

A permanent lessee is not a proprietor or owner under Regulation XXV of 1802 or the Madras Hereditary Village Offices Act (III of 1895).

Venkateswara Yettiappah Naicker v. *Alagoo Mootoo Servagaren* (1861) 8 M.I.A., 327, *Hari Narayan Singh* v. *Sriram Chakravarti* (1910) 37 I.A., 156, *Durga Prasad Singh* v. *Braja Nath Bose* (1911) 39 I.A., 133 and *Kshetrabaro Bissoyi* v. *Sobhanapuram Harikristna Naidu* (1910) I.L.R., 33 Mad., 340, followed.

Robert Fischer v. *The Secretary of State for India in Council* (1899) I.L.R., 22 Mad., 270 (P.C.), distinguished.

Kamalammal v. *Raju Naicker* (1896) I.L.R., 19 Mad., 308, distinguished.

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* Appeal No. 224 of 1909.