

APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., Chief Justice, and Mr. Justice Stodart.

KOYA ANKAMMA (APPELLANT), APPELLANT,

1935,
October 29.

v.

KONAGANCHI KAMESWARAMMA AND THREE OTHERS
(RESPONDENTS), RESPONDENTS.*

Indian Limitation Act (IX of 1908), art. 44—Applicability—Hindu joint family—Minor members of—Sale of property of, by their mothers acting as guardians—Suit by surviving minor to recover property subject of—Limitation for—No adult coparceners in existence at time of alienation.

During the minority of two undivided cousins their mothers acting as guardians alienated certain properties belonging to them. At the time of the alienation there were no adult coparceners. One of the minors died later on and the surviving minor sued to recover the properties from the alienee on the ground that the alienation was beyond the power of the guardians to make.

Held that article 44 of the Indian Limitation Act applied to the case and that the suit which was instituted more than three years after the plaintiff attained majority, though within twelve years of the alienation, was barred by that article.

The mothers who made the alienations were the *de jure* guardians of the minors.

Bindaji v. Mathurabai, (1905) I.L.R. 30 Bom. 152, *Arumugam Pillai v. Panayadian Ambalam*, (1920) 40 M.L.J. 475, *Purushotama v. Brundavana*, A.I.R. 1931 Mad. 597, and *Munugarra Satyalakshmi Narayana v. Munugarra Jagannadham*, (1917) 34 M.L.J. 229, referred to.

APPEAL under Clause 15 of the Letters Patent against the judgment of VARADACHARIAR J. in Second Appeal No. 1254 of 1930, dated 10th May 1934, preferred against the decree of the Court of

* Letters Patent Appeal No. 37 of 1934.

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the Subordinate Judge of Bezwada in Appeal Suit No. 14 of 1929 preferred against that of the Court of the District Munsif of Bezwada in Original Suit No. 416 of 1925.

A. *Lakshmayya* for appellant.

B. V. *Ramanarasu* for V. *Govindarajachari* for respondents.

JUDGMENT.

BEASLEY C.J.

BEASLEY C.J.—The facts here are that there were two undivided cousins and at a time when both of them were minors their mothers acting as guardians alienated certain properties belonging to them. One of the minors died later on and the suit under appeal was brought by the surviving minor to recover the property from the alienee on the ground that the alienation was beyond the power of the guardians to make. The suit was instituted within twelve years of the alienation but more than three years after the plaintiff attained majority. The point is whether article 44 of the Limitation Act applies to this case. Both the lower Courts and the second appellate Court dismissed the suit as barred by article 44. The important facts in the case are that at the time of the alienations there were no adult coparceners and, in spite of the contention in the lower appellate Court which was not accepted there, that it is not correct to speak of the mothers who alienated the property as guardians in any legal sense, in my view, they were the *de jure* guardians of the minors. There is no authority for saying that, when the senior member of a coparcenary—a father—dies leaving only minor coparceners, the mother or mothers of the latter are not their *de jure* guardians; and I agree with VARADACHARIAR J.

that the cases relied upon to show that a minor's interest in an undivided Hindu family is not such an interest or property that a guardian can be appointed or predicated in respect of it can be distinguished on the ground that in those cases there were other adult coparceners and the legal guardianship of the minor coparcener therefore vested in the adult coparceners. That cannot be the case here ; and this distinction was pointed out by JENKINS C.J. in *Bindaji v. Mathurabai*(1). The position is, therefore, that these were alienations made by the *de jure* guardians of the minors and the present plaintiff was entitled to avoid the transaction ; and in such cases it has been held that article 44 is the correct article. In *Arumugam Pillai v. Panayadian Ambalam*(2) property inherited by a minor from his mother and belonging exclusively to him was sold by his father acting as his guardian, and it was held that a suit by the minor on his attaining majority to recover the property was covered by article 44 and not by article 126 of the Limitation Act. KRISHNAN J. on page 476 states :

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“ When a guardian acting in his capacity of guardian sells or otherwise transfers the property of his ward, there can be no question that article 44 will apply to the suit by the ward to recover that property subsequently for he must get the guardian's transfer set aside which is *prima facie* binding on him. A transfer by a guardian, however improper it may have been, is not a void transaction but only a voidable one and, when property cannot be recovered without avoiding it, it is now settled that article 44 will apply to the suit. No doubt it has been held that, where a Hindu father sells the joint ancestral property of himself and his minor son, article 44 will not apply even though he purported to act as his minor son's guardian in making the sale. Article 126 expressly provides

(1) (1905) I.L.R. 30 Bom. 152.

(2) (1920) 40 M.L.J. 475.

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for setting aside such alienations of ancestral property and the Court therefore held in those cases that the mere fact that the father executed the deed also as guardian of his minor son made no difference to the validity of the sale as he could have passed his son's share also by executing the deed himself and therefore article 44 was not applicable. Those rulings however apply only to alienations of ancestral property and are clearly distinguishable from the present case as here the property has been found to be the minor's separate property."

The present case would not be excepted from the operation of article 44 for the reason that there were no other coparceners and this was the separate property of the minors and they alone were interested in the property. *Purushotama v. Brundavana*(1) decides that suits brought by persons to set aside alienations by their *de jure* guardians during their minority are governed by article 44, whereas article 44 does not apply to suits by minors to set aside alienations made by *de facto* guardians; [see also *Munugarra Satyalakshmi Narayana v. Munugarra Jagannadham*(2).] Moreover, on a comparison between the language used in the two articles, it is clear that, of the two, article 44 is the one more applicable. I agree with the conclusion reached by the second appellate Court and this Letters Patent Appeal must accordingly be dismissed with costs.

STODART J. STODART J.—I entirely agree. On the point of limitation, the argument is that a man who wishes to set aside an alienation of immovable property made by his guardian during his minority can avail himself of one of two periods of limitation, whichever is longer, namely (a) three years after attaining his majority under article 44 and (b) twelve years from the date of alienation under

(1) A.I.R. 1931 Mad. 597.

(2) (1917) 34 M.L.J. 229.

article 144 extended of course by the operation of section 6. But article 144 applies to cases where the possession of the purchaser is adverse to the plaintiff and a purchaser from the guardian of a minor does not hold the land under a title adverse to the minor but on the contrary he derives his title from the minor and has a good title until it is shown that in selling the land to him the guardian exceeded his powers. The observations in the referring judgments in *Doraisami Serumadan v. Nondisami Saluvan*(1), which seem to support this part of the appellant's case, are based on the decision of the Privy Council in *Gnana-sambanda Pandara Sannadhi v. Velu Pandaram*(2) in which the alienations were bad from their inception, being sales of trust property which the minor's guardian acting on his behalf had no power to sell. The purchaser in that case did not obtain a good title but was in the position of a trespasser holding adversely to the trust.

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(1) (1912) I.L.R. 38 Mad. 118.

(2) (1899) I.L.R. 23 Mad. 271 (P.C.).
