

**A minor's call of void(ability): Analysing the legal effect of transactions of immovable property executed by guardians**

**I. Introduction**

The objective of this article is to demystify the legal controversy surrounding transactions relating to sale of immovable property(ies) executed by natural and/or legal guardians of a minor and elucidate the statutory framework and the guiding principles applied by the courts pertaining to this vexed issue. Despite the arduous efforts of legislature intending to secure the rights of minors by codifying laws from time to time, a convoluted situation arises when the property of a minor is put to sale by the 'natural guardians' under the Hindu Minority and Guardianship Act, 1956 ('**1956 Act**'), and/ or a 'guardian' under the Guardians and Wards Act, 1890 ('**1890 Act**'). The courts are often invited to deal with the legality of a sale of an immovable property owned by the minor being '*void*' or '*voidable*' when executed by the natural guardian under the 1956 Act and/ or a guardian appointed by the court under the 1890 Act. We will also discuss the legal position pertaining to the period of limitation applicable for challenging the said transactions and the manner in which such transactions may be challenged.

Prior to the enactment of the 1956 Act, the powers of the guardian to deal with the property of the Hindu minor were regulated by the personal laws if there was natural guardian and by the 1890 Act, in case there was a court appointed guardian. Under the personal laws, the natural guardian could sell, mortgage or otherwise dispose of the immovable property of the minor provided the alienation was for the benefit of the minor or his estate.<sup>1</sup> This position was aptly crystalized in a classic decision of the Privy Council in *Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree*<sup>2</sup>:

*"The power of the manager for an infant heir to charge an estate not his own, is, under the Hindu Law, a limited and qualified power. It can only be exercised rightly in a case of need or for the benefit of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded."*

---

<sup>1</sup> Surta Singh v. Pritam Singh, 1982 SCC OnLine P&H 352.

<sup>2</sup> 1856 SCC OnLine PC 7.

The alienation, thus, made by a natural guardian was neither *void* nor *voidable* at the will of the minor during his minority. The only recourse available with the minor, was to wait till the age of majority and institute appropriate proceedings to avoid the alienation on the premise that neither there was any need for alienation, nor it was for the benefit of the estate. Thus, to recover the property back, an action had to be instituted in the court upon the minor attaining majority by filing a suit for setting aside the alienation. Similarly, if the sale of a minor's property was without any consideration, or by way of gift or made by a guardian, the minor was not bound by the transaction and consequently, under no obligation to get it set aside from the court.

In this light, a statutory bar was created under the 1890 Act whereby, a guardian appointed by the court could not deal with the property of a minor by way of sale, mortgage, charge of lease without the permission of the court and against the interest of the minor. This is because a guardian stands in a fiduciary relation to his ward and is not supposed to make any profit out of his office<sup>3</sup>.

As a sequel to the 1890 Act, which is a general and secular legislation, in the post-independence era, the 1956 Act was promulgated to codify the law relating to minority and guardianship among Hindus and to supplement the 1890 Act. This is lucid from Section 2 of the 1956 Act which stipulates that the provisions of the 1956 Act shall be in addition to, and not in derogation of, the 1890 Act. Thus, even after the former enactment, the latter enactment still holds ground. The 1956 Act was curated to specifically deal with natural guardians, testamentary guardians and incidentally abolishing the *de facto* guardians.

Prior to outlaying the judicial discourse on this vexed issue, it would be apt to briefly trace the statutory framework of the 1890 Act and 1956 Act which govern the transactions entered on behalf of a minor by a natural guardian and/ or a guardian appointed by a court under the 1890 Act.

## **II. The Statutory Framework**

---

<sup>3</sup> Sudish Prasad v. Babui Jonhia, (2013) 9 SCC 181.

Under the 1956 Act, the natural guardian of a Hindu minor is vested with the power to do all acts which are necessary, reasonable and proper for the benefit of the minor and the minor's estate. This is premised on the principle of 'welfare of a child' which is of paramount consideration. However, the said power is not unbridled and is fettered as the draftsmen, in their wisdom, contemplated the misuse of powers by a natural guardian. Thus, it was a conscious decision of the legislature to limit the scope of powers of a natural guardian of a Hindu minor as the same was put to judicial scrutiny while dealing with the immovable property of the minor. One may observe in practice that there are numerous fraudulent and duplicitous transactions executed by natural and/or legal guardians during the minority of the ward to obtain personal gains and the legislature sought to curtail this mischief through protective provisions which shall be discussed in detail below.

As a primer for the readers, the relevant provisions of the 1890 and 1956 Act are reproduced below:

#### **The Guardians and Wards Act, 1890**

**29. Limitation of powers of guardian of property appointed or declared by the Court** - *Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he 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 his ward, or*

*(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.*

**30. Voidability of transfers made in contravention of section 28 or section 29** - *A disposal of immovable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.*

#### **The Hindu Minority and Guardianship Act, 1956**

**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*

*realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.*

*(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*

*(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 sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.*

*(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.*

Thus, it is manifest that the intent and objective of Section 8 of the 1956 Act was to equate the legal position of the natural guardian of a Hindu minor with that of a guardian as under the 1890 Act.<sup>4</sup> Further, it is amply clear that clauses (a) and (b) of Section 29 of the 1890 Act are in *pari materia* with clauses (a) and (b) of sub section 2 of Section 8 of the 1956 Act. Similarly, Section 30 of the 1890 Act is worded at par with that of Section 8(3) of the 1956 Act.

The *pari materia* nature of the two statutes is reflective from the effect of transaction being 'voidable', under both statutes, where the disposal of an immovable property of the minor by the guardian is without the prior permission of the court. Therefore it may be seen that the legislature designated the courts as the custodian of the rights of the minor and the discretion of the court was to be exercised based on the paramount consideration of the welfare of the minor.

However, this position of law, at a cursory reading, may, appear to be contrary to the provisions of the Indian Contract Act, 1872 ('**Contract Act**'), which predates both the above acts, and stipulates the effect of a transaction by and/or with the minor as 'void'. The legislative intent behind categorizing the effect of a transaction

---

<sup>4</sup> *Supra* note 1.

with a minor under the Contract Act as 'void' is predicated on the premise that a minor cannot be a contracting party as a minor is not competent to enter into a contract in terms of Section 11 of the Contract Act<sup>5</sup>. For an agreement to become a contract, the parties must be 'competent to contract'<sup>6</sup>, wherein age of majority is a condition precedent for competency<sup>7</sup>. It is important to highlight that the Contract Act only deals with the formal validity of a contract and the substantive validity of a contract entered by a natural and/or legal guardian on behalf of minor is to be adjudicated by the court keeping in mind the ultimate effect of the transaction i.e. whether the transaction is for the apparent advantage and benefit of the minor or otherwise.

Whereas, under the 1956 Act and/or 1890 Act, the alienation of immovable property, amongst others, on behalf of the minor is effectuated by the natural guardian/ guardian. As such, the effect of a transaction executed in the name of a minor by a natural guardian under the 1956 Act and/ or a guardian under the 1890 Act is consciously categorized as 'voidable' as against 'void' owing to the fact that a natural guardian/ guardian may be acting *bonafidely* and entering into a transaction for parting the immovable property of a minor for the benefit of the minor or for the protection of minor's estate. To hold such a transaction as 'void' may be adverse to the interests of the minor. Thus, to protect the interests of a minor, the legislature consciously categorized the transaction as 'voidable'.

### **III. Judicial discourse**

What follows from the above discussion and settled position of law is that a Hindu minor has no legal competence to enter into a contract or authorize someone else on his behalf to enter into a contract. As such, under the Hindu Law, the natural guardian is empowered to enter into a contract on behalf of the minor and the contract would be binding and enforceable provided it is for the benefit/ welfare of the minor<sup>8</sup>. In an early decision *viz., Kakulam Subrahmanyam v. Kurra Subba Rao*<sup>9</sup>, the Privy Council fortified this position by holding that a guardian of a minor is

---

<sup>5</sup> Mathai Mathai v. Joseph Mary, (2008) 1 SCC 1.

<sup>6</sup> Mohori Bibee v. Dharmodas Ghose, (1902-03) 30 IA 114: ILR (1903) 30 cal 539.

<sup>7</sup> *Ibid.*

<sup>8</sup> Manik Chand v. Ramchandra, (1980) 4 SCC 22.

<sup>9</sup> AIR 1948 PC 95.

competent to enter into a contract on behalf of the minor so as to bind him if it is for the benefit/ welfare of the minor.

Appositely, there may be varied situations/ circumstances requiring disposing and/ or alienating an immovable property of a Hindu minor by the guardian. Few possible reasons could be for the welfare of the minor such as their education and socio-economic development *et al*. This situation begs the question that even when the transaction has been effected for the ostensible or apparent benefit of the minor, however, without seeking prior permission of the court appointing a guardian, what would be the effect of such a lapse. Whether the transaction would be a nullity or *void* merely due to this transgression by the guardian, or the effect would only be voidability at the option of the minor upon attaining majority. It is a sour reality that the immovable properties of Hindu minors are often disposed/ alienated without seeking prior permission of the court as opposed to mandatory statutory embargo stipulated under 8(2)(a)(b) of the 1956 Act and Section 29 of the 1890 Act. In such situations it is imperative for prospective buyers to undertake adequate due diligence before entering to any such transactions with the natural/ legal guardian of a minor to safeguard their interest.

The defiance of the mandatory provisions, consequently leads to two anomalous situations i.e. (i) where a minor may argue after attaining majority that the sale of immovable property by the guardian was, in fact, not for the proper benefit/ welfare of the minor and was only executed to usurp/ reap the benefits from the sale transaction; and (ii) a duped *bonafide* purchaser who paid the entire sale consideration for the immovable property of the minor upon being actively represented by the vendor that it has valid authority under the law to enter into a sale transaction. The author, however, for the sake of present article is not intermingling the above two anomalous situations and restricts the scope of the present article towards analyzing the former issue only as the latter issue is perhaps a story for another day.

Another interesting facet which equally assumes significance is also the period of limitation within which an action is to be brought by the Hindu minor challenging the execution of the sale of immovable property by the guardian of such Hindu

minor. Article 60 of the Limitation Act, 1963 ('**Limitation Act**') contemplates a suit to set aside a transfer of property made by the guardian of a ward for which limitation is stipulated as three years from the date of the ward attaining majority. The intent of the said provision is to create a contingent right in favour of the minor to allow the minor to either ratify or avoid the transaction executed by the guardian during his minority and such right vests upon attaining majority as per the prescription under the Limitation Act. Therefore, the position that emerges is that any ratification or challenge to the acts of a guardian alienating/ disposing the immovable property of a minor is only upon attaining majority as per the Limitation Act. However, the vexatious position arises when a court exceeds its statutory mandate and declares the transaction as null and *void* merely due to violation of the conditions envisaged under Section 29 of the 1890 Act and Section 8(2) of the 1956 Act which would essentially deprive the minor from exercising their vested right as per the Limitation Act. The Hon'ble Supreme Court is currently seized with this position in the matter titled "*Surendra Anand v. Pushpendra Kumar & Ors.*" bearing *Special Leave Petition (Civil) No. 137 of 2023*, wherein leave has been granted by the Supreme Court for determining this substantial questions of law. Thus, to analyze these vexed issues, it becomes imperative to trace the judicial discourse thus far.

The Hon'ble Supreme Court in an early decision in *Amirtham Kudumbah v. Sarnam Kudumban*<sup>10</sup> was seized with the interpretation of Section 8 (3) of the 1956 Act while considering the issue "*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?*" While delineating the effect of Section 8(3) of the 1956 Act, it was held by the Hon'ble Supreme Court 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*. Such sale can be avoided by either the minor or any person claiming under him. That means, 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 an action within three years as per the Limitation Act.

---

<sup>10</sup> (1991) 3 SCC 20.

Subsequently, in *Vishwambhar v. Laxminarayan*<sup>11</sup>, the Hon'ble Supreme Court was posed with a situation where a mother alienated the ancestral lands belonging to the minors in the capacity of a guardian by executing sale deeds without any legal necessity and sanction of the court and as such, the transfers made by the mother were held to be 'void' and not binding on the minors. After delineating the statutory scheme under the 1956 Act, the Hon'ble Supreme Court held that the transaction was not 'void' but merely 'voidable'. The Hon'ble Supreme Court also expounded on the difference between *void* and *voidable* documents and held as follows<sup>12</sup>:

*"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..."*

Following the decision in *Vishwambhar*, the Hon'ble Supreme Court in *Nangali Amma Bhavani Amma v. Gopalkrishnan Nair*<sup>13</sup>, held that a transaction entered into by the natural guardian in contravention of Section 8(2) was not *void* but merely *voidable* at the instance of the minor. Pertinently, the Hon'ble Supreme Court also clarified that to read anything contrary to the plain meaning of the statute would have the effect of depriving the minor of the right to affirm or ratify the transaction upon attaining majority.

Recently, in *Murugan v. Kesava Gounder*<sup>14</sup>, it was reiterated that the disposal of immovable property by a natural guardian in contravention of Section 8(3) of the 1956 Act is *voidable*. Further, when a registered sale deed is *voidable*, it is valid till it is avoided in accordance with law.

---

<sup>11</sup> (2001) 6 SCC 163.

<sup>12</sup> *Gorakh Nath Dube v. Hari Narain Singh* [*Gorakh Nath Dube v. Hari Narain Singh*, (1973) 2 SCC 535.

<sup>13</sup> (2004) 8 SCC 785.

<sup>14</sup> (2019) 20 SCC 633.



In light of the settled principles under the 1956 Act, the disposal/ alienation of an immovable property of a Hindu minor by the guardian without the sanction of the court is *voidable* at the instance of a minor. This position is *pari materia* to the 1890 Act where Section 29 limits the power of the person appointed/ declared by the court as a guardian of the property of the minor, to sell the property of the minor without obtaining the permission of the court<sup>15</sup>.

It is well settled that a *voidable* document has to be set aside by the court at the request of the minor before taking its legal effect. As such, setting aside of the sale which is *voidable* under Section 8(3) of the 1956 Act and Section 30 of the 1890 Act is necessary for avoiding a transaction where the sale deed is registered.

#### **IV. Conclusion**

Whilst the legislative intent *qua* the effect of a transaction concerning an immovable property of a Hindu minor by the natural guardian/ guardian under the 1956 Act and 1890 Act, respectively, as being *voidable* is lucid, various trial courts as well as courts of first and second appeal seem to deviate from the statutory mandate of the 1890 and 1956 Act in declaring the sale of an immovable property of a minor by the guardian as a *void* and not a *voidable* transaction. Such erroneous interpretation falls foul of the categorical terms of Section 8(3) of the 1956 Act and Section 30 of the 1890 Act which declare the disposal of immovable property by a guardian in contravention of the said acts as merely *voidable*. The scheme of both the statutes contemplate challenge only after the minor attains majority and not during the minority. As such, the misreading and misapplication of the law by the courts has often led to courts committing an error of jurisdiction which had to be ultimately cured and settled by the Hon'ble Supreme Court *vide* authoritative pronouncements. There are several instances where courts in an act of judicial overreach declare the transactions to be *void* in excess of the statutory jurisdiction and grant declarations which fall foul of the consequences envisaged by the legislature.

---

<sup>15</sup> Minor Mahema v. E.K. Lingamoorthy, 2014 SCC OnLine Mad 889.

It would not be out of place to mention that trial courts along with appellate courts ought to respect the plain meaning and wording of a statute which envisages the nature of such transactions to be *voidable* and not *void*. Passing a declaration and determining transactions of an immovable property of a minor to be *void* not only run contrary to the statutory scheme but simultaneously defeat the contingent right of a minor under the Limitation Act which allows the minor to either ratify or assail such transactions entered into by a guardian during his/ her minority. Therefore, the pronouncements of the Hon'ble Supreme Court of India must be a word of caution for all subordinate and appellate courts to align their reliefs with the statutory scheme.