

K.S. Shivappa Vs. Smt. K. Neelamma

Civil Appeal No. 11342 of 2013 · Supreme Court of India · 2025-10-07 · Pankaj Mithal · Prasanna B. Varale · F2J-C-1559

Full judgment text

K.S. Shivappa Vs. Smt. K. Neelamma

[Civil Appeal No. 11342 of 2013]

Pankaj Mithal, J.

1. One Mahadevappa, son of Waderahalli Basappa of Village Shamanur was the owner of sites measuring 42 ft. x 30 ft. and 41 ½ ft. x 30 ft., which were carved out of Survey Nos. 113/2 and 114/1. These revenue sites were described as plots Nos. 56 and 57 respectively. The aforesaid plots Nos. 56 and 57 were purchased by Rudrappa on 15.09.1971, in the name of his three minor sons, namely, Maharudrappa, Basavaraj and Mungeshappa. Thus, all the three minors became the joint owners of the aforesaid two plots.

2. Rudrappa, the father and the natural guardian of the three minors, transferred one of the two plots i.e. plot No. 56 in favour of one S.I. Bidari by a registered sale deed without the court's permission. The said S.I. Bidari further transferred the said plot i.e. plot No. 56 to one Smt. B.T. Jayadevamma vide sale deed dated 31.01.1983. Subsequently, when the two surviving minors (as one of them died) attained majority, they along with their mother transferred the aforesaid plot in favour of one K.S. Shivappa vide sale deed dated 03.11.1989. Acting in furtherance of the above registered sale deed, K.S. Shivappa started working on the said land due to which Smt. B.T. Jayadevamma thought there was interference with her rights on the said land.

3. As a result, Smt. B.T. Jayadevamma filed an Original Suit No. 120/1997 in the Court of II Additional Civil Judge (Sr. Div.), Davanagere for declaration, possession and permanent injunction. The Trial Court decreed the suit in favour of B.T. Jayadevamma holding that the minors on attaining majority failed to file a suit to get the sale deed executed by their father repudiated. Aggrieved by the aforesaid judgment and order, K.S. Shivappa filed Regular First Appeal No. 1522/2003 before the High Court.

The appeal was allowed, and the judgment and order passed by the Trial Court was reversed, holding that the sale deed of the said plot executed by the father of the minors was voidable at the instance of the minors and that the minors can repudiate the same within the prescribed time, upon attaining majority either by filing a suit or by unequivocal conduct, such as, by transferring the property to a third party. Thus, the transfer of the property by the minors, on attaining majority within the period of limitation, amounted to repudiation of the contract of sale of the property executed by their father without seeking the permission of the District Judge.

4. In a similar fashion, as above, Rudrappa, the father and natural guardian of the minors, transferred the second plot, i.e. plot No. 57 through a registered sale deed dated 13.12.1971 in favour of one Krishnoji Rao without taking any permission from the court. The said purchaser Krishnoji Rao vide Sale Deed dated 17.02.1993 transferred the said plot in favour of Smt. K. Neelamma. On the other hand, the surviving minors on attaining majority, along with their mother within the prescribed time sold the property, i.e., plot No. 57 to K. S. Shivappa, the purchaser of the earlier plot No. 56. The said Shivappa clubbed both the properties, i.e. plot Nos. 56 and 57 and built a house to live therein.

5. In the above background of the facts and circumstances, Smt. K. Neelamma, the purchaser of plot No. 57 who purchased it from Krishnoji Rao, as a plaintiff instituted O.S. No. 76/1997 in the Court of Additional Civil Judge, (Jr. Div.), Davanagere against K.S. Shivappa. The said suit was dismissed on 14.02.2003 by the Trial Court holding that the sale deed under which the predecessor-in-title of the plaintiff had purchased the aforesaid plot from the father and natural guardian of the minors was voidable as no permission of the court was taken for its sale. The minors could repudiate the same on attaining majority, which in fact, has been done by them by executing the sale deed in favour of K.S. Shivappa. Therefore, the plaintiff, Smt. K. Neelamma derives no legal rights in the said plot.

6. Aggrieved by the aforesaid judgment, order and decree, the plaintiff Smt. K. Neelamma preferred Regular Appeal No. 67/2003 before the Principal Civil Judge (Sr. Div.), Davangere. The said appeal was allowed, and the judgment and order of the Trial Court was reversed. It was held that since the minors have not challenged the earlier sale deed executed by their guardian, they could not have sold the plot subsequently on attaining majority.

7. The Second Appeal preferred by K.S. Shivappa against the aforesaid judgment and order was dismissed by the High Court vide judgment and order dated 19.03.2013 on the same reasoning that since no suit for cancellation of the earlier sale deed was filed by the minors on attaining majority, the sale deed executed by their natural guardian had attained finality. Thus, the plaintiff Smt. K. Neelamma is the valid title holder of the plot No. 57.

8. This is how, K.S. Shivappa, the purchaser of the two plot Nos. 56 and 57 has come up before this Court by way of this appeal.

9. It may be pertinent to clarify herein itself that the dispute in the present appeal is confined to plot No. 57 only. The dispute regarding plot No. 56 stands conclusively settled by the judgment and order of the High Court, which was never challenged by either party before any higher forum. No material is on record to indicate that any special leave petition or appeal was filed against it.

10. Upon hearing learned counsel for the parties, the moot question which falls for our consideration in this appeal is: whether it is necessary for the minors to have filed a suit upon attaining majority within the prescribed time period, to set aside the earlier sale deed executed by their natural guardian, with respect to plot no.57 or such a sale deed could be repudiated through their conduct within three years of attaining majority.

11. In order to answer the above question of law, it would be beneficial to refer and quote the relevant provisions of Section 8 of the Hindu Minority and Guardianship Act, 1956. The relevant provisions are sub-Section (2) and sub-Section (3) of Section 8 of the Act, which are being reproduced hereinbelow:

"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.

(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."

12. A simple reading of the aforesaid provisions makes it abundantly clear that a natural guardian of a minor has no authority in law to mortgage, sell, gift or otherwise transfer any part of the immovable property of the minor or even to lease out 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 without the prior permission of the court. Therefore, prior permission of the court is a sine qua non for a guardian of a minor to transfer the property of the minor in any of the manners provided under sub-Section (2) of Section 8 of the Act.

13. Sub-Section (3) of Section 8 of the Act in unequivocal terms provides that the disposal of any immovable property by the 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. In other words, if the natural guardian or a minor disposes of the immovable property of a minor in contravention of sub-Section (1) and sub-Section (2) particularly without the permission of the court, such a transaction would be voidable at the instance of the minor.

14. The aforesaid provision, however, nowhere categorically provide the manner in which such a transaction of disposal of the property of a minor by a guardian without the permission of the court

would be a voidable. Such a transaction can be avoided or repudiated by the minor expressly by filing a suit for the cancellation of such a transaction or impliedly by his conduct namely by transferring the property himself on attaining the majority within the time prescribed.

The avoidance of such a transaction by conduct appears to be permissible for two reasons. First, at times the minor may not be aware of such a transaction and as such may not be in a position to institute any suit; secondly, the transaction of such a nature, if any, may not have been given effect to and the party acquiring right in the property may not be having possession of the property giving an impression that the property is intact in the hands of the minor, in which case also the minor on attaining majority may not deem it proper to institute a suit.

15. 'Travellyan' in his well-known book on Minors 5th Edition, on Page No.202 stated:

"A transaction which is voidable at the instance of the minor may be repudiated by any act or omission of the late minor, by which he intends to communicate the repudiation, or which has the effect of repudiating it, for instance, a transfer of land by him avoids a transfer of the same land made by his guardian before he attained the age of majority. It is not necessary that he should bring a suit."

16. Mulla's Hindu Law, 12th Edition, on Page No.276 observes as under:

"An alienation made by a Hindu widow without legal necessity and without the consent of the next reversioners is voidable at their option. They may affirm it, or treat it as a nullity without the intervention of a court, and they show their election to do the latter by commencing an action to recover possession of the property."

17. Both the above texts indicate that the transfer which is voidable, can be repudiated by the minor on attaining majority by his action and not necessarily by the intervention of the court.

18. In a century and quarter old case of Abdul Rahman vs. Sukhdayal Singh,² a property of the minor was leased out by the guardian but not for the benefit of the minor. The minor sold the property on attaining majority. The court observed that it is not necessary that a suit should be instituted to set aside the lease which was executed by the guardian of the minor and that the act of the minor of selling the property on attaining majority is enough to repudiate the lease deed.

19. In G. Annamalai Pillai vs The District Revenue Officer, Cuddalore³, Madras a lease deed of minor's land was executed by his father in contravention of Section 8 (1) and (2) of the Act. The transferee moved an application for registering himself as a cultivating tenant on the basis of the above lease. The minor on attaining majority resisted the application on the ground that the lease is not valid and is in violation of sub-Section (2) of Section 8 of the Act. It was held that the lease having been avoided by the minor after attaining the age of majority, there was no valid lease and as such the transferee under the lease cannot claim the status of a cultivating tenant.

20. The above decision is certainly not binding upon this Court, nonetheless, it has some persuasive value. It in clear term reveals that the minor on attaining majority can avoid a transaction which is voidable under sub-Section (2) of Section 8 by his conduct such as by resisting the application of the transferee to register him as a cultivating tenant. It means that it is not mandatory to file a suit for the cancellation of the lease deed.

21. In another case reported in Chacko Mathew v. Ayyappan Kutty⁴, it was held thus:

"It is not always necessary that a party entitled to avoid a transaction not binding on him should sue for its rescission. He can himself avoid it by an unequivocal act repudiating it". The opinion so expressed throw enough light to support the view that a transaction which is in violation or contravention of sub-Section (2) of Section 8 of the Act can be avoided by the minor not only by suing for the recession of such a transaction but by otherwise also.

22. In view of the legal opinion expressed by Travellyan, Mulla and the High Courts of Allahabad, Madras and Kerala, it is amply clear that a transaction in relation to the property of a minor executed in contravention of the express provisions of Section 8 of the Act is voidable at the option of the minor or any person claiming under him and such an option to avoid a transaction of the above nature can be by initiating a law suit or may be by conduct as enumerated above.

23. In Madhegowda vs Ankegowda⁵, this Court in paragraph 25 held as under:

"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"."

24. In *Vishwambhar and Ors. vs Laxminarayan (Dead) through Lrs. and Anr.*⁶ a Division Bench in a matter where the minor filed a suit for possession contending that the sale deeds executed by their guardian (mother) were inoperative and not binding upon them as the same were affected without the permission of the court in contravention of Section 8 (2) of the Act, and wherein the relief for setting aside the sale deeds was added after the period of limitation had expired, the Court held that though the sale deeds were executed without legal necessity and in contravention of Section 8 (2), but the suit was rightly dismissed as the relief for cancellation of the sale deeds could not have been added after the expiry of the limitation.

25. The aforesaid decision is not one which lays down that the filing of a suit by the minor on attaining majority for the cancellation of the sale deeds executed by the guardian is mandatory. It only lays down that the relief of cancellation of sale deeds, if added after expiry of limitation period, cannot be granted. The said decision, therefore, has no application to the facts and circumstances of the case at hand to answer the question whether a voidable transaction can be repudiated by the minor only by filing a civil suit or otherwise by his conduct also.

26. Another Division Bench of this Court in *Nangali Amma Bhavani Amma vs Gopalkrishnan Nair and Ors.*⁷ while holding that a transaction entered into by the guardian of a minor in violation of Section 8 (2) is voidable at the instance of the minor and is not void and that the minor can avoid the same on attaining majority. The Division Bench relying upon *Vishwambhar (Supra)* observed that a suit must be filed by minor in order to avoid transaction within period prescribed under Article 60 of the Limitation Act, 1963. The aforesaid decision also nowhere rules that there are no other alternative modes to avoid the transaction which is in contravention of Section 8 (2) of the Act and that the filing of the suit alone is the remedy thereof.

27. The decision of this Court in *Murugan & Ors. vs Kesava Gounder (Dead) through legal representatives & Ors.*⁸, though in the facts and circumstances of the said case, states that alienations which are voidable at the instance of minor are required to be set aside before relief of possession can be claimed by such minor but even then the said decision is of no help to answer the question before us in this appeal.

28. The aforesaid decision is only an authority to the effect that relief of possession cannot be claimed by the minor without getting the sale deeds, which are voidable, set aside. However, the aforesaid decision also falls quite short of laying down that the suit for setting aside the voidable sale deeds is mandatory to repudiate a transaction entered into by the guardian on behalf of the minor in contravention of Section 8 (2) of the Act.

29. Apart from the above decisions of the Apex Court, there is another important decision of this Court in *G. Annamalai Pillai vs District Revenue Officer and Ors.*⁹ In the said case, the guardian of a minor who was the owner of the property, had executed the lease deed of the property of the minor in contravention of Section 8 of the Act. The lease was avoided by the minor on attaining majority. The Court held that the effect of such avoidance would be that though the lease was voidable but once it is avoided it becomes void from its very inception and no statutory rights accrue in favour of the lessee. It was held that the avoidance relates back to the date of the transaction. The Court quoted Salmond on Jurisprudence, 12th edition, page no.341 as under:

"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."

30. The Court in the aforesaid decision went further ahead to state that the Privy Council in *Satgur Prasad vs Mahant Har Narain Das*¹⁰ and in *S. N. R. Sundara Rao & Sons, Madurai vs Commissioner of Income-Tax, Madras*¹¹, held that when a person dissents from the alienation, his dissent is in relation to the whole transaction and not merely to the possession. In the result, the effect is to get rid of the transaction as if the transaction had never taken place.

31. In the light of the above observations, this Court in *G. Annamalai Pillai* (supra) went on to record that when the respondent avoided the lease deed executed by his father, the lease became void from its inception and no statutory rights could therefore accrue in favour of the other party.

32. In view of the above discussion, it can safely be concluded that a voidable transaction executed by the guardian of the minor can be repudiated and ignored by the minor within time on attaining majority either by instituting a suit for setting aside the voidable transaction or by repudiating the same by his unequivocal conduct.

33. In the case at hand, undisputedly the surviving minors on attainment of majority had repudiated the transaction of sale executed by their father by entering into a fresh contract of sale of the property in question. It is admitted on record that on the basis of the sale deed executed by the father of the minors, the purchaser or the subsequent purchasers have not entered into possession and the name of the minors continued to appear in the revenue records. There is no material on record that the minors had the knowledge of the execution of the sale deed by their father.

In the facts and circumstances, if they have avoided the sale executed by their father on attaining majority, it is sufficient repudiation of the said sale and it was not necessary for them to have instituted the suit for the cancellation of such a sale rather the purchasers of the property of the minors through the guardian on acquiring knowledge of the sale executed by the minors on attaining majority ought to have instituted a suit either for the cancellation of the sale deed executed by the minors or for declaration of their right, title and interest in the property.

34. The above discussion leads us conclusively to hold that it is not always necessary for a minor to institute a suit for cancellation of a voidable sale transaction executed by his guardian on attaining majority within the limitation provided and that such a transaction can be avoided or repudiated by his conduct. The question stands answered accordingly.

35. There is one another issue which goes in favour of K.S. Shivappa.

36. The plaintiff, Smt. K. Neelamma in instituting the original suit in the plaint simply pleaded that she had purchased the property vide registered sale deed dated 17.12.1993 for a valuable consideration from Krishnoji Rao. She has nowhere stated or pleaded that she had verified the title of the vendor or that the vendor, Krishnoji Rao, was having a valid title over the property so as to transfer it in her favour.

37. She further pleaded that the cause of action for the suit arose on 27.01.1997 when she noted certain waste products on the suit land and requested the defendant, K.S. Shivappa to remove them, who refused to clear the same denying the title of the plaintiff.

38. The aforesaid plaintiff, Smt. K. Neelamma had not entered the witness box to prove her plaint case or to assert her title over the suit property. She had not even proved the sale deed dated 17.12.1993 under which she has allegedly purchased the suit land from Krishnoji Rao or to state that Krishnoji Rao was having a valid title over the said land to transfer her. In fact, she could not even upon entering the witness box could have proved the valid title of Krishnoji Rao in the absence of any plaint allegations to the above effect. It is settled that the evidence either ocular or documentary cannot travel beyond the pleadings.

39. The power-of-attorney holder of the plaintiff, Smt. K. Neelamma namely Shivaji Rao Salanki, PW-1 was not competent to depose or to prove anything which was not within his personal knowledge or was otherwise personally known to the plaintiff, Smt. K. Neelamma. The testimony of such a witness i.e. a power-of-attorney holder is inadmissible with regard to the facts within the personal knowledge of the plaintiff who has failed to enter the witness box.

This is settled by this Court in *Janki Vashdeo Bhojwani vs. IndusInd Bank Ltd.*¹² In the recent case of *Rajesh Kumar vs Anand Kumar and Ors.*,¹³ a Division Bench of this Court in which one of us (P. Mithal, J. was a member) reaffirmed the principle that where the plaintiff refuses to testify, the proxies cannot substitute his personal testimony on key issues within the personal knowledge of the plaintiff. A

Power-of-Attorney holder is thus, not entitled to depose in place of the principal.

40. In the overall facts and circumstances of the case, firstly for the reason that the plaintiff failed to enter the witness box so as to testify and prove her plaint case; and secondly for the reason that the sale deed executed by the father of the minors was repudiated by the minors within time on attaining majority, no valid right or title stood transferred to Krishnoji Rao from whom Smt. K. Neelamma had allegedly purchased the suit land. Therefore, the suit as instituted has to fail.

41. Accordingly, the judgment and order of the High Court dated 19.03.2013 and that of the First Appellate Court dated 30.06.2005 are set aside and that of the Trial Court is restored so as to decree the suit.

42. The appeal is allowed accordingly with no order as to costs.

.....J. (Pankaj Mithal)

.....J. (Prasanna B. Varale)

New Delhi;

October 07, 2025.

1 Hereinafter referred to as 'the Act'

2 1905 SCC OnLine All 106

3 1984 SCC OnLine Mad 185

4 1961 SCC OnLine Ker 24

5 (2002) 1 SCC 178

6 (2001) 6 SCC 163

7 (2004) 8 SCC 785

8 (2019) 20 SCC 633

9 (1993) 2 SCC 402

10 1932 SCC OnLine PC 2

11 1956 SCC OnLine Mad 300

12 (2005) 2 SCC 217

13 2024 SCC OnLine SC 981

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