

Jharkhand High Court

Bench: V Narayan

Baidnath Mahto v. Jadu Mahto @ Jadunandan Mahato

29 April, 2004

JUDGMENT

Vishnudeo Narayan, J.

1. This appeal at the instance of the plaintiffs-appellant has been preferred against the impugned judgment and decree dated 28.1.1989 and 9.2.1989 respectively passed in Title Appeal No. 38 of 1984 by Shri Anil Kumar Sinha, 3rd Additional District Judge, Dhanbad whereby and whereunder the appeal was allowed and the judgment and decree of the Trial Court passed in Title Suit No. 153 of 1981 was set aside and the suit of the plaintiffs was dismissed.
2. The plaintiffs-appellant have filed the said suit for declaration of their raiyati right and title and recovery of possession in respect of the suit land situate in Village-Dhokhra (No. 12), Police Station-Baliapur, District-Dhanbad fully detailed in Schedule-B of the plaint.
3. The case of the plaintiffs-appellant, in brief, is that Raja Shiva Prasad Singh was the proprietor in respect of 82.61 acres of land situate in Village-Dhokhra and he granted permanent tenure right in respect thereof of one Bhola Prasad Singh and the land aforesaid was recorded in khewat Nos. 2 and 3 of Village-Dhokhra in his name and land of khata No. 145, was recorded as Awad Malik appertaining to khewat No. 3 (Ext. F) in the name of Bhola Prasad Singh aforesaid, who was in cultivating possession thereon. Bhola Prasad Singh aforesaid transferred the said land in favour of Harakali Bose by a registered sale deed dated 21.3.1931 (Ext. 3/A) and Harakali Bose came in possession thereof. Subsequently, Harakali Bose transferred the aforesaid land by virtue of a registered sale deed dated 16.3.1936 (Ext. 3/B) in favour of Raja Shiva Prasad Singh aforesaid, the proprietor of Jharia Raj Estate Jharia Raj Estate was an impartable Estate governed by the rule of primogeniture whereunder the eldest son of the proprietor alone is entitled to inherit the Estate and the other sons of the proprietor are entitled only to get their maintenance and said Raja Shiva Prasad Singh had five sons and Kumar Rama Prasad Singh was his youngest son and in order to provide maintenance to his youngest son, Kumar Rama Prasad Singh, Raja Shiva Prasad Singh executed a registered permanent deed to patta, dated 4.9.1936 (Ext. 4) in his favour in respect of the aforesaid land under khewat Nos. 2 and 3 measuring 82.61 acres including Awad Malik land of khata No. 145 on receipt of proper salami on a nominal rental of Rs. 1/-per annum and put him in possession thereon and since then Kumar Rama Prasad Singh came in possession over the same and he used to cultivate the Awad Malik land of khata No. 145. Thereafter, Kumar Rama Prasad Singh while under peaceful possession thereon transferred the land of khata No. 145 detailed in Schedule-A of the plaint by executing a registered deed dated 6.6.1962 (Ext. 3) in favour of Gore Chand Mahto, the father of the plaintiff-appellant and put him in possession thereon and since then Gore

Chand Mahto came in cultivating possession of Schedule-A, land of the plaintiff and he was mutated in respect thereof and paying rent to the State of Bihar, and in exercise of his permanent raiyati right over the same to the knowledge of the defendants-respondent and their predecessor and all concerned for more than 1-2 years has acquired a perfect title by adverse possession and on his death in the year 1979, the plaintiffs-appellant inherited the Schedule-A, land and they continued in cultivating possession thereon and have perfected raiyati title therein. Their case further is that Harkhu Mahto, the predecessor-in-interest of the defendants-respondent who had no title or possession in respect of the land detailed in Schedule-A of the plaintiff or any portion thereof filed an application before the mukhiya of the local panchayat during harvesting season of 1974 claiming an interest in the suit land and his application on proper enquiry was rejected by the mukhiya and Gore Chand Mahto harvested the paddy crop from the suit land in the year 1974 which he has grown therein and thereafter he also transplanted paddy in the said land in the year 1975 and said Harkhu Mahto initiated a proceeding under Section 144 of the Code of Criminal Procedure during the harvesting session of 1975 against Gore Chand Mahto which was subsequently converted into a proceeding under Section 145 of the Code of Criminal Procedure which was decided against the heirs of Gore Chand Mahto, who has died during its pendency, vide order dated 20/22.4.1981 and being emboldened by the said order the defendants-respondent, have dispossessed the plaintiffs-appellant on 27.5.1981 from Schedule-B, land of the plaintiff which is the subject matter of the suit. It is alleged that the defendants-appellant had set up a claim in the proceeding under Section 145 of the Code of Criminal Procedure on the basis of alleged settlement by a sada hukumnama made in 1944 by Raja Shiva Prasad Singh in favour of Kartik Mahto, the father of Harkhu Mahto aforesaid followed by rent receipts and salami receipts purported to have been granted by Jharia Raj Estate.

4. The case of the defendants-respondent, inter alia, is that Ranjay Mahto, the predecessor-in-interest of the defendants-respondent was in possession of the land of khata No. 145, till his death since the time of Bhola Prasad Singh aforesaid as his bhagidar and after him his son Kartik Mahto remained in possession thereon as such and on 21.3.1944 Raja Shiva Prasad Singh made a permanent raiyati settlement of 12.01 acres of land recorded under khata No. 145 described in Schedule-M, of the written statement including the suit plots with Kartik Mahto on payment of salami of Rs. 901/- and on annual rental of Rs. 9/8/0 besides Rs. 0/7/0 as cess and since then he remained in possession thereon as occupancy raiyat and after vesting of the Estate they are paying rent to the State of Bihar by virtue of the order passed in Case No. 19 of 1960-61. It is alleged that the defendants-respondent being in possession of the land of khata No. 145 since then continuously, openly as of right, adversely to the knowledge of all including the plaintiffs-respondent and their predecessor-in-interest for over 12 years had acquired a perfect and indefeasible title to the land aforesaid including the suit land. The further case of the defendants-respondent is that the alleged deed of settlement dated 4.9.1936 (Ext. 4) executed by Raja Shiva Prasad Singh in favour of Kumar Rama Prasad Singh is a collusive document and a mere paper transaction which was never acted upon and further Kumar Rama Prasad Singh was a minor at that time and the said document being in favour of an unrepresented minor is void in law and under the said deed Kumar Rama Prasad Singh had neither acquired any title in respect thereof nor has ever come in possession of the land of khata No. 145. It is alleged that deed of settlement dated 6.6.1962 in favour of Gore Chand Mahto purported to have been

executed by Kumar Rama Prasad Singh is a collusive deed and said Gore Chand Mahto did not acquire any right, title or interest in the suit land and he has also not come in possession thereon. It is also alleged that the suit for declaration of the raiyati right of the plaintiffs- appellant on the basis of the alleged settlement of the year 1962 from Mukraridar i.e. Kumar Rama Prasad Singh whose right has already vested under the B.L.R. Act, 1950 is not maintainable and the plaintiffs-appellant have not at all acquired any raiyati right by virtue of the settlement made in the year 1962 in their favour. The further case of the defendants-respondent is that Gore Chand Mahto with the help of the musclemen wanted to take forcible possession of the suit land which compelled Harkhu Mahto, the ancestor of the defendants-respondent to initiate a proceeding under Section 144 of the Code of Criminal Procedure bearing M.P. Case No. 1250 of 1975 which was converted into a proceeding under Section 145 of the Code of Criminal Procedure and the possession of the defendants-respondent was declared in the said proceeding.

5. In view of the pleadings of the parties, the learned Trial Court has framed the following issues for a adjudication in this case :

- (i) Has the plaintiff any cause of action for the present suit?
- (ii) Is the suit legally maintainable?
- (iii) Is the suit barred under the principle of waiver estopped and acquiescence?
- (iv) Is the suit barred by law of limitation?
- (v) Is the suit barred under the provisions of Chota Nagpur [Tenancy](#) Act?
- (vi) Have the plaintiffs perfect raiyati right over the suit lands?
- (vii) Have the defendants right, title, interest and possession over the suit land?
- (viii) Are the plaintiffs or the defendants in possession of the suit land for more than 12 years ?
- (ix) Are the plaintiffs entitled to get a decree as claimed?
- (x) To what relief or reliefs, if any, for which plaintiff is entitled?

6. The Trial Court while deciding issue Nos. (vi), (vii) and (viii) in view of the evidence on the record has held that the case of the defendants regarding settlement of the suit land in favour of Kartik Mahto in the year 1944 is incorrect and false and Ext. D, the document of settlement and Ext. A/5, to Ext. A/7, the rent receipts, are forged and fabricated documents. It has also been held that the registered deed of patta dated 4.9.1936 in favour of Kumar Rama Prasad Singh is a genuine document and the said Kumar Rama Prasad Singh was represented in the said document by his natural mother and Kumar Rama Prasad Singh came in possession over the land settled with him by virtue of the registered patta dated 4.9.1936 and in the year 1962 he transferred the suit land along with other lands to Gore

Chand Mahto, the ancestor of the plaintiffs-appellant who came in possession thereon and paid rent to the State of Bihar and after the order passed in the proceeding under Section 145 of the Code of Criminal Procedure, the defendants-respondent have disposed the plaintiffs-appellant in the year 1981. In view of the findings aforesaid, the learned Trial Court decreed the suit.

7. Aggrieved by the judgment and decree of the Trial Court, the defendants-respondent had preferred Title Appeal No. 38 of 1984. The lower appellate Court on reappraisal and re-appreciation of the evidence, oral and documentary, on the record reversed the judgment and decree of the Trial Court and allowed the appeal and dismissed the suit. The learned appellate Court below has held that the document by which Raja Shiva Prasad Singh transferred his interest in khewat Nos. 2 and 3 in favour of his minor son, Kumar Rama Prasad Singh is a void document and the plaintiffs who are transferees of Kumar Rama Prasad Singh cannot drive any valid title since Kumar Rama Prasad Singh had no valid, right, title and interest in respect of any land on the basis of patta dated 4.9.1936 which was a void document. It has also been held that Kumar Rama Prasad Singh had no right to grant any settlement of land to Gore Chand Mahto because the Estate has vested in the State in the year 1956 and all his tenure rights stand vested in the State of Bihar and thus after the year 1956, Kumar Rama Prasad Singh had no right to make any raiyati settlement and in this view of the matter Gore Chand Mahto or the plaintiffs cannot derive any right, title and interest over the suit land on the basis of the settlement dated 6.6.1962 executed by Kumar Rama Prasad Singh. It has also been held that Kartik Mahto, the predecessor-in-interest of the defendants was granted settlement by Raja Shiva Prasad Singh who was actually the owner of Mauza-Dhokhra and Kartik Mahto and his successor-in-interest were acknowledged by the ex-landlord as raiyats and thus the defendants have been able to prove their right, title and interest over the disputed land which undisputedly forms part of 12.01 acres settled lands in favour of Kartik Mahto and the suit land has been coming in possession of the defendants who are still in possession of the same and the plaintiffs were never in possession over the suit land and the story of possession set up by the plaintiffs is nothing but a concocted version which does not deserve to be relied upon. It has also been submitted that the plaintiffs have failed to prove their right, title and interest over the suit land aforesaid.

8. Aggrieved by the impugned judgment and decree of the learned appellate Court below, the plaintiffs-appellant have preferred this appeal.

9. This Court while admitting the appeal for hearing formulated the substantial questions of law which runs thus :

“(i) Whether Rama Prasad, although was minor, acquired valid title in the suit property under Ext. 4, executed by Shiva Prasad :

(ii) If the question No. (i) is answered in affirmative, whether the land could have been settled with the defendant in 1944, i.e. long after execution of Ext. 4.”

10. Assailing the impugned judgment it has been submitted by the learned counsel for the

plaintiffs-appellant that the learned appellate Court below has committed a manifest error in coming to the finding that Ext. 4, the registered deed of patta dated 4.9.1936 executed by Raja Shiva Prasad Singh in favour of his minor son Kumar Rama Prasad Singh under the guardianship of his natural mother, Smt. Mandakini Devi is a void document and under the said document Kumar Rama Prasad Singh had acquired no valid, right, title and interest in respect of the land under the registered patta dated 4.9.1936, it has been submitted that Jharia Raj Estate was government by the rule of primogeniture being an impartable Estate and said Raja Shiva Prasad Singh had five sons and Kumar Rama Prasad Singh is his youngest son and in order to provide his youngest son Kumar Rama Prasad Singh with maintenance, the said registered deed of patta dated 4.9.1936 was executed by Raja Shiva Prasad Singh in his favour in respect of 82.61 acres of land including Awad Malik Land of khata No. 145, under khewat Nos. 2 and 3 and Smt. Mandakini Devi, the natural mother of Kumar Rama Prasad Singh figured as guardian of said Kumar Rama Prasad Singh in the said registered deed of patta and said document was executed for the benefit and welfare of Kumar Rama Prasad Singh and thus the said registered patta (Ext. 4) is a legal and valid document whereby Kumar Rama Prasad Singh has acquired valid title in respect of the land covered under the said patta including the suit land and Kumar Rama Prasad Singh was in possession thereon. It has also been submitted that there is no provision in the Transfer of Property Act under which a minor is incapable of being a transferee of property and Section 7 of the Transfer of Property Act which speaks of person competent to [contract](#) applies only to a transferor and it does not prevent a minor from being a transferee of property and a minor is also not a person disqualified to be a transferee under Section 136 of the Transfer of Property Act and thus a minor may be a purchaser or a mortgagee and here in this case the said patta (Ext-4) was executed by the father in favour of his minor son who was under the guardianship of his natural mother and for the benefit of the said minor and as such the covenant regarding payment of rent of Re. 1/- and other reciprocal obligations were fulfilled by his mother, Smt. Mandakini Devi under whose care, protection and guardianship, the minor was during his minority. It has further been submitted that as per Mulla's Principles of Hindu Law, prior to the enactment of Hindu Minority and Guardianship Act, 1956, the father and the mother are the natural guardians of their minor children and Article 518, envisages that father is the natural guardian of the person and of the separate property of his minor children and next to him, the mother and definition of 'guardian' in Section 4(b) of the Hindu Minority and Guardianship Act means a person having the care of the person of the minor or of his property or of both his person and property and includes a natural guardian, as defined under Section 6 of the said Act and the definition of guardian under Section 4(b) and natural guardian in Section 4(c) of the Hindu Minority and Guardianship Act do not make any discrimination against the mother and she being one of the guardians mentioned in Section 6 would undoubtedly be a natural guardian as defined in Section 4(c) aforesaid. It has further been contended that the expression "and next to him, the mother" in Article 518 of Mulla's Principles of Hindu Law though give an impression that the mother can be considered to be the natural guardian of the minor only after the lifetime of the father but it is not disputed and otherwise well settled also that the welfare of the minor in the widest sense is the paramount consideration and in the lifetime of the father if necessary he can be replaced by the mother where to do so would be in the interest of the welfare of the minor and here in this case, Mandakini Devi, the natural mother of Kumar Rama Prasad Singh as his natural guardian was a party in the said "registered patta on his behalf

executed by his father Raja Shiva Prasad Singh for his maintenance in view of the paramount consideration of his welfare and in this view of the matter the said registered patta cannot be said to be a void document and Kumar Rama Prasad Singh has acquired valid right and title in respect of the suit property and the plaintiff-appellant being a transferee from Kumar Rama Prasad Singh by virtue of the registered deed dated 6.6.1962 has acquired valid title in respect thereof. It has also been contended that Raja Shiva Prasad Singh after the execution of the registered deed of patta dated 4.9.1936 had no right to settle the suit land with Kartik Mahto, the predecessor-in-interest of the defendants-respondent by virtue of the deed of settlement dated 21.3.1944 (Ext. D) and thus the defendants-respondent have not acquired any right in the suit property. Lastly, it has been contended that the learned appellate Court below has misconstrued and misread (Ext. 4) in stating in the impugned judgment that gair awad malik land appertaining to khata No. 145, was not transferred in favour of his minor son Kumar Rama Prasad Singh by the said registered patta (Ext. 4) by Raja Shiva Prasad Singh, rather, the recital of the document (Ext. 4) is crystal clear which shows that 82.61 acres of land under khewat Nos. 2 and 3 recorded in the name of Bhola Prasad Singh which was subsequently transferred to Harakali Bose vide sale deed dated 21.3.1931 (Ext. 3/A) which included gair awad malik land of khata No. 145 and all the 82.61 acres of land have been transferred to Raja Shiva Prasad Singh by virtue of the registered deed dated 16.3.1936 by Harakali Bose and that very entire land is the subject matter of registered deed of patta dated 4.9.1936 (Ext. 4) and therefore, the finding of the learned appellate Court below is factually erroneous and thus, the impugned judgment is unsustainable.

11. In contra, it has been submitted by the learned counsel for the defendants-respondent that the registered patta dated 4.9.1936 (Ext. 4) executed by Raja Shiva Prasad Singh in favour of his minor son Kumar Rama Prasad Singh is a void document whereby and whereunder Kumar Rama Prasad Singh did not acquire any right in respect of the suit land. It has also been contended that Smt. Mandakini Devi, the natural mother of Kumar Rama Prasad Singh aforesaid is not the natural guardian of her aforesaid minor son in the lifetime of Raja Shiva Prasad and there is neither pleading nor evidence on the record to show that for some reasons she was living separately from her husband Raja Shiva Prasad Singh and maintaining her minor son Kumar Rama Prasad Singh or Raja Shiva Prasad Singh was wholly indifferent to the matters of the minor even if he is living with his mother or by virtue of the mutual understanding between the father and the mother, the mother is put conclusively-in-charge of the said minor or Raja Shiva Prasad Singh was physically unable to take care of the minor either because of his staying away from the place where the mother and minor are living or because of this physical and mental incapacity and the mother being a recognised natural guardian can act validly on behalf of minor as his guardian. In support of his contention he has referred the ratio of the case of Jijabai Vithalrao Gajre v. Pathankhan and Ors., AIR 1971 SC 315. It has also been submitted that there is no evidence either oral or documentary on the record to show that the transfer of interest in favour of Kumar Rama Prasad Singh vide Ext. 4 was accepted on his behalf by his mother Smt. Mandakini Devi acting as his guardian and the registered deed of permanent mukarari patta (Ext. 4) shows that Kumar Rama Prasad Singh was a minor when Raja Shiva Prasad Singh had granted him the mukarari settlement in respect of 82.61 acres of land of village-Dhokhra under Khewat Nos. 2 and 3, and thus (Ext. 4) aforesaid in favour

of Kumar Rama Prasad Singh executed by Raja Shiva Prasad Singh is a void document conferring no title upon him in respect thereof and as such the plaintiffs-appellant, the transferee from Kumar Rama Prasad Singh can have no valid title over the same. It has also been submitted that mukarari settlement is a lease and a lease to a minor is void as the lease imports covenant by the minor to pay rent and other reciprocal obligations and Section 107 of the Transfer of Property Act makes it clear that a lease to a minor must be void because it is to be executed both by the lesser and the lessee and a lease is a contract whereunder the transferee accepts certain obligations and the transferee must therefore, be one who is capable of contracting. In support of his contention the ratio of the case of A.T. Raghava Chariar v. O.A. Srinivasa Raghava Chariar, AIR 1917 Mad 630, has been referred which was also followed in the case of Pramila Bali Das v. Jogeshwar, 3 Pat LJ 518. Lastly, it has been contended that the learned appellate Court below has rightly held that Ext. 4, is a void document conferring no right to Kumar Rama Prasad Singh in respect of the suit land which he has illegally transferred to the plaintiffs-appellant and thus, there is no illegality in the impugned judgment requiring an interference therein.

12. Admittedly, Jharia Raj Estate was an impartible Estate governed by the rule of primogeniture under which it was devolves on a single member of the family to the exclusion of the other members. Raja Shiva Prasad Singh was the landlord of Jharia Raj Estate and he has five sons, the youngest being Kumar Rama Prasad Singh, the then minor in the year 1936. It is an admitted case of the parties that Bhola Prasad Singh was a tenure holder in possession of 82.61 acres of land including gair awad malik land of khata No. 145 situate in Village-Dhokhra which stood recorded under khewat Nos. 2 and 3 in his name Said Bhola Prasad Singh had transferred the aforesaid entire land by virtue of the registered sale deed dated 21.3.1931 (Ext. 3/A) in favour of Harakali Bose, who in turn transferred the same to Raja Shiva Prasad Singh by virtue of the sale deed dated 16.3.1936 (Ext. 3/B). Raja Shiva Prasad Singh executed a registered permanent patta deed on 4.9.1936 (Ext. 4) in favour of his minor son Kumar Rama Prasad Singh describing him under the guardianship of his natural mother Mandakini Devi for his maintenance. Subsequently, Kumar Rama Prasad Singh executed a registered deed dated 6.6.1962 (Ext. 3) in respect of some of the plots of gair awad malik khata No. 145 aforesaid in favour of Gore Chand Mahto, the father of the plaintiffs-appellant out of which Plot Nos. 1487 and 1474 are the suit land in this case. It is relevant to mention here that Raja Shiva Prasad Singh has also settled the entire land of awad malik khata No. 145, on 31.3.1944 by virtue of Ext. D, in favour of Kartik Mahto, the predecessor-in-interest of the defendants-respondent. It is relevant to mention here that it is explicit from the conjoint reading of Ext. 4, the Survey Records of Right and Eats. 3/A, and 3/B, that the entire 82.61 acres of land including gair awad malik khata No. 145 of Village-Dhokhra is the subject matter of settlement under registered permanent mukarari deed dated 4.9.1936 (Ext. 4) executed by Raja Shiva Prasad Singh in favour of his said minor son, The learned appellate Court below has misconstrued the aforesaid documents and has erroneously observed in para-14, of the impugned judgment that there is absolutely no reference in the deed (Ext. 4) that gair awad malik land appertaining to khata No. 145 was also transferred by Raja Shiva Prasad Singh in favour of his minor son and thus, the said observation of the learned appellate Court below is unsustainable. It is made clear that the land under awad malik khata No. 145 is a part and parcel of 82.61 acres of land of Village-Dhokhra which is the subject, matter of

permanent mukarari deed dated 4.9.1936 (Ext. 4). Now question for consideration is as to whether Kumar Rama Prasad Singh although a minor, on 4.9.1936 could have acquired valid title in the suit property under Ext. 4 executed by his father Raja Shiva Prasad Singh in his favour describing him under guardianship of his natural mother Mandakini Devi. Section 7 of the Transfer of Property Act mandates that every person competent to contract and entitled to transferable property is competent to transfer such property to the extent and in the manner allowed and prescribed by any law for the time being enforce. Section 6(h) of the said Act also mandates that no transfer can be made to a person legally disqualified to be transferee and thus, it appears that any person is competent to be transferee unless he is legally disqualified. It has been settled by the catena of the decisions of the Privy Council as well as of the different High Courts that a transferee must have attained the age of majority according to law to which is subject and a contract by the minor is void and so as the transfer by the minor is also void. But Section 7 of the Transfer of Property Act does not apply to a transferee and the general scheme of the said Act is that minor may be a transferee but not a transferor and thus a sale to a minor and a mortgage to a minor are valid. Here in this case at hand, the registered permanent mukarari patta dated 4.9.1936 (Ext. 4) executed by Raja Shiva Prasad Singh in favour of his minor son Kumar Rama Prasad Singh is neither a sale deed nor a mortgage deed, rather, it is a lease. The lease has been defined under Section 105 of the Transfer of Property Act. The lease of immoveable property is a transfer of right to enjoy such property made for a certain time, expressed or implied, or in perpetuity, in consideration of a price paid or promised, or of money, the share of corps, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms. Section 107 of the said Act mandates that where a lease of immoveable property is made by a registered instrument, such instrument shall be executed by both the lesser and the lessee. Here in this case, Ext. 4 is an unilateral document executed by Raja Shiva Prasad Singh in favour of his minor son aforesaid. It does not show that Ext. D, has also been executed by Smt, Mandakini Devi as guardian of her minor son Kumar Rama Prasad Singh Ext. 4 aforesaid does not appear to have been executed jointly by both Raja Shiva Prasad Singh and Smt. Mandakini Devi as natural guardian on behalf of the minor son Kumar Rama Prasad Singh. A lease is a contract whereunder the transferee accepts certain obligations. Therefore, the transferee must be one who is capable of contracting. There is nothing on the record to show that transfer of interest by Ext. 4 in favour of Kumar Rama Prasad Singh was executed on his behalf by his mother, Smt. Mandakini Devi acting as his guardian. It is well settled that a lease to a minor is void as the lease imports a covenant by the minor to pay rent and other reciprocal obligations and Section 107 of the Transfer of Property Act referred to above also makes it clear that a lease to a minor must be void because it is to be executed by both the lesser and by the lessee. In answering to a reference whether a mortgage executed in favour of a minor who has advanced the whole of the money is enforceable by him or by an other person on his behalf, the Full Bench of the Madras High Court in the case of A.T. Raghava Chariar (supra) has thus observed :

“..... the next question is whether a minor can be a transferee of property, whether such transfer is by way of sale, mortgage, lease, exchange or gift. The provisions of the Transfer of Property Act and Trusts Act make it clear that an infant can be a grantee though he could not ordinarily be a grantor,’ “Infant”, it was said, “cannot make grants : they may

accept them” *Palmer v. Low* (29). In the consideration of this question it is necessary however to remember that certain transactions may necessarily involve both a transfer of property and contracts’ as for example a lease. In such cases, if a minor makes a promise in consideration of the transfer, or binds himself by obligations on account of the transfer, the transaction would be void and the transfer may not take effect. But a distinction must be drawn between cases of contractual liability which a minor agrees to undertake and obligations attached to the holding of property. Even in cases of pure gifts it is clear that there is an obligation on the part of the donee to pay Government revenue and public taxes. In the case of a gift of a minor’s whole property, there is the obligation to discharge the doner’s debts to the extent to the value of the property. These obligations do not prevent the vesting of the property in the minor by a transfer *inter vivos* any more than by inheritance or devise. Those covenants or obligations are attached to the property and are not really consideration for the transfer. This is the view taken by Sundara Aiyar and Spencer, J.J., in *Muniya Kanan v. Perumal Kanan* (30) see also the observations of Jessel, M.R., in *Mortin v. Gale* (31). A transfer to a minor by way of a lease, he agreeing to pay rent or to perform any particular covenants which form an essential part of the transaction, may prevent the transfer from taking effect. In a sale, gift or mortgage ordinarily there are no such essential consensual obligations. A mortgage however is only a conditional transfer, and when the condition is fulfilled (as when the debt is discharged), the property re-vests in the transfer.”

The said ratio was also followed in the case of *Pramila Bali Das*, (*supra*) by the Patna High Court. Therefore, in the facts and circumstances of this case and in view of the ratio referred to above, Ext. 4 is a void document and Kumar Rama Prasad Singh had definitely not acquired any right, title and interest in respect of the suit property by virtue of Ext. 4 executed in his favour during his minority and thus, the plaintiffs-appellant have acquired no right, title and interest in respect thereof by virtue of Ext. 3 executed by Kumar Rama Prasad Singh in favour of Gore Chand Mahto, their predecessor-in-interest.

13. Let us now come to the other important aspect involved in this case which is in respect of the competency of Smt. Mandakini Devi to act as guardian of Kumar Rama Prasad Singh. She figures as guardian of Kumar Rama Prasad Singh in the registered permanent mukarari deed (Ext. 4) I have already stated above that there is no evidence either oral or documentary on the record to show that she has played any role in respect of the transaction as per Ext. 4 aforesaid Hindu Minority and Guardianship Act, 1956 has come into effect from 25.8.1956 whereby some material changes and modifications in the rule of Hindu Law relating to minority and guardianship have been brought about. Prior to this Act guardians were divided into three classes, firstly, natural guardian, secondly, guardians appointed by the will of the minor’s father and thirdly, the guardian appointed under the Guardians and Wards Act of 1890. The father is the natural guardian of the person and of the separate property of the minor children, and next to him, the mother unless the father has by his will appointed any other person as the guardian of the person of his children. When the father is alive he is entitled to the custody of the minor child, however, it may be in preference to the mother. A Hindu father is the natural guardian of the children during their minorities and this guardianship is in the nature of a sacred trust, and he cannot therefore, during his lifetime, substitute another person to be the guardian in his place. The

legal position in respect thereof is similar under the Hindu Minority and Guardianship Act, 1956. Section 4(b) of this Act defines guardian “and it means a person having the care of the person of a minor or of his property or of both his person and property and includes a natural guardian.” Clause (c) of Section 4, of this Act defines “natural guardian” which means any of the guardians mentioned in Section 6 which runs thus :

“6. Natural guardians of a Hindu minor.–The natural guardian of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in the joint family property), are

(a) in the case of a boy or an unmarried girl the father, and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother:”

Under Article 518 of the Principles of Mulla’s Hindu Law, the expression used is “and next to him, the mother” whereas under Section 6, is the words “and after him the mother.” Literally there is practically no difference between the two expressions aforesaid. It has been observed in the case of Jijabai Vithalrao Gajre (supra) the Apex Court has observed “that the position in the Hindu Law as well as under Section 6 of the Act is that normally when the father is alive he is the natural guardian and it is only after him that the mother becomes the natural guardian. Where the father was alive but had fallen out with the mother of the minor daughter and was living separately for several years without taking any interest in the affairs of the minor who was in the keeping and care of the mother it was held that in the peculiar circumstances, the father should be treated as if non-existent and therefore, the mother could be considered as the natural guardian of the minor’s person as well as property and had power to bind the minor by granting lease of her land in proper course and management of the property.” In the case of Githa Hariharan (Ms) and Anr. v. Reserve Bank of India and Anr., (1999) 2 SCC 228, the Apex Court has thus observed that :

“The word “after” need not necessarily mean “after the lifetime.” In the context in which it appears in Section 6(a), it means “in the absence of the word “absence” therein referring to the father’s absence from the care of the minor’s property or person for any reason whatever. If the father is wholly indifferent to the matters of the minor even if he is living with the mother or if by virtue of mutual understanding between the father and the mother, the latter is put exclusively in charge of the minor, or if the father is physically unable to take care of the minor either because of his staying away from the place where the mother and the minor are living or because of his physical or mental incapacity, in all such like situations, the father can be considered to be absent and the mother being a recognized natural guardian, can act validly on behalf of the minor as the guardian.”

Here in this case a hand, Raja Shiva Prasad Singh, the father of his minor son Kumar Rama Prasad Singh has immense care for him and he is not absent from the care of the minor’s person and property for any reason whatsoever. He is also not wholly indifferent to the matters of the said minor and there is also nothing on the record to show that the said minor is living with his mother by virtue of mutual understanding between them and the

mother of the said minor has been put exclusively in charge of the said minor. Therefore, in the given facts of this case. Smt. Mandakini Devi as natural mother cannot act as the guardian of her minor son Kumar Rama Prasad Singh in presence of the natural father Raja Shiva Prasad Singh and thus Smt. Mandakini Devi cannot act as the guardian for and on behalf of her minor son Kumar Rama Prasad Singh for the execution of Ext. 4 in his favour. A minor has no legal competence to enter into a lease or authorize someone else on his behalf in respect thereof but a natural guardian is only empowered to enter into a transaction of behalf of minor if it is for the benefit of the minor. No doubt, Ext. 4 has seen the light of the day in view of the consideration of the paramount welfare as well as for the benefit of the said minor but Smt. Mandakini Devi as natural guardian of the said minor cannot act as the guardian of his said minor son in presence of Raja Shiva Prasad, the natural father and thus, Ext. 4 cannot confer any right, title and interest upon Kumar Rama Prasad Singh in respect of the suit property and consequently, the plaintiffs-appellant have not acquired any right, title and interest in the suit properties by virtue of Ext. 3 executed by Kumar Rama Prasad Singh. Therefore, the defendants-respondent had acquired valid right and title in respect of the suit property by virtue of Ext. D, the deed of settlement dated 21.3.1944 in respect Of the suit land. Viewed thus, I see no substance in the contention put forward by the learned counsel for the appellants.

14. There is no merit in this appeal and it fails. The impugned judgment of the learned appellate Court below is hereby affirmed. The appeal is dismissed. There shall be no order as to cost in the facts and circumstances of this case.