



[SC] Alternate remedy – Where an effective remedy is available to an aggrieved person, the High Court ordinarily must insist that before availing the remedy under Article 226 of the Constitution – Sarfaesi

Description

Hindu Minority and Guardianship Act, 1956, Section 8(3) a disposition made and which may also entail the transfer of the share of a minor is not void in the eyes of law. As Section 8(3) in unambiguous terms stipulates it is merely voidable. It is voidable at the instance of the minor provided an appropriate action is brought at the instance of the minor provided an appropriate action is brought seeking repudiation of the transfer made by the natural guardian within the period of limitation as prescribed in Article 60 of the Limitation Act. The ambit of Section 8 (3) was succinctly explained by the Supreme Court in **Nangali Amma Bhavani Amma Vs. Gopalkrishna and others** [(2004) 8 SCC 785] as follows:—

“7. But the learned counsel for the appellant is right in contending that the High Court had misconstrued the provisions of Section 8 of the Act. Section 8(1) empowers the natural guardian of a Hindu minor to do all acts which are necessary or reasonable and proper for the benefit of a minor or for the realisation, protection or benefit of the minor’s estate subject to two exceptions of which we may only note the exception carved out in subsection (2) of Section 8. Section 8(2) provides that the natural guardian shall not without the previous permission of the court, inter alia, transfer by way of a sale any part of the immovable property of a minor. The effect of violation of this provision has been provided for in the section itself under sub-section (3). This sub-section reads:

“8. (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.”

8. In view of the express language used, it is clear that the transaction entered into by the natural guardian in contravention of sub-section (2) was not void but merely voidable at the instance of the minor. To hold that the transaction in violation of Section 8(2) is void would not only be contrary to the plain words of the statute but would also deprive the minor of the right to affirm or ratify the transaction upon attaining majority. This Court in *Vishwambhar v. Laxminarayan* [(2001) 6 SCC 163] has also held that such transactions are not void but merely voidable. It was also held that a suit must be filed by a minor in order to avoid the transaction within the period prescribed under Article 60 of the Limitation Act. The High Court did not consider the issue of limitation at all in view of its finding on the effect of a violation of Section 8(2) of the Act. As the conclusion of the High Court on this aspect of the matter is unsustainable, the impugned decision must be set aside.”

Nangali Amma Bhavani Amma v. Gopalkrishna [(2004) 8 SCC 785]

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