APPELLATE CIVIL.

Before K. L. Gosain and Harbans Singh, JJ.

PRAN NATH AND OTHERS,—*Appellants*

versus

BAL KISHAN AND OTHERS,—*Respondents.*

Regular Second Appeal No. 453 of 1950.

1958

Dec., 30th

Minor—Suit by, for setting aside alienation of property made by his guardian—Whether to be filed—Period of limitation for such suit—Indian Limitation Act (IX of 1908)—Article 44—Whether applies.

Held:—

(1) that if a sale of minor's property is made by a person who is not the minor's guardian either accroding to his personal law or by appointment by Court, such a sale is a nullity, and no suit need be brought to set aside the same;

(2) that if, however, a sale is made by a natural guardian who goes beyond the scope of his authority, or if it is made by a certificated guardian without the permission of the Court, the transaction is merely voidable at the instance of the minor and will bind him till he succeeds in impeaching it;

(3) that a suit by a quondam minor to set aside an alienation of his property by his guardian is governed by Article 44 of the First Schedule of the Indian Limitation Act.

(4) that if a quondam minor brings a suit for possession of the property alienated by his guardian or for redemption of a mortgage of a property effected by his guardian, the suit will also be governed by Article 44 of the First Schedule of the Indian Limitation Act and not by Article 148 of the Indian Limitation Act;

(5) that the proposition of law that a plaintiff need not sue to set aside a transfer to which he was not a party may well apply to a case of a reversioner impugning an alienation by a Hindu widow, but cannot possibly apply to the case of a minor on whose behalf an alienation has been made by his guardian and who is for all intents and purposes regarded as a party to the tranfer.

Second Appeal from the decree of Shri Guru Datta, Additional District Judge, Amritsar at Jullundur, dated the 12th day of April, 1950, affirming that of Shri Tek Chand, Senior Sub-Judge, Jullundur, dated the 26th January, 1949, dismissing the plaintiff's suit and leaving the parties to bear their own costs.

D. K. MAHAJAN and K. L. KAPUR, for Appellants.

S. D. BAHRI and A. L. BAHRI, for Respondents.

JUDGMENT

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GOSAIN, J.—The facts giving rise to this second appeals are as under: On 29th April, 1924, one Gokal Chand mortgaged the suit property with possession in favour of Jamna Das. In a court sale held thereafter, the father of defendants Nos. 1 to 6 purchased the mortgagee rights. On 14th May, 1924, Gokal Chand, made a will bequeathing the property to the present plaintiffs who were minors at that time. On 28th November, 1928, Lal Devi, mother of the plaintiffs, was appointed their guardian under the Guardian and Wards Act. On 6th June, 1936, Lal Devi, sold the equity of redemption in the property in dispute to the father of defendants Nos. 1 to 6 with the result that the equity of redemption as also the mortgagee rights vested in the same person, that is, the father of defendants Nos. 1 to 6. On 13th August, 1947, the plaintiffs brought the present suit for redemption of the mortgage alleging that the sale of equity of redemption by their mother Lal Devi, was not

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binding on them and they were entitled to redeem the mortgage. The suit was contested by the defendants (their father in the meantime having died) on various pleas including (1) that the suit was barred by time, and (2) that a suit for setting aside the sale of equity of redemption having not been brought within the period of limitation prescribed by Article 44 of the Indian Limitation Act, the present suit for redemption could not be maintained. The defendants also pleaded that the plaint was not properly stamped and that the property in dispute had been validly sold by the mother of the plaintiffs in favour of the father of the defendants. The defendants further pleaded that they had made some improvements in the property in suit and were entitled to the costs incurred on the same. The point of court-fee was decided against the defendants on the ground that the plaint as brought was only for redemption of the mortgage and that the plaintiffs could not be asked to pay court-fee with regard to the relief for cancellation of the sale made by the mother of the plaintiffs. On merits the trial Court framed the following three issues :—

(1) Is the suit within time ?

(2) Whether the property in suit was validly sold by the guardian of the plaintiffs in favour of the father of defendants Nos. 1 to 6 and what is its effect ?

(3) Had the defendants Nos. 1 to 6 made may improvements in the property in suit, if so at what costs and in case of decree in favour of the plaintiffs are they entitled to costs ?

The trial Court came to the conclusion that the suit of Ram Nath and Raj Kumar plaintiffs Nos. 1 and 2 was barred by time, but the suit of Vishwa

Nath, plaintiff, No. 3 was within time inasmuch as his date of birth was 5th January, 1924, and the suit had been brought within three years from his attaining majority. It also found that the property in dispute had not been validly sold by the mother of the plaintiffs and that the sale was voidable at the instance of the plaintiffs. No finding was recorded on issue No. 3 as the trial Court found the same to be unnecessary. In spite of the fact that the finding on issue No. 1 was in favour of plaintiff No. 3 and that issue No. 2 had been decided in favour of the plaintiffs, the suit was dismissed by the trial Court on the ground that the plaintiffs were bound to sue for setting aside the sale of the equity of redemption by their mother, and having failed to bring the said suit, they were not competent to sue for redemption. In appeal the learned Additional District Judge, Amritsar, at Jullundur, found that the suit by Vishwa Nath plaintiff No. 3 was also barred by time inasmuch as he had failed to prove that he was born on 5th January, 1924, and had brought the suit within three years from his attaining majority. The learned Additional District Judge, endorsed the other findings of the trial Court, namely, that it was necessary for the plaintiffs to have brought a suit for setting aside the sale and they having failed to bring the same could not maintain the present suit for redemption. On the aforesaid findings the appeal was dismissed. The plaintiffs have now come up to this Court in second appeal.

Mr. Daya Krishan Mahajan, learned counsel for the appellants, contends that the findings of the two courts below, on the aforesaid points are erroneous and that the plaintiffs' suit has been wrongly dismissed. He urges that the sale of equity of redemption by their mother was voidable at the instance of the plaintiffs and they must

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be deemed to have avoided it by the very act of bringing the present suit. His contention is that it was not at all necessary for the plaintiffs to bring a specific suit for avoiding the sale in question and that the present suit for redemption must at any rate be deemed to imply a prayer that the sale by Mst. Lal Devi may be set aside. He has drawn our attention to the pleas taken in the plaint where the plaintiffs have specifically impugned the sale. In support of his contention he relies on a number of rulings which are—*Bijoy Gopal Mukerji* v. *Krishna Mahishi Devi* (1), *Petherpermal Chetty* v. *Muniandy Servai* (2), *Nagendra Nath Ghose* v. *Mohini Mohan Bose and others* (3), *Lalit Kumar Das Chaudhury and others* v. *Nogendra Lal Das and others* (4), *Abdul Rahman* v. *Sukhdayal Singh* (5), *Jain Narain Lal Tandon and others* v. *Lala Bechoo Lal* (6), *Jagdamba Prasad Lalla and another* v. *Anadi Nath Roy and others* (7), and *Chhaju Mal and others* v. *Multan Singh and others* (8).

Mr. Daya Krishan Mahajan, further challenges the finding of the learned Additional District Judge on the point of date of birth of Vishwa Nath plaintiff, He contends that the copy of the birth entry Exhibit P. 1 clearly relates to Vishwa Nath and that the trial Court had arrived at a correct decision on the point.

Mr. Som Datta Bahri, learned counsel for the respondents, urges that the plaintiffs could not succeed in the present suit on the short ground

(1) I.L.R. 34 Cal. 329
(2) I.L.R. 35 Cal. 551
(3) A.I.R. 1931 Cal. 131
(4) A.I.R. 1940 Cal. 589
(5) I.L.R. 28 All. 30
(6) A.I.R. 1938 All. 369
(7) A.I.R. 1938 Pat. 337
(8) A.I.R. 1936 Lah. 996

that they had not brought a suit for setting aside of the sale of equity of redemption and that the equity of redemption as also the mortgagee rights having vested in the same person, that is the father of defendants Nos. 1 to 6, the question of redemption of mortgage did not arise. He further urges that the present suit has been brought after the expiry of the period of limitation as prescribed in article 44 of Schedule I of the Indian Limitation Act and the same must be held to be barred by time even if it is taken that the prayer for setting aside of the sale of equity of redemption is implicit in the plaint filed in the present suit. He draws our attention to *Labha Mal and others* v. *Malak Ram and another* (1), *Dwijendra Mohan Sharma* v. *Manorama Dasi* (2), *Raja Ramaswami and others* v. *Gobindammal and others* (3), *Dip Chand* v. *Munni Lal and another* (4),*Gujar Singh and another* v. *Puran* (5), *Said Shah* v. *Abdul Shah* (6), *Khushia* v. *Faiz Muhammad Khan,* (7), *Data Ram* v. *Raghu Nath* (8), *Fakirappa Limanna Patil* v. *Lumanna Mahadu Dhamnekar* (9), and *Gangadhar Balkrishana* v. *Dattatrava Baliram* (10), His argument is that the sale of equity of redemption effected by Mst. Lal Devi was an impediment in the way of the plaintiffs and till the plaintiffs got rid of the same, they could not maintain the present action for redemption. On the question of the date of birth of Vishwa Nath, Mr. Bahri contends that the finding of the learned Additional Disrict Judge must be taken to be one of fact, and that the same is, in any case, correct.

(1) I.L.R. 6 Lah. 447
(2) ILR 49 Cal. 911
(3) A.I.R. 1929 Mad. 313
(4) A.I.R .1929 All, 879
(5) 71 P.R. 1901
(6) 19 P.R. 1902
(7) I.L.R. 9 Lah. 33
(8) 116 I.C. 893
(9) A.I.R. 1920 Bom. 1 (F.B.)
(10) A.I.R. 1953 Bom. 424

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Before coming to the law point it would be necessary to decide the question of fact, namely, whether Vishwa Nath was born on 5th January, 1924, and the present suit by him is within three years of his attaining majority. There can be no doubt that this is a pure finding of fact and as such cannot be assailed in second appeal. Mr. Daya Krishan Mahajan, however, has filed an affidavit of his client Mr. Om Nath who is an Advocate of this Court. In the said affidavit Mr. Om Nath has deposed that he was present in the Court of Mr. Guru Datta Sikka, Additional District Judge, Amritsar, at Jullundur, when the appeal was argued before him and that the learned Additional District Judge did not call upon the plaintiffs' counsel Rai Bahadur Badri Das to argue the said point and in fact on an express question by Rai Bahadur Badri Das, the learned Additional District Judge said that it was not necessary to argue the said point. This affidavit was sworn on 8th July, 1950, and was filed along with the appeal. Mr. Som Datta Bahri urges that although ground No. 4 of the grounds of appeal in this Court expressly deals with this point, the affidavit in question is not referred to therein and that his clients had, therefore, no occasion to file a counter affidavit. We have, however, no reason to characterize the affidavit as a false one. In these circumstances, we have heard the learned counsel for the parties on this question of fact also, but have ultimately come to the decision that the finding of fact recorded by the learned District Judge on this point is correct. The only evidence that plaintiff No. 3 produced on the point of his date of birth was (1) a copy of the entry of the birth register, Exhibit P. 1, (2) a recital in the sale deed in question, and (3) an oral statement of Om Nath, plaintiff. It was admitted by the plaintiffs that they were five brothers out of whom four were living and one had

died. The birth entry, Exhibit P. 1, does not mention the name of Vishwa Nath, plaintiff. In order to prove that the birth entry really related to Vishwa Nath, the plaintiffs should have produced birth entries of all the five brothers, so that it could be found with certainty as to which of them related to the fourth son. The plaintiffs could have also produced copies of vaccination register or the school register or the Matriculation certificate but the same have not been produced. Father of the plaintiffs is said to be insane, but the mother could certainly have been produced in evidence to prove the exact date of birth of Vishwa Nath. The learned counsel for the respondents alleges that in the sale deed executed by the mother she stated the age of Vishwa Nath as being approximately twelve years and that the same more or less tallies with the date of birth as given in Exhibit P. 1. In the sale deed the ages of her sons are given by Mst. Lal Devi as under :—

Pran Nath	...	approximately 17 years
Om Nath	...	approximately 16 years
Raj Kumar, and	..	approximately 14 years
Vishwa Nath	..	approximately 12 years.

Om Nath in his statement as a witness states that Pran Nath was probably born in 1917, and, according to him, the age of Pran Nath in 1936, when the sale deed was executed, would be about 19 years. He gave his own date of birth as 27th July, 1919, and, according to the same, he would, at the date of sale, be about 17 years. With respect to Raj Kumar, he states that he was born in 1921 or 1922 and his age, therefore, would be 14 or 15 years. The ages given by Om Nath do not,

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therefore, exactly tally with the approximate ages given by the mother in the sale deed executed by her. If she had come into the witness-box and subjected herself to cross-examination, it may have been possible to ascertain the exact ages, but the plaintiffs did not produce her into the witness-box. It is rather curious that the plaintiff Vishwa Nath did not himself also come into the witness-box and did not state on oath that he was born on 5th January. 1924, Admittedly, Vishwa Nath had a younger brother who died about a week after his birth. If the birth entry relating to him or even the death entry relating to him had been produced, there would have been material to find that the birth entry, Exhibit P. 1, did not relate to him and presumably related to Vishwa Nath. For reasons best known to the plaintiffs they did not produce the proper material on the record with the result that there is no cogent evidence on the present record from which it may be definitely found that the plaintiff was born on 5th January, 1924, and it cannot, therefore, be held that the present suit was brought by Vishwa Nath, plaintiff, within three years of his attaining majority. The suit must, therefore, be treated as having been brought after the period of limitation prescribed by Article 44 of Schedule I of the Indian Limitation Act and if we come to the conclusion that the same should have been brought withinthe said period, the suit must obviously be held to be barred by time.

There is no doubt that there are some reported cases in which it has been held that in circumstances like those in the present case it is incumbent on the plaintiffs to make a specific prayer for setting aside the alienation which was voidable *qua* them and that they cannot outright maintain a suit for redemption of the mortgage without first removing the impediment in their way which

exists by reason of the sale made by the guardian on their behalf. The weight of authority, however, is to the contrary, and, in a large number of cases, it has been held that such a prayer should be deemed to be implicit in a suit which the plaintiffs bring either for redemption or for possession. The *ratio decidendi* of the latter class of rulings is that the award of relief of possession or award of relief of redemption of mortgage clearly depends on the alienation being declared ineffective against the plaintiffs and that the mere fact of a suit for possession or redemption having been brought shows that the plaintiffs wish to have the relief of possession or redemption after the impediment in the way of the same is removed by a declaration that the alienation made by their guardian is not binding on them. The weight of authority, however, is quite clearly in favour of the proposition that a suit of this type—whether it is for redemption or for possession—must in any case be brought within the period prescribed by Article 44 of the 1st Schedule of the Indian Limitation Act. The facts of the various cases relied upon by Mr. Daya Krishan Mahajan are entirely distinguishable and the said rulings cannot be deemed to lay down the proposition of law as contended for by him.

The facts in *Bijay Gopal Mukerji* v. *Krishna Mahishi Devi* (1), were entirely distinguishable from those of the present one. The sale there was by a widow representing her husband's estate, and it is obvious that until her death there was no one who had a vested interest, nor was there an obligation on anyone to take proceedings until the reversion fell. In the present case the sale was by a guardian of the minors and the guardian represented the minors' estate and had power to manage

(1) I.L.R. 34 Cal. 329

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it for the benefit of the minors. What would be true about a reversioner's suit in which he seeks to challenge the alienation by a Hindu widow cannot possibly be true about an alienation made by a minor's guardian because in the latter case it is obligatory upon the minor to challenge the alienation within the narrower period of limitation prescribed by Article 44 of the Indian Limitation Act. This case was considered by a Full Bench of the Bombay High Court in *Fakirappa Limanna Patil* v. *Lumanna Mahadu Dhamnekar* (1), and again by a Division Bench of that Court in *Gangadhar Balkrishana* v. *Dattatrava Baliram* on the short ground that the suit of a reversioner (2), and in both of these cases it was distinguished for setting aside an alienation by the widow stood on different grounds than the suit by a *quondam* minor seeking to set aside the sale made by his guardian.

In *Petherpermal Chetty* v. *Muniandy Servai* (3), the deed was found to be inoperative and void as against the rights of the plaintiff and no suit was, therefore, necessary to declare the alienation void.

In *Nogendra Nath Ghose* v. *Mohini Mohan Bose and others* (4), the immovable property belonging to a minor was sold by his certificated guardian for consideration but without the permission of the District Judge and the same property was subsequently sold by the certificated guardian but with the permission of the District Judge. It was found that it was not necessary for the second vendee expressly to seek to set aside the sale by suit brought within the period prescribed by Article 91 and that he was entitled to sue for

(1) I.L.R. 44 Bom, 742 (F:B,)
(2) A.I.R. 1953 Bom. 424
(3) I,L,R, 35 Cal: 551
(4) A.I.R. 1931 Cal. 131

possession of the property on a declaration that the previous sale was not binding on him. The suit in the said case had been brought within the period of limitation prescribed for declaration and on that basis it was found that the suit was within time. The subsequent vendee had to do nothing more than to ask for a declaration, and to his suit the correct article applicable was Article 120 of the Indian Limitation Act and the suit had been brought within the period prescribed therein.

In *Lalit Kumar Das Chaudhury and others* v. *Nogendra Lal Das and others* (1), certain property belonging to one Durga Charan was inherited by his sons Khagendra and Jogendra *pro forma* defendants 6 and 7. Khagendra sold it to the plaintiffs' father during the minority of Jogendra and subsequently Jogendra sold it to the appellants after attaining his majority. The question which fell for decision in that case was which of the two sales should prevail. The learned Single Judge of the Calcutta High Court deciding that case did not in fact record any definite finding and merely remanded the case after framing two additional issues. Certain observations, however, were made in the body of the judgment, but read as a whole the said observations, in my opinion, go more against the proposition propounded by Mr. Mahajan than in favour of the same. In column 2 of page 590 of the report he observed as under:—

> "A suit by their vendor to set aside the transfer was already barred before their purchase. In such circumstances the appellants' suit would fail not because their right was extinguished under section 28 but because their conveyance was defeated by an earlier conveyance

(1) A.I.R. 1940 Cal: 589

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> which could no longer be impugned. * * * *. Then in the second place Article 44 has no application either. This Article refers to the relationship of guardian and ward. The manager, loosely, described as a *de facto* guardian, is not a guardian at all."

The learned Single Judge clearly envisages a case which may have been brought after the period of limitation to set aside the transfer, and even though a specific prayer is not included in the suit for setting aside the transfer, the suit will, in the opinion of the learned Judge, be barred because of the fact that time had expired to impugn the voidable transfer and the suit, without avoiding the same, cannot be decreed.

In *Abdul Rahman* v. *Sukhdayal Singh* (1), the certificated guardian of a minor without previously obtaining the permission of the Court granted a perpetual lease of certain immovable property forming part of the minor's estate on the 28th of March, 1890. The minor came of age on the 7th of December, 1901, and on 21st October, 1902, sold the property, the subject of the lease mentioned above. On the 22nd July, 1903, the purchaser sued for possession of the property purchased by him asking for cancellation of the lease if necessary. From the above facts it is quite clear that the sale by the *quondam* minor was made within the period of limitation allowed to him for filing a suit for setting aside the sale and that even the suit filed by the purchaser was within the said period. Banerji, J., who delivered the judgment observed at page 31 :—

> "No doubt a voidable act is an act which is valid until repudiated. If the transfer

(1) I.L.R. 28 All, 30

> in question had been made by the plaintiff's vendor himself or by some one through whom he claimed and effect had been given to it, it would be necessary for him to get the instrument of transfer out of the way before he could recover the property. But where the act is the act of the guardian and not of the owner himself or of his predecessor-in-title, it is, I think, sufficient for him to repudiate the act and it is not necessary to have the instrument cancelled. The claim to have the instrument cancelled must, in such a case, be deemed to be only ancillary to the substantive claim for possession."

It is on the aforesaid observations that Mr. Mahajan chiefly relied. But the said observations cannot be divorced from the facts of the case which clearly show that the suit in the said particular case had been brought within the period of limitation provided for the purpose.

In *Jai Narain Lal Tandon and others* v. *Lalu Bechoo Lal* (1), one Mst. Basanti Bibi, defendant No. 6, had made a mortgage on behalf of her sons, defendants Nos. 1 to 5, on 22nd August, 1919. The minors repudiated the mortgage almost immediately after attaining majority and well within the period of limitation prescribed by Article 44 of the First Schedule of the Indian Limitation Act. For these obvious reasons the question of limitation was not involved in the case and the Division Bench of the Allahabad High Court deciding that case did not at all refer to the said point. All that they held was that it was not necessary that a minor on attaining majority

(1) A.I.R. 1938 All. 369

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should institute a suit to set aside a transfer effected by the guardian and that it was sufficient if he declared his will to rescind the transaction by way of defence when an action was brought to enforce the transfer against him.

In *Jagdamba Prasad Lalla and another* v. *Anadi Nath Roy and others* (1), the plaintiff sued as the assignee of the mortgage from defendant No. 17 who was the mortgagee and who was a minor but had attained his majority at the time of assignment to the plaintiff which was dated 23rd December, 1932. The minor attained majority on 25th October, 1931, and it was found that the persons interested in having the transaction set aside were within time as the action was within three years of the date of the minor's majority. All that the Division Bench of the Patna High Court had to decide was whether it was necessary that a specific suit for cancellation of the sale be brought or whether it was enough that the minor on attaining majority made an assignment of his rights and the plaintiff sued to enforce that assignment. It was held in that case that a specific suit for cancellation need not be brought and that the suit having been brought within the period of limitation prescribed by Article 44 of the First Schedule of the Indian Limitation Act was enough for the purposes of giving adequate relief to the assignee of the quondam minor.

In *Chhaju Mal and others* v. *Multan Singh and others* (2), the transfer was made by four members of a coparcenary and related to the coparcenary property. Within twelve years of the said transfer a suit was brought by Multan Singh and Madan Gopal and their minor brothers of the

(1) A.I.R. 1938 Pat. 337
(2) A.I.R. 1936 Lah. 996

coparcenary during the minority of the plaintiffs. and the question arose whether the said suit was within limitation. A Division Bench of the Lahore High Court held the suit to be within limitation and observed as follows :—

> "It is contended for the appellants that the article applicable is either Article 44 or Article 91. The alienation has, however, been found to have been made not by a guardian but by the manager of a joint Hindu family. Ther can be no guardian in respect of an infant's isterest in the property of a joint Hindu family. It has frequently been pointed out that Article 91 binds only the parties to the instrument or persons claiming under or through such parties and has no applicability to suits like this one. The members of a coparcenary have individual rights, separately enforceable, and in a suit of this kind the cancellation of the deed of alienation, so far as it affects their rights, is a relief ancillary to their claim for possession."

From the above it is quite clear that none of the rulings relied upon by Mr. Mahajan really applies to the facts of the present case.

The rulings relied upon by Mr. Bahri are much more appropriate and the point is directly covered by *Labha Mal and others* v. *Malak Ram and another* (1), and *Datta Ram* v.*Raghu Nath* (2).

In Labha Mal and others v. *Malak Ram and another* (1), the plaintiffs sued in 1922 to redeem

(1) I.L.R. 6 Lah. 447
(2) 116 I.C. 893

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a shop mortgaged by their father in 1888 but after his death sold by their mother in 1907. The lower Courts found that the sale was not for necessity and on second appeal it was decided by an Hon'ble Judge that the sale being invalid, the suit for redemption was governed by Article 148 of the Indian Limitation Act and was consequently within time. A Letters Patent Bench of the Lahore High Court whose judgment was delivered by Sir Shadi Lal, Chief Justice, held that under Hindu Law the mother was the guardian of the property of her minor sons and the finding that the sale was not for necessity did not alter the nature of the transaction, which being an unauthorised transfer by an authorised guardian, was not void but voidable at the instance of the minors. It was further held that as the *quondam* minors could not establish their right to possession unless the alienations were first set aside, their suit for redemption would be barred under Article 44 of the Indian Limitation Act, if not instituted within three years of their attaining majority. It was observed as under at page 449 of the report:—

> "If a sale is effected by a person who is not the minor's guardian either according to his personal law or by appointment by the Court, such a sale is a nullity and does not affect the minor's property. If, on the other hand, the sale is made by a natural guardian, who goes beyond the scope of his authority, the transaction cannot be regarded as a nullity and will bind the minor unless he succeeds in impeaching it within the period prescribed by law.
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> * * * *

There can be no doubt that a suit by a *quondam* minor to set aside an alienation of his property by his guardian is governed by Article 44, and that, if he cannot establish his right to possession without first setting aside the alienation, the suit for possession is also governed by that article."

In *Data Ram* v. *Raghu Nath* (1), a sale was made on 24th October, 1916, by Mst. Hardei acting as the guardian of her minor son Raghunath. On attaining majority Raghunath instituted a suit for possession of the house alleging that the sale by his mother was not for his benefit and therefore, was not binding on him. It was admitted that the plaintiff had attained majority more than three years before the instituion of he suit. A Division Bench of the Lahore High Court found that the suit was barred by time inasmuch as it had been filed beyond the period prescribed by Article 44. The Bench relied upon two earlier decisions of the Punjab Chief Court reported as *Gujar Singh and another* v. *Puran* (2), and *Said Shah* v. *Abdul Shah* (3), and on two earlier decisions of the Lahore High Court, namely, *Labha Mal and others* v. *Malak Ram and another* (4), and *Khushia* v. *Faiz Muhammad Khan* (5).

In *Fakirappa Limanna Patil* v. *Lumanna Mahadu Dhamnekar* (6), a Full Bench of the Bombay High Court found that a Hindu minor on attaining majority cannot sue to recover possession of property transferred by his mother acting

(1) 116 I.C. 893
(2) 71 P.R. 1901
(3) 19 P.R. 1902
(4) I.L.R. 6 Lah. 447
(5) I.L.R. 9 Lah. 33
(6) I.L.R. 44 Bom. 742=A.I.R. 1920 Bom. (F.B.)

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as his natural guardian during his minority without suing to set aside the transfer within the period of limitation provided by Article 44 of the Limitation Act. At page 760 of the report it was observed as under:—

> "Lastly there is the argument that a plaintiff need not sue to set aside a transfer to which he is not a party : *Sikher Chund* v. *Dulputty Singh* (1). That argument may very well apply to a suit by a reversioner impugning a transfer by a Hindu widow, for the widow represents her husband's estate and until her death there is no one who has a vested interest, nor is there an obligation on any one to take proceedings until the reversion falls in. But the natural guardian represents the minor's estate and has power to manage it, subject to the condition that he must manage it for the benefit of the minor."

In *Gangadhar Balkrishna* v. *Dattutrava Baliram* (2), a Division Bench of the Bombay High Court consisting of Gajendragadkar and Vyas, JJ., held that where in execution of a mortgage decree against a minor judgment-debtor, his mother, acting as the guardian *ad litem,* enters into compromise with the decree-holder without the sanction of the Court and sells the mortgaged properties to the decree-holder in full satisfaction of the decree, a suit for possession by redemption of the mortgaged properties brought by the minor after three years from the date of his attaining majority would be barred. The reason is that the minor not having sued to set aside the transfer

(1) I.L.R. (1879) 5 Cal, 363
(2) A.I.R. 1953 Bom: 424

within the period prescribed by Article 44, Limitation Act, the transfer became binding on him and as a result of the transfer of the equity of redemption the right to redeem became extinguished by acts of parties. The Bench relied upon the earlier decision of the Bombay High Court in *Fakirappa Limanna Patil* v. *Lumanna Mahadu Dhammekar* (1), and distniguished the Privy Council case reported in *Bijay Gopal Mukerji* v. *Krishna Mahishi Devi* (2).

After giving our careful consideration to the entire matter, we have arrived at the following conclusions—

(1) if a sale of a minor's property is made by a person who is not the minor's guardian either according to his personal law or by appointment by Court, such a sale is a nullity, and no suit need be brought to set aside the same ;

(2) if, however, a sale is made by a natural guardian who goes beyond the scope of his authority, or if it is made by a certificated guardian without the permission of the Court, the transaction is merely voidable at the instance of the minor and will bind him till he succeeds in impeaching it ;

(3) that a suit by a *quondam* minor to set aside an alienation of his property by guardian is governed by Article 44 of the First Schedule of the Indian Limitation Act ;

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(1) I.L.R. 44 Bom, 742
(2) I.L.R. 34 Cal, 329

Pran Nath and others
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(4) that if a *quondam* minor brings a suit for possession of the property alienated by his guardian or for redemption of a mortgage of a property effected by his guardian, the suit will also be governed by Article 44 of the First Schedule of the Indian Limitation Act and not by Article 148 of the Indian Limitation Act ;

(5) that the proposition of law that a plaintiff need not sue to set aside a transfer to which he was not a party may well apply to a case of a reversioner impugning an alienation by a Hindu widow, but cannot possibly apply to the case of a minor on whose behalf an alienation has been made by his guardian and who is for all intents and purposes regarded as a party to the transfer ; and

(6) that the present case clearly falls within the ambit of Article 44 of the First Schedule of the Indian Limitation Act, and having been brought after the period of limitation prescribed by the said Article must be held to be barred by time.

In the result, this appeal fails and is dismissed with costs.

B.R.T.

LETTERS PATENT APPEAL

Before G. D. Khosla, Acting C.J. and S. S. Dulat, J.

SHANKAR SINGH AND OTHERS,—*Appellants.*

versus

IQBAL SINGH AND OTHERS,—*Respondents*

Letters Patent Appeal No. 69 of 1955.

1959

Jan., 8th

Administration of Evacuee Property Act (XXX of 1950)—Section 27—Rule 14(6)—Whether restricts the