

PETITIONER:
G. ANNAMALIA PILLAI

Vs.

RESPONDENT:
DISTRICT REVENUE OFFICER AND ORS.

DATE OF JUDGMENT 17/03/1993

BENCH:
KULDIP SINGH (J)
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KULDIP SINGH (J)
KASLIWAL, N.M. (J)

CITATION:
1993 SCR (2) 397 1993 SCC (2) 402
JT 1993 (4) 113 1993 SCALE (2) 75

ACT:
Hindu Minority & Guardianship Act, 1956:
Section 8(2) and (3) Lease--deed executed by the guardian
which was voidable--"en validly avoided--Makes transaction
void abinitio.

HEADNOTE:
The father of Purshothanan (then minor) respondent No. 5,
executed a registered lease-deed of the land owned by
Purshothanan (minor) for a period of five years to the
appellant/G. Annamalia Pillai.
The appellant riled an application before the Tehsildar
under the provisions of the Tamil Nadu Agricultural Lands
Record of Tenancy Rights Act, 1969 praying to be registered
as a tenant in the tenancy records, on the basis of the said
lease-deed.
Respondent No.5/Janarthanan contested the said proceeding on
the ground that the land was his property, his father had no
right or title to deal with the same and the lease deed
executed by his father was contrary to the provisions of
Section 8 of the Hindu Minority & Guardianship Act. Further
he contended that he had no knowledge of the execution of
the lease-deed by his father and on attaining majority he
avoided the same.
The Tehsildar dismissed the application of the appellant
holding that there was no valid lease.
The Revenue Divisional Officer, no appeal, reversed the
findings of the Tehsildar and held that the appellant is
entitled to be registered as a cultivating tenant.
In revision, the District Revenue Officer set aside the
order of the Appellate Authority and restored the order of
the Tehsildar.
The High Court of Madras dismissed the writ petition and the
writ appeal filed by the appellant.

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This appeal by way of Special Leave is against the judgment
of the Madras High Court.

Appeal dismissed,

HELD: In the present case, the High Court has rightly held
that the, lease was to go more than one year beyond the date
on which the minor was to attain majority. The provisions
of Section 8(2) (b) were attracted. [400D]

Clause (3) of Section 8 of the Hindu Minority and Guardianship Act, 1956, specifically makes the transaction voidable. The lease executed by the guardian in this case is prohibited and in that sense it was without any authority. It was further held that the respondent No.5 avoided the lease executed by his father, the lease became void from its inception and no statutory rights could, therefore, accrue in favour of the appellant.

[400F, 401G]

Solmond on Jurisprudence, Twelfth Edition at page 341; Satgur Prasad v. Hamaraili Das, AIR 1932 Supreme Court 89; S.N.R. Sundara Rao & Sons, Madurai v. Commissioner of Income Tax, Madras, AIR 1957 Madras 451, referred to. [401D]

G. Ponniah Thewar v. Nellavam Perumal Pillai and others, AIR 1977 S.C. 244, distinguished. [401H]

2. In the present case the father of respondent No.5 had no authority to lease the property without complying with the provisions of Section 8(2)(b) of the Act. Because of the inherent illegality in the execution of the lease-deed it was liable to be cancelled at the option of the minor on attaining majority. On the exercise of the option the lease became void abinitio. [402D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4792 of 1984. From the Judgment and Order dated 14.9.1984 of the Madras High Court in Writ Appeal No.96 of 1981.

Sanjeev Madan for Ms. Asha Jain Madan for the Appellant.

A.T.M. Sampath for the Respondents.

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The Judgment of the Court was delivered by KULDIP SINGH, J. The short question for consideration in this appeal is whether lease-deed in dispute, which was voidable in terms of Section 8(3) of the Hindu Minority and Guardianship Act, 1956 (the Act) when validly avoided, was affective from the date of the lease-deed so as to make the transaction void and unenforceable from the very inception. It is not disputed before us that the land in dispute was owned by Janarthanan respondent-5 before us. His father Purushothaman by a registered deed dated December 12, 1971 leased the land in dispute for a period of five years to G. Annamalai Pillai. On the date when the lease deed was executed Janarthanan was a minor, his date of birth being September 27, 1957. Claiming to be a cultivating tenant, on the basis of the lease deed, Annamalai Pillai filed an application before the Tehsildar under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 praying that he be registered as a tenant in the tenancy records. Janarthanan contested the said proceeding on the ground that the land was his property, his father had no right or title to deal with the same and the lease deed executed by his father was contrary to the provisions of Section 8 of the Act. He further contended that he had no knowledge of the execution of the lease deed by his father and on attaining majority he avoided the same on September 15, 1978. The Tehsildar held that there was no valid lease and as such he dismissed the application of Annamalai Pillai. On appeal the Revenue Divisional Officer reversed the findings of the Tehsildar and came to the conclusion that Annamalai Pillai was a contractual tenant and as such was entitled to be registered as a cultivating tenant. Janarthanan preferred a revision before the District Revenue Officer who set aside the order of the Appellate Authority

and restored the order of the Tehsildar holding that the Annamalai Pillai was not a cultivating tenant. The writ petition and the writ appeal filed by Annamalai Pillai were dismissed by the Madras High Court. This appeal by way of special leave is against the judgment of the Division Bench of the High Court dated September 14, 1984 rendered in writ appeal.

Sub-sections (2) and (3) of Section 8 of the Act which are relevant are reproduced hereunder:

"(2) The natural guardian shall not, without the previous permission of the court,

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(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."

Respondent-5 was to attain majority on September 27, 1975 and the lease was to subsist upto December 11, 1976. Since the tenure of the lease in this case was to go more than one year beyond the date on which the minor was to attain majority the provisions of section 8(2)(b) were attracted.

We have heard learned counsel for the parties. We have been taken through the orders of the Revenue Authorities, judgment of the learned single Judge and of the Division Bench of the High Court in writ appeal. The Division Bench of the High Court, in a lucid judgment, answered the question posed by us in the beginning in the affirmative and against the appellant-Annamalai Pillai on the following reasoning:

"We have already seen that clause (3) of section 8 of the Hindu Minority and Guardianship Act, 1956, specifically makes the transaction voidable. The lease executed by the guardian in this case is prohibited and in that sense it was without any authority. On the legal efficacy and the distinction between valid, void and voidable agreements, we find the following passage in Salmond on Jurisprudence, Twelfth Edition at page 341:-

"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

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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 ad 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.

This distinction has also been judicially noticed in the Privy Council judgment reported in *Satgur Prasad v. Harnarain Das*, A.I.R. 1932 P.C. 89 and in the Division Bench judgment in *S.N.R. Sundara Rao and Sons, Madurai v. Commissioner of Income Tax, Madras*, A.I.R. 1957 Madras 451. The Division Bench held, following the Privy Council Judgment as follows:-

"When a person, who is entitled to dissent from the alienation, does so, his dissent is in relation to the transaction as such and not merely to the possession of the alienee on the date of such dissent.

The effect of the evidence is, therefore, to get rid of the transaction with result that in law it is as if the transaction had never taken place."

We have, therefore, no doubt that when the fifth respondent avoided the lease executed by his father, the fourth respondent, the lease became void from its inception and no statutory rights, could, therefore, accrue in favour of the appellant herein."

We agree with the reasoning and the conclusions reached by the Division Bench of the High Court and as such this appeal has to be dismissed.

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The judgment of this Court in *G. Ponniah Thevar v. Nellavam Perumal Pillai and others*, A.I.R. 1977 S.C. 244 relied upon by the learned counsel for the appellant is not relevant in the facts and circumstances of this case. In *G. Ponniah Thevar's* case a lease deed was executed by a life estate-holder. On the cessation of the life estate the successor claimed that the lease executed was not binding on him and as such the tenant could not claim the benefit of the Tenants Protection Act. This Court held that the life estate-holder was entitled to create a valid tenancy and the tenant was entitled to take the benefit of the Tenants Protection Act. It was further held that the right accrued to the tenant could legally extend beyond the life time to the life estate-holder and would bind the successor. The reason is obvious. The life estate-holder has a right to lease the property. He does not deal with the property on behalf of the successor. Though the lease itself may be valid only during the life time of the life estate-holder, the authority to lease could not be questioned. If once initially there was a valid tenancy then the successor is bound by the tenancy rights acquired by the tenant during that period. In the present case unlike life estate-holder the father of respondents had no authority to lease the property without complying with the provisions of Section 8(2)(b) of the Act. Because of the inherent illegality in the execution of the lease-deed it was liable to be cancelled at the option of the minor on attaining majority. On the exercise of option the lease became void ab initio.

We, therefore, dismiss the appeal. No costs.

S.K.

Appeal dismissed.

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JUDIS