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NARAYAN

v.

BABASAHEB & ORS.

(Civil Appeal No. 3486 of 2016)

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APRIL 05, 2016

[MADAN B. LOKUR AND N.V. RAMANA, JJ.]

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*Limitation Act, 1963 – Arts.60, 109 and Explanation 2 of s. 7 – Alienation of suit property made by mother vide sale deed dated 20.01.1982 – Suit filed by plaintiffs-sons and daughters against the mother for partition and declaration that sale deed was not binding – 1<sup>st</sup> plaintiff was 20 years old, 2<sup>nd</sup> plaintiff was still a minor and the plaintiffs 3, 4 and 5-married daughters, were aged 29, 27 and 25 respectively, on the date of institution of the suit in the year 1989 – Suit decreed by trial court – Appellate court, on the issue of limitation, held that Art. 109 applies and limitation prescribed is 12 years, thus, suit filed in the year 1989 is within limitation – Said order upheld by the High Court – On appeal, held: Quondam minor plaintiff challenging the transfer of an immovable property made by his guardian in contravention of s. 8(1)(2) of the 1956 Act and who seeks possession of property can file the suit only within the limitation prescribed under Article 60 of the Act which is three years – Limitation to file the present suit is governed by Art. 60 and the limitation is 3 years from the date of attaining majority – As per Explanation 2 of s. 7, the manager of a Hindu undivided family governed by Mithakshara law shall be deemed to be capable of giving a discharge without concurrence of other members of family only if he is in management of the joint family property – Plaintiffs 3 to 5 though majors as on the date of institution of suit will not fall under Explanation 2 of s. 7 as they are not the manager or Karta of the joint family – 1<sup>st</sup> plaintiff was 20 years old – Thus, the suit is instituted well within three years of limitation from the date of attaining majority as envisaged u/Art. 60 – Hindu Minority and Guardianship Act, 1956.*

**Dismissing the appeal, the Court**

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**HELD: 1.1** The instant transaction on the face of it is in contravention of the 1956 Act and is not done for legal necessity, such transaction is voidable and unless such a transaction is sought

to be impeached or set aside, the question of recovery of possession of that property does not arise. [Paras 24 and 25] [957-C-D] A

1.2 A close analysis of the language of Article 60 would indicate that it applies to Suits by a minor who has attained majority and further by his legal representatives when he dies after attaining majority or from the death of the minor. The broad spectrum of the nature of the Suit is for setting aside the transfer of immovable property made by the guardian and consequently, a Suit for possession by avoiding the transfer by the guardian in violation of Section 8(2) of the 1956 Act. [Para 26] [957-E] B

1.3 The Limitation Act neither confers a right nor an obligation to file a Suit, if no such right exists under the substantive law. It only provides a period of limitation for filing the Suit. A quondam minor plaintiff challenging the transfer of an immovable property made by his guardian in contravention of Section 8(1)(2) of the 1956 Act and who seeks possession of property can file the Suit only within the limitation prescribed under Article 60 of the Act which is three years and Articles 109, 110 or 113 of the Act are not applicable to the facts of the case. [Paras 28 and 29] [957-G-H; 958-A] C

1.4 The High Court as well as the trial court erred in applying Article 109 of the Act, where Article 109 of the Act clearly speaks about alienation made by father governed by Mitakshara law and further courts below proceeded in discussing about the long rope given under Article 109 of the Act and comparatively lesser time specified under Article 60 of the Act. It is well settled principle of interpretation that inconvenience and hardship to a person will not be the decisive factors while interpreting the provision. When bare reading of the provision makes it very clear and unequivocally gives a meaning it was to be interpreted in the same sense as the Latin maxim says "*dulo lex sed lex*", which means the law is hard but it is law and there cannot be any departure from the words of the law. [Para 30] [958-B-C] D

1.5 The limitation to file the instant Suit is governed by Article 60 of the Act and the limitation is 3 years from the date of attaining majority. However, as regards the question when there are several plaintiffs, what is the reckoning date of limitation, a E

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A reading of Section 7 makes it clear that when one of several persons who are jointly entitled to institute a Suit or make an application for the execution of the decree and a discharge can be given without the concurrence of such person, time will run against all of them but when no such discharge can be given, time will not run against all of them until one of them becomes capable of giving discharge. [Para 31] [958-D-E]

1.6 The 1<sup>st</sup> plaintiff was 20 years old, the 2<sup>nd</sup> defendant was still a minor and the plaintiffs 3, 4 and 5, who are married daughters, were aged 29, 27 and 25 respectively, on the date of institution of the Suit in the year 1989. As per Explanation 2 of Section 7, the manager of a Hindu undivided family governed by Mithakshara law shall be deemed to be capable of giving a discharge without concurrence of other members of family only if he is in management of the joint family property. The plaintiffs 3 to 5 though majors as on the date of institution of Suit will not fall under Explanation 2 of Section 7 of the Limitation Act as they are not the manager or Karta of the joint family. The first plaintiff was 20 years old as on the date of institution of the Suit and there is no evidence forthcoming to arrive at a different conclusion with regard to the age of the 1<sup>st</sup> plaintiff. In that view of the matter, the Suit is instituted well within three years of limitation from the date of attaining majority as envisaged under Article 60 of the Act. [Para 32] [958-F-H; 959-A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3486 of 2016.

From the Judgment and Order dated 05.10.2011 of the High Court of Judicature at Bombay, Bench at Aurangabad in Second Appeal No. 223 of 2004.

Uday B. Dube, Adv. for the Appellant.

Vivek C. Solshe, C. G. Solshe, Advs. for the Respondents.

The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. Leave granted.

2. The appellant is before us aggrieved by the Judgment and decree passed by the High Court of Bombay, Bench at Aurangabad, dated 5.10.2011 in Second Appeal No.223 of 2004 wherein and whereby the High Court has confirmed the judgment and decree of the Courts below.

3. This Court, while issuing notice on 27<sup>th</sup> April, 2012, has passed the following order: A

“Delay condoned.

Issue notice returnable in ten weeks limited to the question as to whether the Suit filed in the year 1989 with regard to the sale deed dated January 20, 1982 was within limitation. B

Dasti, in addition to the ordinary process.

In the meanwhile, the parties shall maintain status quo with regard to the property which is subject matter of the sale deed dated January 20, 1982.” C

4. In the light of the order passed by this Court on 27.04.2012, we are confining ourselves only to the question as to whether the Suit filed in the year 1989 in respect of a sale deed dt. 20.01.1982 is well within limitation or barred by limitation:

5. The appellant before us is the 1<sup>st</sup> defendant in the Suit. Respondents 1 to 5 are the plaintiffs and the 6<sup>th</sup> respondent is defendant no.2. For the purpose of convenience, the parties are referred as they are before the trial Court. D

6. The brief facts which are necessary for proper appreciation of the dispute between the parties in nutshell are as follows: E

The plaintiff/respondents 1 to 5 filed Reg. Civil Suit No.12 of 1989 against the 1<sup>st</sup> defendant (appellant herein) and 2<sup>nd</sup> defendant (respondent No. 6). The Suit was filed seeking the relief of partition and for a declaration that the sale deed dated 20.01.1982 and 28.11.1988 executed by defendant No.2 in favour of defendant No.1 are not binding and to set aside the same and also for recovery of possession of the Suit schedule property and for *mesne* profits. F

7. The brief averments of the plaint are that the plaintiffs 1 and 2 are the real brothers and the 2<sup>nd</sup> plaintiff, being minor, is under the guardianship of plaintiff No.1. Plaintiff Nos.3 to 5 are the real sisters, whereas defendant No.2 is their mother and the defendant No.1 is the purchaser in whose favour defendant No.2 alleged to have executed the sale deeds dated 20.01.1982 and 28.11.1988 which are sought to be set aside and defendant No.3 is another sister who is married about 12 years back and whose whereabouts are not known to the plaintiffs. The 3<sup>rd</sup> defendant is later impleaded. G H

A 8. It is the specific case of the plaintiffs that their father is the original owner of the Suit schedule property which is ancestral property. He died in the year 1972 leaving behind him his two sons, four daughters and the widow i.e. the 2<sup>nd</sup> defendant. After the death of their father, the 2<sup>nd</sup> defendant, who is alleged to be a person of loose character, left the matrimonial home and married one Begaji. The father of the plaintiffs, B during his lifetime, performed the marriage of plaintiff Nos.3 and 4 and the marriage of the 5<sup>th</sup> plaintiff was performed by the 1<sup>st</sup> plaintiff. The 2<sup>nd</sup> defendant, without there being any legal necessity, has alienated the property for a meager amount of Rs.6,000/- when the surrounding lands were fetching an amount of Rs.15,000/-. At the time of execution of the C second sale deed, though the 1<sup>st</sup> plaintiff was major, he was shown as minor. It is stated that as the 2<sup>nd</sup> defendant was never taking care of them at any point of time and staying with some other person, she cannot be termed as a guardian. The 1<sup>st</sup> defendant, without paying any consideration, in active connivance with the 2<sup>nd</sup> defendant, has got the D sale deed registered with an intention to defraud the interest of the minors. It is further pleaded that as on the date of execution of the second sale deed, the land fetches an amount of Rs.20,000/- per acre, apart from that as the 1<sup>st</sup> defendant is in possession of the property, they are entitled to *mesne* profits at the rate of Rs.2,000/- per annum from the date of taking over possession by the 1<sup>st</sup> defendant till the date of recovery of E possession.

9. The defendants filed the written statement resisting the claim of the plaintiffs by denying the averments in the plaint and put forth their case stating that the 2<sup>nd</sup> defendant sold the Suit schedule property for the purpose of legal necessity. She had the responsibility of getting her F daughters married, maintaining the large family and under those circumstances she was compelled to sell the property and further the consideration received was also adequate and as such the sale deeds are binding on the plaintiffs. The 2<sup>nd</sup> defendant took the objection that one of her daughters was not made as a party to the Suit as such Suit requires to be dismissed for non-joinder of proper and necessary parties G and accordingly sought for dismissal of the Suit.

10. Later the 3<sup>rd</sup> defendant was arrayed as a party to the Suit and in spite of the best efforts by the plaintiffs, the notice could not be served and it was reported that her whereabouts are not known for more than ten years. No written statement was filed on her behalf. H

11. The trial Court, after a full-fledged trial, has come to the conclusion that under Section 11 of the Hindu Minority and Guardianship Act, 1956 (for short 'the 1956 Act') the sale made by the *de facto* guardian of the minor is *void ab initio* and is incapable of subsequent clarification in the absence of evidence to show that the transfer is made for legal necessity. Hence, the sale deeds are not binding on the plaintiffs and accordingly decreed the Suit holding that the plaintiffs are entitled to partition and separate possession of their share. Plaintiffs 1 and 2 are entitled to 7/12<sup>th</sup> share and plaintiffs 3 to 5 are entitled to 1/24<sup>th</sup> each and the 2<sup>nd</sup> defendant is entitled to 7/24<sup>th</sup> share and plaintiffs are entitled for mesne profits.

12. Assailing the said judgment and decree, the 1<sup>st</sup> defendant has filed RCA.No.120/1991 on the file of the District Judge, Parbhani. The issue of limitation was raised by the defendants before the 1<sup>st</sup> appellate court contending that the Suit is barred by limitation as per Article 60 of the Limitation Act, 1963 (for short 'the Act') and as on the date of filing of the Suit, except the 2<sup>nd</sup> plaintiff (Waman), all other plaintiffs are majors and hence the Suit ought to have been instituted within three years as envisaged by Article 60 of the Act. It is further urged that the legal disability of 2<sup>nd</sup> plaintiff (Waman) does not entitle other plaintiffs to institute the Suit after the prescribed period in the Act and relied upon Section 7 of the Act. As per the cause title in the plaint, as on the date of filing of the Suit, the 1<sup>st</sup> plaintiff was aged 20 years, the 2<sup>nd</sup> plaintiff was minor and plaintiffs 3, 4 and 5 were aged 29, 27 and 25 years respectively. Basing on the contentions, the appellate Court has come to the conclusion that Article 60 of the Act is not applicable to the facts of the case as the 2<sup>nd</sup> defendant is not the guardian appointed by the Court. Therefore, Article 109 of the Act, which prescribed 12 years is applicable where the alienation made by the father of the ancestral property by the Hindus who are governed by the Mitakshara law and hence the Suit filed in the year 1989 is well within limitation. But however, the appellate court has modified the decree to the extent that the 1<sup>st</sup> defendant is entitled to the share of the 2<sup>nd</sup> defendant.

13. The unsuccessful and unsatisfied 1<sup>st</sup> defendant has approached the High Court of Bombay, Bench at Aurangabad by way of Second Appeal No.223/2004. The High Court has dismissed the appeal holding that Article 109 of the Act applies to the alienation made by the mother and Article 60 of the Act does not apply to the facts of the case and its

A application altogether is in a different eventuality and Section 109 of the Act applies to the facts of the case and the Suit is well within limitation. Against the said order, the present appeal is filed before this Court.

B 14. We are not inclined to go into any of the factual issues or otherwise which has attained finality and we are restraining ourselves to the limited question whether the Suit filed in the year 1989 for setting aside the sale deed dated 20.01.1982 is governed under which Article of the Limitation Act and whether the same is within limitation or not?

C 15. We have heard the learned counsel on either side and given our anxious consideration to their submissions, to the relevant provisions of the Act and the material placed before us.

D 16. It is argued on behalf of the appellant/1<sup>st</sup> defendant that a challenge to the sale deed dated 20.01.1982 is barred by limitation as Article 60 of the Act applies to the facts of the case and the limitation is 3 years. It is contended by him that the Courts below have erroneously applied Article 109 and further Article 109 applies to cases where alienation was made by the father but in the case on hand, alienation was made by the mother. He further submitted that the interpretation of Articles under the Act is against the settled principles of interpretation of statutes and when a provision is provided exclusively which deals with alienation made by father, the Courts below were not right in applying the same to the alienation made by the mother. It is for the first time contended before the Court that Article 110 of the Act applies but the provision will be applied only once the sale deed dated 20.01.1982 is set aside and sought for allowing the appeal.

F 17. On the other hand, the learned counsel appearing on behalf of the respondents/plaintiffs has urged that Article 60 is applicable to cases where guardian sells exclusive property of minor but not joint family property. Further the residuary clause has no application as it will apply only when there is no other Article provided under the Act and he further stated that the case of the plaintiffs squarely falls under Article 110 of the Act and as such the Suit filed by the plaintiffs is well within the limitation and sought for dismissal of the appeal.

G 18. In the light of the submission made by the counsel, before we proceed to deal with the main issue, it is appropriate to have a look at Section 7, Articles 60, 109, 110 and 113 of the Act which read as follows:

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**Section 7 : Disability of one of several persons:**

Where one of several persons jointly entitled to institute a Suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation I: This section applies to a discharge from every kind of liability, including a liability in respect of any immovable property;

Explanation II: For the purpose of this section, the manager of a Hindu undivided family governed by the Mitakshara law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint family property.

**Articles 60, 109, 110, 113 of the Act:-**

60. To set aside a transfer of property made by the guardian of a ward		
(a) by the ward who has attained majority;	Three years	When the ward attains majority.
(b) by the ward's legal representative		
(i) When the ward dies within three years from the date of attaining majority;	Three years	When the ward attains majority.
(ii) When the ward dies before attaining majority	Three years	When the ward dies.

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109. By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property.	Twelve years	The date of the dispossession or discontinuance.
110. By a person excluded from a joint family property to enforce a right to share therein.	Twelve years	When the exclusion becomes known to the plaintiff.
113. Any Suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

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19. Before we venture to discuss the applicability of Section 7 of the Act which deals with disability of one of several persons, we have to bestow our attention to the Articles which are applicable to the facts of the case.

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20. In the case on hand, there cannot be any dispute about the fact that after the death of the 2<sup>nd</sup> defendant's husband automatically the 2<sup>nd</sup> defendant becomes a natural guardian to her children. On this, the finding of the lower appellate court, that as she was not the guardian appointed on the day to alienate the Suit schedule property therefore Article 109 of the Act applies which gives 12 years limitation from the day the alienee takes possession of the property and the alienation made by the father of ancestral property of the Hindus who are governed by Mitakshara law, and that the Suit is well within limitation, cannot be sustained.

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21. Even the High Court has proceeded on the same notion that Article 60 of the Act applies where the ward files a Suit after attaining majority, for setting aside transfer of property made by his guardian when he was minor.

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22. The High Court has further observed that under Article 109 of the Act, a long rope is given to file the Suit to the plaintiff than a Suit

filed by the plaintiff under Article 60 of the Act and the case of the plaintiff strictly falls under Article 109 of the Act. A

23. A bare reading of Section 8(1) of the 1956 Act indicates that it empowers the natural guardian to do all the acts which are necessary or reasonable or proper for the benefit of the minor. Section 8(2)(a) of the 1956 Act prescribes that either the purchaser or the seller should obtain the permission of the District Court to transfer the property by sale. B

24. Hence, the present transaction on the face of it is in contravention of the mandatory provisions laid down by the 1956 Act.

25. When once a transaction takes place in the name of the minor which is in contravention of the 1956 Act and which is not done for legal necessity, such transaction is voidable and unless such a transaction is sought to be impeached or set aside, the question of recovery of possession of that property does not arise. C

26. A close analysis of the language of Article 60 would indicate that it applies to Suits by a minor who has attained majority and further by his legal representatives when he dies after attaining majority or from the death of the minor. The broad spectrum of the nature of the Suit is for setting aside the transfer of immovable property made by the guardian and consequently, a Suit for possession by avoiding the transfer by the guardian in violation of Section 8(2) of the 1956 Act. In essence, it is nothing more than seeking to set aside the transfer and grant consequential relief of possession. D E

27. There cannot be any doubt that a Suit by quondam minor to set aside the alienation of his property by his guardian is governed by Article 60. To impeach the transfer of immovable property by the Guardian, the minor must file the Suit within the prescribed period of three years after attaining majority. F

28. The Limitation Act neither confers a right nor an obligation to file a Suit, if no such right exists under the substantive law. It only provides a period of limitation for filing the Suit. G

29. Hence, we are of the considered opinion that a quondam minor plaintiff challenging the transfer of an immovable property made by his guardian in contravention of Section 8(1)(2) of the 1956 Act and who seeks possession of property can file the Suit only within the limitation H

A prescribed under Article 60 of the Act and Articles 109, 110 or 113 of the Act are not applicable to the facts of the case.

30. The High Court as well as the Trial Court erred in applying Article 109 of the Act, where Article 109 of the Act clearly speaks about alienation made by father governed by Mitakshara law and further  
 B Courts below proceeded in discussing about the long rope given under Article 109 of the Act and comparatively lesser time specified under Article 60 of the Act. It is well settled principle of interpretation that inconvenience and hardship to a person will not be the decisive factors while interpreting the provision. When bare reading of the provision makes it very clear and unequivocally gives a meaning it was to be interpreted  
 C in the same sense as the Latin maxim says "*dulo lex sed lex*", which means the law is hard but it is law and there cannot be any departure from the words of the law.

31. Hence, in view of our above discussion, the limitation to file the present Suit is governed by Article 60 of the Act and the limitation is  
 D 3 years from the date of attaining majority. When once we arrive at a conclusion that Article 60 of the Act applies and the limitation is 3 years, the crucial question is when there are several plaintiffs, what is the reckoning date of limitation? A reading of Section 7 makes it clear that when one of several persons who are jointly entitled to institute a Suit or  
 E make an application for the execution of the decree and a discharge can be given without the concurrence of such person, time will run against all of them but when no such discharge can be given, time will not run against all of them until one of them becomes capable of giving discharge.

32. In the case on hand, the 1<sup>st</sup> plaintiff was 20 years old, the 2<sup>nd</sup>  
 F defendant was still a minor and the plaintiffs 3, 4 and 5, who are married daughters, were aged 29, 27 and 25 respectively, on the date of institution of the Suit in the year 1989. As per Explanation 2 of Section 7, the manager of a Hindu undivided family governed by Mithakshara law shall be deemed to be capable of giving a discharge without concurrence of other members of family only if he is in management of the joint family  
 G property. In this case, plaintiffs 3 to 5 though majors as on the date of institution of Suit will not fall under Explanation 2 of Section 7 of the Limitation Act as they are not the manager or Karta of the joint family. The first plaintiff was 20 years old as on the date of institution of the Suit and there is no evidence forthcoming to arrive at a different conclusion  
 H with regard to the age of the 1<sup>st</sup> plaintiff. In that view of the matter, the

Suit is instituted well within three years of limitation from the date of attaining majority as envisaged under Article 60 of the Act. A

33. Hence, in view of the above discussion, as the appeal is devoid of merits, we deem it appropriate to dismiss the appeal and accordingly the appeal is dismissed but in the circumstances without costs.

Nidhi Jain

Appeal dismissed. B