IN THE HIGH COURT OF TRIPURA
A G A R T A L A

RSA No.08 of 2020

Sri Sanjit Poddar,
son of late Lal Behari Poddar of Arya Colony, P.O. & P.S. Belonia, District- South Tripura

…… Appellant(s)

– V e r s u s –

1. **Smt. Jayanti Dey [Dhupi],**
wife of Shri Chandan Dhupi, a resident of Uttar Sonaichari, P.S. Belonia, P.O. Sarasima, District- South Tripura, Tripura

2. **Smt. Shanti Dey [Mitra],**
wife of Shri Sankar Mitra, a resident of Krishnanagar, P.O. Krishnanagar, P.S. Belonia, District- South Tripura, Tripura

3. **Shri Ranjit Dey,**
son of late Nirmal Chandra Dey, a resident of Motai, P.O. Motai, P.S. Belonia, District- South Tripura, Tripura

…… Respondent(s)

For the Appellant (s)	:	Mr. S.M. Chakraborty, Sr. Adv. Ms. P. Sen, Adv.
For the Respondent (s)	:	Mr. R.R. Datta, Adv.
Date of hearing	:	26.04.2021
Date of delivery of Judgment & order	:	**31.05.2021**
Whether fit for reporting	:	YES ✓ / NO

HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER

This is an appeal under Section 100 of the CPC from the judgment dated 06.11.2019 delivered in Title Appeal No.09 of 2016 by the District Judge, South Tripura, Belonia affirming the judgment

dated 13.09.2013 delivered in Title Suit 06 of 2014 by the Civil Judge, Sr. Division, South Tripura, Belonia.

[2] At the time of admitting the appeal, the following substantial questions of law were framed by the order dated 11.02.2020:

> **(I) Whether the findings of both the courts below in respect of the validity and legality of the lease deed is correct due to the fact that one of the executants of the lease deed at the time of execution was minor?**
>
> **(II) Whether the suit itself is barred by law of limitation for the reason that minor did not challenge the said lease deed dated 14.01.2002 bearing No. 1-80 within the time of limitation for cancellation of the said lease deed?**
>
> **(III) Whether a suit can be said to have been proved when the sole witness of a plaintiff makes a statement in cross-examination that he was not aware of the contents of the plaint and statements made in his examination-in-chief by affidavit?**

[3] The material facts for appreciating the challenge in this appeal may be introduced at the outset.

After death of the original allottee, namely Nirmal Chandra Dey, the plaintiffs inherited the suit property pertaining to Khatian No.1479, Plot No.5046, 5636/5797 measuring 1.96 acres under Mouja- Sarasima, South Tripura. The plaintiffs No.1 and 2 were married and they had settled in their married life. The plaintiff No.3 was alone and minor. The defendant having taking the 'advantage' as stated by the plaintiff, got the lease deed bearing No.1-80 registered in the office of the Sub-Registrar, Belonia on

14.01.2002 [Exbt.5]. At the time of 'execution' of the lease deed, the plaintiffs were unaware about the status of the land. According to the plaintiffs in the first week of August, 2012 some revenue officials from the office of the Sub-Divisional Magistrate, Belonia came to the suit land for verification. They told the plaintiff No.3 that the said land was allotted in favour of Nirmal Chandra Dey subject to the condition that the land could not be 'transferred' without permission of the concerned Collector. The plaintiff No.3 disclosed to the Revenue Officers the fact of leasing out of the suit property to the defendant for a period of 99 years by executing and registering a lease of deed. The Revenue Offices told the plaintiff No.3 that the said lease deed was in contravention to the terms and conditions of allotment for which the allotment order could be cancelled by the competent authority at any point of time. The plaintiff No.3 had communicated the said observation to other 2[two] plaintiffs [his sisters]. The plaintiffs collected the certified copy of the lease deed and computerized Khatian and they came to know that the suit property was allotted and for alienation, of any right which constitutes transfer, the prior permission of the Collector is essentially required but no such permission was taken before executing the lease deed in question.

[4] The defendant, the appellant herein, by filing the written statement did not challenge the incidence of inheritance but according to the defendant, the suit is barred by waiver, estoppel, acquiescence and above all by limitation. The defendant denied the allegations made against him. According to the defendant, the lease deed was executed without any duress or coercion from any corner or on suppression of any material fact. The defendant paid the rent in terms of the lease. He has raised the rubber plantation over the suit property, which plantation is by efflux of time has reached the stage when the latex could be collected.

[5] Initially, the suit was filed and registered in the court of the Civil Judge, Sr. Division, South Tripura, Udaipur being Title Suit 36 of 2013 but when South Tripura had become a separate judicial district, the said suit was transferred to the court of the Civil Judge, Sr. Division, South Tripura, Belonia and the suit got reregistered as T.S.06 of 2014. Based on the rival pleadings, the Civil Judge framed the following issues for purpose of adjudicating the suit:

> **[i] Is the suit maintainable in its present form and nature?**
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> **[ii] Are the plaintiffs have right, title and interest over the suit land?**
>
> **[iii] Are the plaintiffs entitled to get a decree declaring that the Lease Deed bearing No.I-80 dated 14.01.2002 is illegal, void and inoperative?**
>
> **[iv] Are the plaintiffs entitled to get recovery of possession of the suit land by evicting the defendant therefrom?**

[v] Any other relief or relieves the parties are entitled to?

[6] To prove their case as it appears from the records, the plaintiffs adduced 2[two] witnesses and admitted few documentary evidence including the certified copy of the computerized Khatian No.1479 under Mouja and Tehshil-Sarasima, South Tripura [Exbt.1]. The admit card of the plaintiff No.3 [Exbt.3], the survival certificate dated 13.12.1996 evidencing the survivors of Nirmal Dey, since deceased [Exbt.4] and the lease deed dated 14.01.2002 in respect of the suit property [Exbt.5].

The defendant examined himself as DW-1 and introduced few documents including the permit of the Rubber Plantation Development Scheme issued by the Rubber Board on 29.03.2003 [Exbt.A] and receipt issued by Mahamaya Rubber Producers Society on diverse dates [Exbts.D1-D11].

[7] Pursuant to the judgment dated 15.03.2016, the trial Judge decreed the suit. According to the trial Judge, the plaintiffs have proved their right, title and interest over the suit property and also proved that the property the plaintiffs inherited from their parents is allotted land. In this regard, he has observed that a lease is a transfer of right of enjoyment of an immovable property making for a certain period and it is not a transfer of ownership of

the property, but the transfer of interest of an immovable property. A substantial interest not the absolute interest was transferred by way of the lease, but it definitely caused parting of right of possession. The plaintiff No.3 was minor at the time of execution of the lease deed as he did not complete 18 years of age on 14.01.2002, the day of execution, and the plaintiffs did not know about the status of the land until they obtained a certified copy of the Khatian on 07.12.2012. Thus, the period of limitation be counted from the date of knowledge. That apart, the Civil Judge has observed that nowhere in the lease deed [Exbt.5] it has been recited that the lessors were competent in all respects to execute the said lease deed. The claim of the defendant as asserted that the plaintiff No.3 was more than 18 years on the day of execution of the lease deed has been rejected by the Civil Judge placing his reliance on the admit card [Exbt.3], where the date of birth of the plaintiff No.3 has been recorded as 02.03.1984. Thus, on 14.01.2002, the plaintiff No.3 was below 18 years. The defendant, the appellant herein, could not rebut the evidence relating to the date of birth. According to the Civil Judge, the said lease deed was executed in violation of Rule 12 of the Tripura Land Revenue and Land Reforms [Allotment of Land] Rules, 1980 inasmuch as Rule 12 provides that the land will be heritable but not 'alienable' without

the written consent of the Collector granted on the recommendation of the Advisory Committee that may be set up by the Government. A reference has been made to Section 29(1) of the Guardians and Wards Act, 1890 which provides that even a minor's guardian of the property is not authorized to grant lease without permission of the court for a term exceeding 5[five] years or inuring for more than one year after the period when the minor would attain the majority. It is apparent from the written statement that the defendant did not claim that for executing the said lease deed, permission from the District Collector was obtained. Even the Civil Judge discarded the plea as raised by the defendant's counsel that Section 41 of the Transfer of Property Act may be invoked for protecting the possession of the defendant. The Civil Judge having referred a decision of the apex court in **Hardev Singh vs. Gumail Singh,** reported in **2007 AIR SCW 948** where it has been held the provision of Section 41 of the Transfer of Property Act cannot be invoked for protecting the possession. To get benefit of the said provision, the contract of transfer is to be made by a person who is competent to contract and the contract would be subsisting at the time when the claim for recovery of the property is made.

[8] On the question of maintainability [Issue No.1], the Civil Judge has quite distinctly observed that a lease deed executed

by a minor is void *ab initio*. When a document itself is void for derogation of law, the other reliefs cannot be granted. The Civil Judge has made a reference to **State of Maharashtra vs. Prabin Jetha Lal Kamdar**, reported in **AIR 2000 SC 1099** where the apex court has observed thus:

> **"Thus, it has not been and cannot be disputed that the order dated 26th May, 1976, was without jurisdiction and nullity. Consequently, sale deed executed pursuant to the said order would also be a nullity. It was not necessary to seek a declaration about the invalidity of the said order and the sale deed. The fact of plaintiff having sought such a declaration is of no consequence. When possession has been taken by the appellants pursuant to void documents, Article 65 of the Limitation Act will apply and the limitation to file the suit would be 12 years. When these documents are null and void, ignoring them a suit for possession simpliciter could be filed and in the course of the suit it could be contended that these documents are nullity."**
>
> **[Emphasis added]**

[9] Thus, there is no question of seeking cancellation of the document [Exbt.5] as the said document is void. The said document is absolutely inconsequential for two reasons viz. [i] the plaintiff No.3 was minor and he was not represented by the guardian appointed for the said purpose. That apart, [ii] the terms of the said lease deed was in contrast to Section 29 (1) of the Guardian and Wards Act, 1890 which clearly provides limitation of powers of the guardian of property appointed or declared by the Court in the following manner:

> **Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—**
>
> **(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or**
>
> **(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.**

[iii] Admittedly, the land is an allotted land. The allotment was in favour of Nirmal Chandra Dey and Alo Rani Dey [wife of Nirmal Chandra Dey] subject to condition that without the permission of the Collector no transfer can be made in respect of the allotted land. [See Khatian No.1479- Exbt.1]. Thus, all the issues were decided in favour of the plaintiffs. Even the plea raised for protection under Section 41 of the Transfer of Property Act was discarded as the pre-requisite conditions were not available, as stated before. Thereafter, the following finding has been returned by the Civil Judge:

> **"Now since under the lease deed which was a void instrument, the possession of the suit land was gone into the hands of the defendant which is now required to be handed over back to the plaintiffs and the plaintiffs had received Rs.500/- per annum as rent and also Rs.30,000/- as security which was adjustable to the yearly rent if such rent was remained unpaid in time, it is required on the equitable principles that the amount paid by the defendant and received by the plaintiffs be returned to the defendant. It appears from the receipts exhibited by the defendant [Exhibit B-1 to BE-11] that he has paid yearly rent @ Rs.500/- for 11 years from 2003 to 2013 and thus he has paid in total Rs.5,000/-. There is nothing to show that any yearly rent was adjusted with the security money."**

[10] Based on those findings, the Civil Judge has declared the right, title and interest of the plaintiffs over the suit property. It has been also declared that the lease deed dated 14.01.2002 [Exbt.5] is void, illegal and inoperative. Further, it has been declared that the plaintiffs are entitled to recovery of possession of the suit property by evicting the defendant or any other person claiming through them. The defendant has been directed to hand over the suit property to the plaintiffs within one month and the plaintiffs shall repay the yearly rent so far received which amounts to Rs.5,500/- and the security money to the extent of Rs.30,000/- at the time of handing over the possession.

[11] The defendant being aggrieved by the said judgment dated 15.03.2015 preferred an appeal under Section 96 of the CPC in the court of the District Judge, being Title Appeal No.09 of 2015.

The defendant being aggrieved by the said judgment dated 15.03.2015 preferred an appeal under Section 96 of the CPC in the court of the District Judge being Title Appeal No.09 of 2015.

The said appeal was dismissed by the first appellate court by the judgment dated 06.11.2019 holding *inter alia* as under:

> **10. The conditions of allotment in any case shall be right by Rule 12 of TLR & LR (Allotment of Land) Rules, 1980. Rule 12 mandates that, allotment of land in sub-section (1) of**

> **section 14 of the Act shall be further subject to the following conditions and also the conditions specified in the allotment order which shall be as nearly as possible in the form of Appendix-B. Section 14(1) TLR & LR Act mandates certain conditions for giving allotment of land to different persons and bodies as mentioned therein and Rule 12 of the Allotment Rules further mandates that the allottee land shall be heritable but not alienable without written consent of the Collector granted on the recommendation of the Advisory Committee that may be setup by the Government.**
>
> **11. The word 'alienate' has not been defined in the Act or the Rules, but the dictionary meaning of the verb 'alienate' is transfer of property or ownership and the dictionary meaning of the noun 'alienation' means (in law) voluntary and absolute transfer of title and possession of real property from one person to another. Therefore, in 1980 Rules the condition of parting away of allottee land has been made more stringent instead of relaxing the condition. The proviso to sub-rule (1) of Rule 12 of 1980 Rules mandates that allottee land may be mortgaged to the Government, or co-operative society or a bank or such institution as may be notified in the official gazette by the State Government from time to time. This proviso to rule 12 is indicative of the fact that the appropriate Government was not unmindful to the needs of the allottee, if any, to alienate the land for bonafide purpose and that is why the Government has annexed the proviso to rule 12 to meet the bonafide needs of an allottee in case the allottee is required to alienate his property for bonafide purpose.**
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> **12. What necessarily transpires that, no allottee land can be alienated / transferred in any other manner except by giving mortgage etc. as indicated in the proviso to sub-rule (1) of Rule 12 without permission of the Collector, but any other alienation is forbidden under Rule 12 without written consent of the Collector granted on the recommendation of the Advisory Committee that may be setup by the Government. Meaning thereby, the lease executed by the plaintiff-respondent No. 3 in favour of the defendant-appellant which was marked as exhibit-5 series has no force in the eye of law and it is void and inoperative at the inception. Hence, on the basis of the exhibit-5, no right vest upon the defendant-appellant. I find no error in the judgment of learned trial Court.**

[12] The said judgment of affirmation has been challenged in this appeal on the substantial questions of law as noted in para-2 of this judgment.

[13] Mr. S.M. Chakraborty, learned senior counsel appearing for the appellant has submitted that two of the executants of the lease deed were major and as such, the lease deed so far the possession is concerned is valid for two-third share of the suit property. He has further submitted that the minor [PW-1] who was supposed to institute the suit within the limitation period from the date of his attaining majority. He has referred to Section 6 of the Limitation Act, 1963 in respect of legal disability as the ground for execution of limitation period for the minor. Section 6(1) which is relevant for our purpose provides that where a person is entitled to institute a suit or to makes an application for execution of decree, is, at the time from which the prescribed period has to be reckoned, a minor or insane or an idiot, he may institute the suit or make the application within the same period after the disability has ceased as would otherwise have been allowed from the time specified therefor, in the third column of the schedule. According to Mr. Chakraborty, learned senior counsel even the date recorded in the admit card is accepted, the plaintiff had attained the majority on 01.03.2002. According to Mr. Chakraborty, learned senior counsel, the suit ought to have been filed on or before 28.02.2005 but the suit has been filed on 13.09.2013. As such, the suit is hopelessly barred by limitation. Mr. Chakraborty, learned senior

counsel has submitted that in view of the statement made in the cross-examination that PW-1 was not aware of the contents of the plaint and the statement made in his examination-in-chief by affidavit, the courts below ought to have discarded the evidence of the plaintiff No.3 who has failed to prove his case, and hence, the 'pleadings' ought not have been relied on. In this respect, Mr. Chakraborty, learned senior counsel has relied a decision of this court in **Smt. Bishnupriya Das vs. Sri Chunilal Das** [the judgment and order dated 18.07.2018 delivered in RSA No.31 of 2015] where this court had occasion to observe as follows:

> **[14] The plaintiff-appellant did not appear in person, in the trial to depose and prove her case but on her behalf her attorney (PW1) appeared and deposed in the court. While browsing through the records, a very significant statement made by PW1, the person who was entrusted to prove the plaintiffs case has been located and that statement is required to be reproduced. It reads as under :**
>
> > **"I do not know how to read in English. I have no idea about the contents of the Affidavit-in-Chief."**
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> **However, it is apparent on the face that the examination-in-chief, filed under Order 18 Rule 4 of the CPC, has been signed the attorney who has stated that he has no idea of the content of the said affidavit. This statement is enough to hold that the case as pleaded by the plaintiff has not been proved at all inasmuch as the defendant no.2 does not have any burden to prove the case of the plaintiff.**

[14] Mr. R. R. Datta, learned counsel appearing for the plaintiff-respondents has stated that the law as enunciated in **Bishnupriya Das** (supra) cannot be applied in the present case as the plaintiff himself appeared in the proceeding and testified in

support of his case. He had introduced the documents which are the primary evidence and on the basis of the primary evidence the inference drawn by the courts below cannot be faulted with. There is no infirmity in the judgment of the Civil Judge and the first appellate court has correctly affirmed the said judgment.

[15] Having appreciated the submissions of the learned counsel, this court would hold that the plaintiff has categorically pleaded that he had no knowledge of the nature of transaction i.e. the content of the lease deed which was for 99 years. Only on the first week of August, 2012, the plaintiffs had realized that the suit land is an allotted land and the lease deed as executed by them was illegal. Moreover, on the date of execution of the said lease deed the plaintiff No.3 was minor. As such, under Section 29 of the Guardian and Wards Act, 1890 the term of said lease deed could not have been for that 5[five] years and not more than 1[one] year from the date of majority. For purpose of reference, Section 29 of the said Act as a whole is reproduced:

> **29. Limitation of powers of guardian of property appointed or declared by the Court. —Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—**
>
> **(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or**

> **(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.**

[16] In the perspective fact and the contention raised by the learned counsel for the parties, let us examine the substantial questions, as framed.

> **Whether the findings of both the courts below in respect of the validity and legality of the lease deed is correct due to the fact that one of the executants of the lease deed at the time of execution was minor?**

[17] There cannot be any amount of doubt that as the plaintiff No.3 was minor, the lease deed would not have been for a term more than five years, with further restriction that the term of the lease deed would not have been laid beyond one year from the date on which the ward will cease to be a minor. There had been no guardian appointed in terms of the Guardian and Wards Act, 1890 for dealing with the property of the minor. The lease deed is further hit being the instrument transferring the right of possession without permission from the courts so far the share of the plaintiff No.3 was concerned. When an instrument of lease is void or nullity in the eye of law, no court of law can decide any right in favour of a person on the basis of the said lease deed. So far the question of limitation is concerned, for such void instrument no limitation would apply and from the date of knowledge as regards the status of the document the suit can be filed by the person whose right is affected by

execution of such deed within the prescribed limitation. That apart, when the lease deed is void, the possession of the defendant, the appellant herein, is liable to be declared as adverse to the plaintiffs. The apex court in **Prabin Jetha Lal Kamdar** *(supra)* has clearly laid down the law that when the possession has been taken by the appellants pursuant to void document, Article 65 of the Limitation Act will apply and the limitation to file the suit will be 12 years. Thus, the suit filed by the plaintiff-respondents is within the period of limitation. Therefore, it is held that as one of the executants of the said lease deed dated 14.01.2002 was minor at the time of execution and he was not represented by the guardian appointed by the court or the Collector in terms of Section 29 of the Guardian and Wards Act, 1890, the said lease deed is void. Even though the other two executants [the plaintiffs No.1 & 2] were major, but the said transfer by them is as well void as the statutory permission as required from the Collector was not taken before the execution of the said deed. Hence, the findings in this regard by the civil judge and the first appellate aourt required no interference.

Whether the suit itself is barred by law of limitation for the reason that minor did not challenge the said lease deed dated 14.01.2002 bearing No. 1-80 within the time of limitation for cancellation of the said lease deed?

[18] Even though the submission of Mr. Chakraborty, learned senior counsel appears very charming at the first blush but when

the discovery of fact becomes the matter of knowledge so far the cause of action is concerned, the date of knowledge becomes very material for counting the period of limitation. As already discussed, as the lease deed itself is considered void, the possession of the defendant becomes adverse and for that reason the limitation would be for the present suit is 12 years and it has transferred that the suit has been filed within 12 years even from the date when the plaintiff No.3 ceased to be minor. Thus, the suit cannot be held as barred by limitation.

Whether a suit can be said to have been proved when the sole witness of a plaintiff makes a statement in cross-examination that he was not aware of the contents of the plaint and statements made in his examination-in-chief by affidavit?

[19] Mr. Chakraborty, learned senior counsel has correctly raised the issue that in the cross-examination, the plaintiff No.3 [PW-1] has stated that he is unable to say about the contention written in the plaint 'against Sub-Registrar'. PW-1 has further stated that he is 'unable to say' that about the contents of his examination-in-chief. A keen reading without basing on the distinction made out by Mr. Datta, learned counsel appearing for the plaintiff-respondents would show that there are two parts in the statement of PW-1 as referred by Mr. Chakraborty, learned senior counsel. One part is in respect of the contention raised in the plaint against the Sub-Registrar. The second part is about his

examination-in-chief. The said statement is about to recall the content. It does carry the same meaning of what has been written there. Thus, it is not a case alike **Bishnupriya Das** *(supra)* where some third person was deposing in the court without having personal knowledge or the knowledge about the contents of the evidence filed by the affidavit. It is sometimes become humanly impossible to recall or to say what has been stated in certain documents, but it does not mean that the person who was making such statement was not aware of the purpose of the content. Apart that, Mr. Datta, learned counsel appearing for the plaintiff-respondents has correctly stated that the documents as noted above were admitted in the evidence following the process and those are the primary evidence. On their appreciation, the court can independently draw its inference having regard to the pleadings.

[20] Having observed thus, this court does not find any reason to disturb the concurrent finding as returned by the judgment dated 06.11.2019. Hence, the appeal stands dismissed.

The decree be drawn in terms of the above.

Send down the LCRs thereafter.

JUDGE

Sujay