SUPREME COURT OF INDIA

Baljinder Singh

Vs

Rattan Singh

Civil Appeal No.598 of 2005

(Dr. Arijit Pasayat and Tarun Chatterjee)

5/0862008

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. These appeals are directed against a common judgment of a learned Single Judge of the Punjab and Haryana High Court disposing of three Second Appeals filed under Section 100 of the Code of Civil Procedure, 1908 (in short `CPC'). All the three appeals and the cross objections filed related to certain acts of one Shivdev Singh. All the appeals and cross objections were dismissed except with certain modifications.

2. The background facts in a nutshell are as follows:

Shiv Dev Singh was allotted land measuring 811 kanal 14 marlas out of which he effected sale of 440 kanals earlier. The said sale is not disputed in the present proceedings. Shiv Dev Singh earlier

married Harbans Kaur and from the said wedlock one son i.e. plaintiff Lt. Col. Rattan Singh, and four daughters who are also plaintiffs along with Lt. Col. Rattan Singh in Civil Suit No.172 of 3.9.1994 were born. Smt. Harbans Kaur died in the year 1986. Shiv Dev Singh thereafter married Iqbal Kaur and from wedlock of Shiv Dev Singh with Iqbal Kaur, Jaspal Singh, Lakhwinder Kaur, Sukhjinder Kaur and Baljinder Singh and Balwinder Singh were born. The dispute in these appeals is in respect of the land measuring 337 kanals 10 marlas. Shiv Dev Singh executed a gift deed on 19.12.1962 in favour of Jaspal Singh, one of the sons of Shiv Dev Singh in respect of land measuring 10 kanals 5 marlas. The said gift deed was disputed by his another son Lt. Col. Rattan Singh and four daughters in Civil Suit No172 of 3.9.1994. Regular Second Appeal No.2550 of 2000 before the High Court arose out of the said suit.

The said suit was for declaration to the effect that they are co owners in joint possesson to the extent of = share, and that the property in the hands of Shiv Dev Singh was ancestral. In the written statement, the defendant denied that the land was ancestral. It was asserted that same was self acquired property of Shiv Dev Singh. It was pleaded that since 19.12.1962 when Shiv Dev Singh gifted the land in his favour, possession was delivered to him and ever since he is continuing in possession as owner of the suit land. Jaspal Singh, the donee, was minor at the time of execution of gift deed. The learned trial Court recorded a finding that the suit land was ancestral in the hands of Shiv Dev Singh and that alienation of ancestral property effected by father of a Hindu governed by Mitakshara law could be challenged in terms of Article 109 of the Limitation Act, 1963 (in short the `Limitation Act') within 12 years from the date when alienee takes possession of the property alienated. Since Jamabandi for the year 1973-74, (Exhibit D-8) Jamabandi for the year 1978-79 (Exhibit D-9), Jamabandi for the year 1983-84 (Exhibit D-10) record Jaspal Singh as a person in possession, the Court returned a finding that Jaspal Singh came into possession more than 12 years before the filing of the suit and thus, the suit is beyond the period of limitation.

Shiv Dev Singh also executed two separate sale deeds on 25.2.1980 and 27.3.1980 in respect of land measuring 73 kanals 11 marlas in favour of Pritam Kaur, widow of Thakur Singh, who happened to be sister of Iqbal Singh, wife of Shiv Dev Singh. After the death of Pritam Kaur on 1.4.1990, the same devolved upon defendant Baljinder Singh, minor son of Jaspal Singh i.e. grandson Shiv Dev Singh by virtue of will dated 30.1.1984. The said sale deeds were disputed by Lt.Col. Rattan Singh in Civil Suit No.171 of 6.9.1994. Regular Second Appeal No.2549 of 2000 before the High Court arose out of said suit.

In the said suit, the challenge is to the sale deeds dated 25.2.1980 and 27.3.1980 whereby Shiv Dev Singh has sold the land in favour of Pritam Kaur, his sister-in-law through his attorney Jaspal Singh. In the said suit it was alleged that the suit land was ancestral having been inherited from his forefathers and that the sale deeds were without legal necessity and thus null and void. It was alleged that the defendant, son of Jaspal Singh is in illegal and unauthorized possession of the suit land without any legal right for the last four years. The plaintiff alleged that the cause of action accrued in the year 1993 when the share of compensation amount in respect of the land acquired by the Improvement Trust was not allowed to be withdrawn by the plaintiff at the instance of Iqbal Kaur, second wife of Shiv Dev Singh. The defendant in written statement pleaded that the sales in

question are not in any way illegal, without consideration and/or void. Shiv Dev Singh was the sole owner of the suit land. The suit land remained in possession of Smt. Pritam Kaur as owner ever since the sale in her favour. It was alleged that cause of action, if any, arose to the plaintiff to challenge the alienation on the date of execution of the sale deeds. The learned trial Court dismissed the suit holding that the suit is barred by limitation governed by Article 109 of the Limitation Act as revenue record since Jamabandi 1983-84 (Exhibit D-5) records the name of Pritam Kaur in the column of ownership and cultivation. The said Jamabandi entry was recorded after mutation in favour of Pritam Kaur and was sanctioned in the year 1980.

Shiv Dev Singh also executed a registered will dated 1.8.1969 in favour of his wife Iqbal Kaur. At the time of death of Shiv Dev Singh on 9.6.1988 he was owner of land measuring 107 kanals 13 Marlas. Lt. Col. Rattan Singh and his four sisters filed suit for declaration to claim = share of the said land on the basis of natural succession and for joint possession in Civil Suit No.170 of 3.9.1994. Regular Second Appeal No.2548 of 2000 before the High Court arose out of the said suit.

The said suit was for declaration and in the alternative for joint possession filed, inter alia, on the ground that they are owners of = share of the land. It was averred that Shiv Dev Singh son of Sahib Singh was owner of 107 kanals 13 marlas of land which was inherited from his forefathers and it was ancestral. Shiv Dev Singh died on 9.6.1988 leaving behind plaintiffs and defendants Nos. 1 and 4 to 6 and Smt. Lakhwinder Kaur as his legal heirs. Lakhwinder Kaur died on 18.6.1993 leaving behind defendants Nos. 2 and 3 as her legal heirs. It was averred that defendant no.1 has claimed a will in her favour. The deceased Shiv Dev Singh has not executed any valid will in favour of defendant No.1 and the alleged will is false and fabricated. It was further alleged that the plaintiffs have succeeded to the estate of Shiv Dev Singh to the extent of = share and the defendants succeeded to the remaining = share of his estate. Defendant No.1 relied upon will dated 1.8.1969 and claimed that she has become the exclusive owner in possession of the suit land. In evidence, the defendants produced son of the scribe and one of the attesting witnesses of the will. The trial Court held that the said will is proved to have been executed and is not surrounded by suspicious circumstances. One of the reasons for coming to such view by the trial Court was that Lt. Col. Rattan Singh has got 8 acres of land earlier and thus, the plaintiffs cannot make any grievance.

3. However, in three separate appeals, the first Appellate Court reversed the findings recorded by the trial Court. The first Appellate Court held that Civil Suit No.171 and 172 of 1994 are within the period of limitation as cause of action arose to them when they were excluded from the Joint Hindu Family property in the year 1992. However, in respect of the will, the first Appellate Court held that it is surrounded by suspicious circumstances and consequently decreed the suit holding that the estate of Shiv Dev Singh will vest on the coparceners Rattan Singh, Jaspal Singh and Iqbal Kaur wife of Rattan Singh in equal shares and thus plaintiff Lt. Col. Rattan Singh would have 1/3rd share and the defendants Jaspal Singh and Iqbal Kaur would have 2/3rd share.

4. Aggrieved by the findings recorded by the learned First Appellate Court, Second Appeals were

filed.

5. The plaintiffs also filed cross objections in each of the appeals claiming that the judgment and decree of the first Appellate Court granting 1/3rd share to Rattan Singh is incorrect as a matter of fact plaintiff Rattan Singh has = share.

6. In Second Appeals the findings of the Courts below that the land is joint Hindu Family coparcenary property was not disputed. This fact was not disputed even before the learned trial Court. It was also not disputed that the sale deeds were executed without legal necessity and Shiv Dev Singh was not competent to gift the property. However, what was disputed is that the suit challenging alienation by way of gift in the year 1962 and sale deeds in the year 1980 by way of suit filed in the year 1994 were clearly beyond the period of limitation as prescribed under Article 109 of the Indian Limitation Act, 1963 (in short the `Limitation Act'). The first Appellate Court had recorded a finding that the plaintiffs acquired knowledge of alienation by way of gift and sale in the year 1992 after Lt. Col. Rattan Singh retired from army. Learned counsel for the appellants before the High Court disputed such finding as one based upon perversity. It was that it is impossible to believe that the gift deed executed in the year 1962 mutation of which was recorded in the year 1967 came to the notice of the plaintiffs only in the year 1992 since plaintiff Lt. Col. Rattan Singh was visiting the village every year during his annual leave. However, since the first Appellate Court has believed the statement of the plaintiff to record a finding that he acquired the knowledge of alienation of the year 1992, it would a finding of fact. High Court was of the view that even if a different view was possible to be taken it would not entitle the High Court to take a different view in Second Appeal. The finding recorded by the first Appellate Court was held to have been arrived at after discussing the relevant oral and documentary evidence. Therefore, the High Court preceded on the assumption that plaintiff Lt. Col. Rattan Singh came to know about the alienation in the year 1992.

7. The High Court formulated following substantial questions of law for consideration:

1. Whether the gift deed executed by Shiv Dev Singh in favour of son Jaspal Singh on 19.12.1962 is void or voidable?

2. Whether the sale deeds dated 25.2.1980 and 27.3.1980 executed by Shiv Dev Singh in favour of Pritam Kaur, his sister in law, is void or voidable?

3. Whether the suit for possession is within the period of limitation or such suit is barred by limitation in terms of Article 109 of the Limitation Act, 1963?

4. Whether Will dated 1.8.1969 executed by deceased Shiv Dev Singh in favour of his wife Iqbal Kaur is proved to be duly executed and is not surrounded by suspicious circumstances?

5. What will be the share of the plaintiffs in the suit property consequent to the decision on the above questions of law?

8. The genealogy as given below indicating the relationship between the parties was taken note of by the High Court.

Shivdev Singh

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Harbans Kaur - Wife Iqbal Kaur (wife) Pritam Kaur

(Sister of Iqbal)

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Rattan Gurbachan Manjit Kuldip Balwinder Jaspal Lakhwinder Sukhwinder Baljit

Singh Kaur Kaur Kaur Kaur Singh Kaur Kaur Kaur

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No.601 of 2005)

9. After analyzing the legal position and the applicable Hindu Law the High Court inter alia came to the following conclusions:

"In the judgment and decree passed by the learned first Appellate Court holding that Rattan Singh plaintiff will have 1/3rd share is not sustainable as the share of Shiv Dev Singh was excluded for the reason that Shiv Dev Singh during his life time sold 50-60 acres of land and, thus he ceased to have any share in the suit land. The said reasoning is not sustainable in law. The sale effected by Shiv Dev Singh during his life time will diminish the joint property of all the coparceners. Such sale is not disputed and, therefore, such sale is for the benefit of coparcenary body and, thus, it cannot be said that such sale was out of the share of Shiv Dev Singh alone. In terms of Explanation 1 to Section 6 of the Hindu Succession Act, 1956, the notional partition is to be presumed immediately before the death of Shiv Dev Singh. Therefore, Shiv Dev Singh will have equal share within Rattan Singh, Jaspal Singh and Iqbal Kaur.

Immediately before the death of Shiv Dev Singh, the coparceners were Shiv Dev Singh himself, Rattan Singh plaintiff, Iqbal Kaur (wife of Shiv Dev Singh), and Jaspal Singh. The married daughters from the first wife Harbans Kaur or from the second wife Iqbal Kaur were not coparceners and, thus not entitled to any share. Thus, Shiv Dev Singh, Rattan Singh, Jaspal Singh and Iqbal Kaur shall have 1/4th share each as coparcener. One fourth share of Shiv Dev Singh will fall equally to the share of one son and four daughters from his first wife Harbans Kaur one son and three daughters from the second wife Iqbal Kaur and Iqbal Kaur herself i.e. 1/4th share to each of the legal heirs of Shiv Dev Singh at the time of his death".

10. It was inter alia held that the deed of gift purported to have been executed by Shivdev Singh in favour of Jaspal Singh was surrounded by mysterious circumstances and was not a genuine document. So far as the sale deeds in favour of Pritam Kaur are concerned it was held that Article 65 of the Limitation Act was applicable. While the challenge in the first suit relating to the sale deeds was filed on 1.9.1994, the other suits challenging the gift purported to have been made on 19.12.1962 and the will purported to have been executed on 1.8.1969 were filed on 3.9.1994.

11. In the present appeals, challenge to the High Court's judgment was on various grounds. We shall deal with them separately.

12. So far as the appeal relating to the effect of the sale deed is concerned, it was submitted that the High Court had made out a new case about applicability of Article 65 of the Limitation Act, while the trial Court and the first Appellate Court had proceeded on the basis that Article 109 was applicable. Similarly, the basic issue was whether the sale deed was void or voidable. So far as the appeal relating to validity of the gift made by Shivdev Singh is concerned, according to learned counsel, the relevant issue is whether he made the gift and if the answer to the question is in the affirmative; to what extent could he had made the gift. Here again the question was whether the gift was void or voidable. So far as the appeal relating to the validity of the Will is concerned, it was submitted that the Courts below failed to notice that there was nothing suspicious about execution of the Will and the evidence on record clearly established that the Will had been executed out of free will and was not tainted in any way.

13. In response, learned counsel for the respondent submitted that the High Court has analysed the legal and the factual position in great detail and has rightly dismissed the appeals.

14. The first issue in the appeals relates to the validity of the sale deeds. Articles 65 and 109 operate in different fields. The trial Court categorically found that Article 65 was not applicable and Article 109 was applicable to the facts of the case. The first Appellate Court in essence accepted that Article 109 was applicable, which provided for a period of 12 years to set aside the alienation effected by a father from the date when the alienee was in possession of the property. Though the first Appellate court accepted that Article 109 was applicable, yet it was held that the spirit of Article 109 is that by taking over the possession of the land which is subject matter of the suit the alienee inter alia gives a notice to the persons governed by Mitakashara School of Law to agitate their rights, if any. Otherwise, their remedy would become barred by limitation. It was held that the starting point of limitation would be somewhere in the year 1992 when he came to know of the alienation made by the father. Consequently, the cause of action accrued in the year 1992 when he gained knowledge about the existence and execution of the sale deeds. Therefore, the period of 12 years as laid down in Article 109 was to be reckoned from the year 1992 and since the suit had been filed in 1994 it is within the period of limitation.

15. A bare perusal of the High Court's order it is seen that the High Court proceeded on the basis that the applicable Article is Article 65 and not Article 109. It is to be noted that there was no issue framed about applicability of Article 65. On the contrary, the issue framed related to the applicability of Article 109. There was no pleading by the plaintiff about applicability of Article 65. Even in the counter affidavit filed before this Court in the concerned Civil Appeal, the categorical stand is Article 110 is applicable. In para 8 of the counter affidavit filed in Civil Appeal No.598 of 2005 it has been stated that the suit of the respondent (plaintiff) is within time under Article 110 and counting from the date of knowledge, the suit filed is clearly within the period of limitation. The effect of Exhibit D-11 and the deed on which the appellants placed strong reliance has not been considered by the first Appellate Court and it reversed the findings of the trial Court. On the question of position relating to applicability of Article 109 there is practically no discussion by the learned counsel.

16. It is, therefore, crystal clear that the High Court proceeded to decide the issue relating to period of limitation by making out a new case for which there was no pleading and even no question of law was framed.

17. The question whether the sale deed was void or voidable has to be adjudicated in the light of principles set out by this Court in several decisions. We shall deal with this aspect in detail while considering the appeal relating to the gift.

18. In Thamma Venkata Subbamma (dead) by Lrs. V. Thamma Rattamma and Others (1987 (3) SCC 294) it was observed as follows:

"12. There is a long catena of decisions

holding that a gift by a coparcener of his

undivided interest in the coparcenary property

is void. It is not necessary to refer to all these

decisions Instead, we may refer to the

following statement of law in Mayne's Hindu

Law, eleventh Edn., Article 382:

"It is now equally well settled

in all the Provinces that a gift or

devise by a coparcener in a

Mitakshara family of his undivided

interest is wholly invalid....A

coparcener cannot make a gift of his

undivided interest in the family

property, movable or immovable,

either to a stranger or to a relative

except for purposes warranted by

special texts

13. We may also refer to a passage from

Mulla's Hindu Law, fifteenth edn., Article 258,

which is as follows:

Gift of undivided interest. - (1) According to the Mitakshara law as applied in all the States, no coparcener can dispose of his undivided interest in coparcenary property by gift. Such transaction being void altogether there is no estoppel or other kind of personal bar which precludes the donor from asserting his right to recover the transferred property. He may, however, make a gift of his interest with the consent of the other coparceners.

14. It is submitted by Mr. P. P. Rao, learned counsel appearing on behalf of the respondents, that no reason has been given in any of the above decisions why a coparcener is not entitled to alienate his undivided interest in the coparcenary property by way of gift. The reason is, however, obvious. It has been already stated that an individual member of the joint Hindu family has no definite share in the coparcenary property. By an alienation of his undivided interest in the coparcenary property, a coparcener cannot deprive the other coparceners of their right to the property. The object of this strict rule against alienation by way of gift is to maintain the jointness of ownership and possession of the coparcenary property. It is true that there is no specific textual authority prohibiting an alienation by gift and the law in this regard has developed gradually, but that is for the purpose of preventing a joint Hindu family from being disintegrated.

17. It is, however, a settled law that a coparcenary can make a gift of his undivided interest in the coparcenary property to another coparcener or to a stranger with the prior consent of all other coparceners. Such a gift would be quite legal and valid".

19. We may also refer to a passage from Mulla's Hindu Law, Seventeenth Edn., (Article 258), which is as follows:

"Gift of undivided interest- (1)According to Mitakshara law as applied in all the States, no coparcener can dispose of his undivided interest in coparenary property by gift. Such transaction being void altogether there is no estoppel or other kind of personal bar which precludes the donor from asserting his right to recover the transferred property. He may, however, make a gift of his interest with the consent of the other coparcener".

20. In Mayne's Hindu Law, XIV Edn. It has been noted as follows:

"Gifts of affection- The father's power to make gifts through affection within reasonable limits of ancestral movable property has been fully recognized. In Ramalinga v Narayana (1922 (49) IA 168) the Privy Council held that "the father has undoubtedly the power under th Hindu Law of making within reasonable limits, gifts of movable property to a daughter".

By Will- But such gifts through affection of joint family property when they are by will, are invalid, because the right of the coparceners vests by survivorship at the moment of the testator's death, and there is accordingly nothing upon which the will can operate. In Subbarami v. Ramamma ((1920 (43) Mad 824) the Madras High Court held that a will made by a Hindu father bequeathing certain family properties for the maintenance of his wife was invalid as against his infant son through it would have been a proper provision if made by him, during his lifetime. This may be in a sense right. There is however no compelling logic in not regarding wills "as gifts to take effect upon death at least as to the property which they can transfer and the persons to whom it can be transferred". Convenience would seem rather to point to the extension to the sphere of Hindu Law of the general principle of jurisprudence that what a man can give by act inter vivos, he can give by will".

21. In view of the decision in Venkata Subbamma's case (supra), the decision of the High Court so far the gift is concerned, does not warrant any interference.

22. So far as the question whether the gift is void or voidable much depends on the factual scenario. The distinction between void or voidable is summarized as follows:

"De Smith, Woolf and Jowell in their treatise Judicial Review of Administrative Action, 5th, para 5-044, have summarized the concept of void and voidable as follows:

"Behind the simple dichotomy of void and voidable acts (invalid and valid until declared to be invalid) lurk terminological and conceptual problems of excruciating complexity. The problems arose from the premise that if an act, order or decision is ultra vires in the sense of outside jurisdiction, it was said to be invalid, or null and void. If it is intra vires it was, of course, valid. If it is flawed by an error perpetrated within the area of authority or jurisdiction, it was usually said to be voidable; that is, valid till set aside on appeal or in the past quashed by certiorari for error of law on the face of the record."

Clive Lewis in his work Judicial Remedies in Public Law at p.131 has explained the expressions "void and voidable" as follows:

"A challenge to the validity of an act may be by direct action or by way of collateral or indirect challenge. A direct action is one where the principal purpose of the action is to establish the invalidity. This will usually be by way of an application for judicial review or by use of any statutory mechanism for appeal or review. Collateral challenges arise when the invalidity is raised in the course of some other proceedings, the purpose of which is not to establish invalidity but where questions of validity become relevant."

23. In Sunil Kumar and Anr. v. Ram Parkash and Ors. (AIR 1988 SC 576) it was noted in paras 23 and 24 as follows:

23. The managing member or karta has not only the power to manage but also power to alienate joint family property. The alienation may be either for family necessity or for the benefit of the estate. Such alienation would bind the interests of all the undivided members of the family whether they are adults or minors. The oft quoted decision in this aspect, is that of the Privy Council in Hanuman Parshad v. Mt. Babooee, [1856] 6 M.I.A. 393. There it was observed at p. 423: (1) "The power of the manager for an infant heir to charge an estate not his own is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in case of need, or for the benefit of the estate." This case was that of a mother, managing as guardian for an infant heir. A father who happens to be the manager of an undivided Hindu family certainly has greater powers to which I will refer a little later. Any other manager however, is not having anything less than those stated in the said case. Therefore, it has been repeatedly held that the principles laid down in that case apply equally to a father or. other coparcener who manages the joint family estate.

Remedies against alienations:

24. Although the power of disposition of joint family property has been conceded to the manager of joint Hindu family for the reasons aforesaid, the law raises no presumption as to the validity of his transactions. His acts could be questioned in the Court of law. The other members of the family have a right to have the transaction declared void, if not justified. When alienation is challenged as being unjustified or illegal it would be for the alienee to prove that there was legal necessity in fact or that he made proper and bona fide enquiry as to the existence of such necessity. It would be for the alienee to prove that he did all that was reasonable to satisfy himself as to the existence of such necessity. If the alienation is found to be unjustified, then it would be declared void. Such alienations would be void except to the extent of manager's share in Madras, Bombay and Central Provinces. The purchaser could get only the manager's share. But in other provinces, the purchaser would not get even that much. The entire alienation would be void. [Mayne's Hindu Law 11th ed. para 396].

24. In Sadasivam v. K. Doraisamy (AIR 1996 SC 1724) it was found that when the father has executed sale deed in favour of a near relative and the intention to repay debt or legal necessity has not been proved as a sham transaction.

25. In Words and Phrases by Justice R.P. Sethi the expression `void' and `'voidable' read as under:

"Void- Black's Law Dictionary gives the meaning of the word "void" as having different nuances in different connotations. One of them is of course "null or having no legal force or binding effect". And the other is "unable in law, to support the purpose for which it was intended". After referring to the nuances between void and voidable the lexicographer pointed out the following: "The word `void' in its strictest sense, means that which has no force and effect, is without legal efficacy, is incapable of being enforced by law, or has no legal or binding force, but frequently the word is used and construed as having the more liberal meaning of `voidable'. The word `void' is used in statute in the sense of utterly void so as to be incapable of ratification, and also in the sense of voidable and resort must be had to the rules of construction in many cases to determine in which sense the legislature intended to use it. An act or contract neither wrong in itself nor against public policy, which has been declared void by statute for the protection or benefit of a certain party, or class of parties, is voidable only". (Pankan Mehra and Anr. v. State of Maharashtra and Ors. (2000 (2) SCC 756).

Per Fazal Ali, J- The meaning of the word "void" is stated in Black's Law Dictionary (3rd Edn.) to be as follows:

"Null and void; ineffectual; nugatory; having no legal force or binding effect; unable in law to support the purpose for which it was intended; nugatory and ineffectual so that nothing can cure it; not valid". Keshavan Madhava Menon v. State of Bombay (1951 SCR 228).

The expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. Judicial Review of Administration Action, 5th Edn., para 5-044 (See also Judicial Remedies in Public Law at page 131; Dhurandhar Prasad Singh v. Jai Prakash University and Ors. (2001 (6) SCC 534)

The other type of void act, e.g. may be transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate preceding the transaction becomes void from the very beginning. Another type of void act may be one, which is not a nullity, but for avoiding the same, a declaration has to be made. (See Government of Orissa v Ashok Transport Agency and Ors (2002 (9) SCC 28)

The meaning to be given to the word "void" in Article 13 of the Constitution is no longer res integra, for the matter stands concluded by the majority decision of the Court in Keshavan Madhava Menon v. The State of Bombay (1951) SCR 228. We have to apply the ratio decidendi in that case to the facts of the present case. The impugned Act was a existing law at the time when the Constitution came into force. That existing law imposed on the exercise of the right guaranteed in the citizens of the India by Article 19(1)(g) restrictions which could not be justified as reasonable under clause (6) as it then stood and consequently under Article 13 (1) That existing Law became void "to the extent of such inconsistency". As explained in Keshavan Madhava Menon's case (supra) the Law became void in toto or for all purposes or for all times or for all persons but only "to the extent of such inconsistency", that is to say, to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights on the citizens. It did not become void independently of the existence of the rights guaranteed by Part III. (See Bhikaji Narain Dhakras and Ors. v. The State of Madhya Pradesh and Anr. (1955 (2) SCR 589).

The word "void" has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. In Halsbury's Laws of England, 4th Edn. (Re- issue) Vol. 1(1) in para 26, p.31 it is stated thus: "If an act of decision, or an order or other instrument is invalid, it should, in principle, be null and void for all purposes; and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a court of competent jurisdiction. Until its validity is challenged, its legality is preserved". (See State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and ors. (1996 (1) SCC 435).

"Voidable act" is that which a good act is unless avoided, e.g. if a suit is filed for a declaration that a document is fraudulent, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleges otherwise is oblige to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable. Government of Orissa v. Ashok Transport Agency and Ors. (2002 (9) SCC 28)".

26. So far as the appeal relating to Will is concerned, it is to be noted that the Courts below including the High Court have come to the conclusion that its execution is surrounded by suspicious circumstances.

27. The defendants have relied upon will dated 1.8.1969 executed by Shiv Dev Singh in favour of his wife Iqbal Kaur. Will Ex.D-1 is sought to be proved by DW-1 Sham Lal son of Jitender Nath scribe of the Will and DW-2 Surinder Nath Vohra, the attesting witness DW-1 Sham Lal has identified the handwriting of his father and deposed that his father died in the year 1993. DW-2 Surinder Nath Vohra has deposed that the Will was executed by Shiv Dev Singh at Kharar in his presence. At that time, Shiv Dev Singh was in sound disposing mind. It has come on record that Dharam Singh, husband of Lakhwinder Kaur daughter of Shiv Dev Singh was residing at Chandigarh. Shiv Dev Singh used to stay with Dharam Singh when he used to visit Chandigarh in connection with litigation. However, the Will was not executed and registered at Chandigarh but at Kharar. Surinder Nath Vohra is not known to the testator but attested the Will at the asking of Dharam Singh. Still further, in Will Exhibit D-1 there is no reference about Rattan Singh who is none else but real son of the testator. The first Appellate Court found that the reasoning given by the learned trial Court that Shiv Dev Singh gave 8 acres of land to Rattan Singh and, therefore, it was not necessary for him to assign any reason was found to be incorrect because the said land measuring 8 acres came to him from his grand father as he was born after 4 daughters. The first Appellate Court found that even if Shiv Dev Singh had been given 8 acres, there is no reason as to why such mention was not made in the Will. Consequently, the first Appellate Court returned a finding that the execution of the Will Exhibit D-1 is not proved and its execution is surrounded by suspicious circumstances.

28. The finding recorded about the genuineness of the Will is essentially factual. The Courts below have analysed the factual position in great detail. Nothing infirm in the conclusions could be shown by learned counsel for the appellant.

29. In view of the aforesaid circumstances it would be proper for the High Court to re-hear the appeal relating to applicability of Article 129 of the Limitation Act and to decide the matter taking note of the factual position.

30. The other appeals are dismissed. The appeals are accordingly disposed of.