

**DECREE IN ORIGINAL SUIT
IN THE COURT OF PRL. SENIOR CIVIL JUDGE
MEDCHAL-MALKAJGIRI DISTRICT, AT MEDCHAL**

Present : **Sri M. ARJUN**
Prl. Senior Civil Judge,
Medchal-Malkajgiri, at Medchal.

Dated this the 20th day of January, 2025

O.S.No.535 OF 2015

Between :-

B. Chakradhari S/o B. Seetharama Sarma
Aged 40 years, Occ : Private Service,
R/o. Plot No.S.16, R.K. Housing Society,
ECIL Post, Hyderabad - 500 062

... Plaintiff

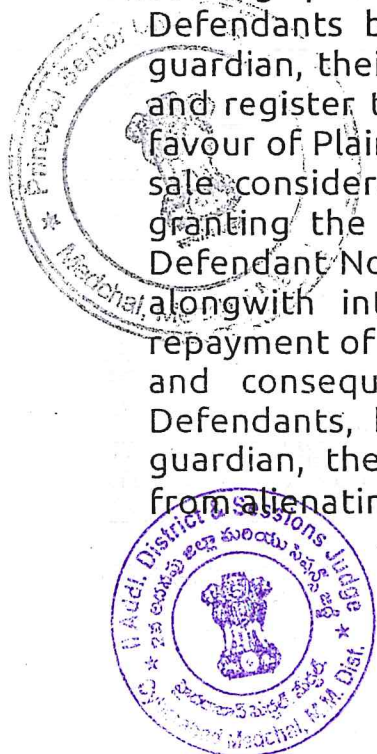
AND

1. Master C. Shashir S/o C. Rajesh,
Aged 14 years, Occ : Student.
2. Baby C. Vithica D/o C. Rajesh
Aged 17 years, Occ: Student
3. Smt. Deepthi Rajesh D/o Radhaswamy,
Aged 42 years.

The defendant No.1 and 2 being the minors
represented by their mother and natural guardian
the defendant No.3 and all are R/o House No.74/6,
East Marredpally, Secunderabad – 500 006.

... Defendants

Claim:- This is a suit filed under section 26 R/w order VII rules 1 of CPC seeking specific performance in favour of the Plaintiff and against the Defendants being Minors, represented by their mother and natural guardian, their heirs, successors in interest, Attorneys, etc., to execute and register the sale deed in respect of the suit schedule property in favour of Plaintiff or in favour of his nominees, by receiving the balance sale consideration of Rs.3 lakhs or in the event of impossibility of granting the relief of Specific Performance, the Decree against the Defendant No.3 be granted directing her to pay the sum of Rs.12 Lakhs alongwith interest @ 18% P.A. from 12-11-2010 till the date of repayment of entire money as alternative relief in favour of the Plaintiff and consequential relief of Perpetual Injunction restraining the Defendants, being minors, represented by their mother and natural guardian, their heirs, successors in interest. Attorneys, agents, etc., from alienating the suit schedule property and costs of the suit.



Valuation of the suit :- The suit is valid at Rs. 15,00,000/- being the sale consideration as shown in the agreement of sale and a court fee of Rs. 17,426/- is paid u/sec. 39 of TSCF and SV Act .

Cause of Action :- The cause of action arose on 12/11/2010 when the Plaintiff had advanced a sum of Rs.12 lakhs to the Defendants' mother as hand loan, on 23/01/2015 when the Defendants' mother entered into Agreement of sale with the Plaintiffs to sell the suit schedule property, on 04/07/2015 when the Plaintiffs got issued legal notice to the Defendants mother calling upon her to execute and register the sale deed in respect of the suit schedule property in favour of the Plaintiff, and on 23-07-2015 when the Defendants mother got issued reply notice to the Plaintiff asserting false and baseless grounds.

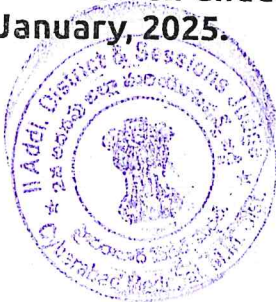
Plaint presented on : 25-08-2015

Plaint numbered on : 25-08-2015

This suit is coming on this day before me for final hearing in the presence of **Sri M. Sreedhara Murthy** , Advocate for the Plaintiff and **Sri Kunapareddy Preetham**, Advocate for the Defendant No.1 and 2 and **Sri Duvva Pavan Kumar**, Advocate for defendant No.3 and the matter having stood over for consideration till date, this Court doth order decree as follows:

- 1) The suit of the plaintiff be and the same is hereby dismissed
- 2) In the circumstances of the case, parties have to bear their own costs.

Given under my hand and seal of this court on this the 20th day of January, 2025.




Prl. Senior Civil Judge,
Medchal, Medchal-Malkajgiri District.

Prl. Senior Civil Judge
Medchal-Malkajgiri District, at Medchal

MEMO OF COSTS

	<u>For Plaintiffs :</u>	<u>For Defendants</u>
	Rs. Ps.	Rs. Ps.
Stamp on Complaint	17,426 -00	-
Stamp on Vakalat	2 -00	2- 00
Stamp on Process	210 -00	-
TOTAL:	17,638 00	2- 00

 Prl. Senior Civil Judge,
Medchal, Medchal-Malkajgiri District.

Prl. Senior Civil Judge
Medchal-Malkajgiri District, Medchal

SUIT SCHEDULE PROPERTY

All that Plot Nos 17 and 18 in Deepthi Villas each admeasuring 257 sq yards or 214.85 Sq meters in Sy.No.32/Part, situated in Muraharipalli, Yadaram village and Gram Panchayat, Medchal Mandal, RR District bounded by :

North : Plot No.16
South : Plot No.19
East : 30' Wide Road
West : Plot Nos. 3 and 4

 Prl. Senior Civil Judge,
Medchal, Medchal-Malkajgiri District.

Prl. Senior Civil Judge
Medchal-Malkajgiri District, Medchal



Court Of The II Addl District & Sessions Judge
Medchal, M.M. Dist.

C.A. No. 509 of 2025
Application Filed on 20/1/25
Charges Called on 22/2/25
Charge Deposited on 4/3/25
Receipt No. 966 Rs. 376/-
Copy Made Ready on 24/3/25
Copy Delivered on 4/3/25

Superintendent
II ADJ Court
Medchal, M.M. Dist.

READY BY:
COMPARED BY:

Certified To be Photo True Copy

Superintendent
II ADJ Court
MEDCHAL, M.M. DIST.



**IN THE COURT OF THE PRL SENIOR CIVIL JUDGE,
MEDCHAL MALKAJGIRI DISTRICT, AT MEDCHAL**

PRESENT : SRI. M.ARJUN,
PRL. SENIOR CIVIL JUDGE
AT MEDCHAL

Dated this the 20th day of January, 2025

O.S.No.535 OF 2015

Between :-

B. Chakradhari S/o B. Seetharama Sarma
Aged 40 years, Occ : Private Service,
R/o. Plot No.S.16, R.K. Housing Society,
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... Plaintiff

AND

1. Master C. Shashir S/o C. Rajesh,
Aged 14 years, Occ : Student.
2. Baby C. Vithica D/o C. Rajesh
Aged 17 years, Occ: Student
3. Smt. Deepthi Rajesh D/o Radhaswamy,
Aged 42 years.

The defendant No.1 and 2 being the minors
represented by their mother and natural guardian
the defendant No.3 and all are R/o House No.74/6,
East Marredpally, Secunderabad – 500 006.

... Defendants

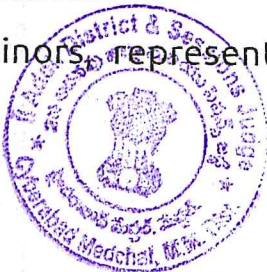
This suit is coming on this day before me for final hearing in
the presence of **Sri M. Sreedhara Murthy**, Advocate for the Plaintiff and
Sri Kunapareddy Preetham, Advocate for the Defendant No.1 and 2
and **Sri Duvva Pavan Kumar**, Advocate for defendant No.3 and the
matter having been heard and stood over for consideration till today,
this Court made the following :-

JUDGMENT

This suit is filed by the plaintiff seeking specific
performance in favour of the Plaintiff and against the Defendants
being Minors, represented by their mother and natural guardian,

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their heirs, successors in interest, Attorneys, etc., to execute and register the sale deed in respect of the suit schedule property in favour of Plaintiff or in favour of his nominees, by receiving the balance sale consideration of Rs.3 lakhs or in the event of impossibility of granting the relief of Specific Performance, the Decree against the Defendant No.3 be granted directing her to pay the sum of Rs.12 Lakhs alongwith interest @ 18% P.A. from 12-11-2010 till the date of repayment of entire money as alternative relief in favour of the Plaintiff and consequential relief of Perpetual Injunction restraining the Defendants, being minors, represented by their mother and natural guardian, their heirs, successors in interest. Attorneys, agents, etc., from alienating the suit schedule property.

Brief averments of the plaintiff as per his plaint are as follows :-

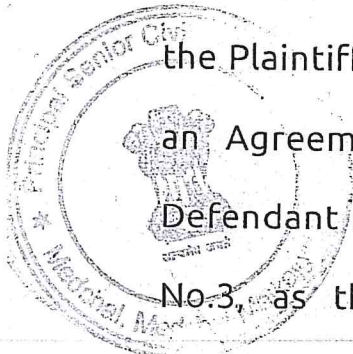
2. The defendant No.1 and 2 herein are the absolute owners and possessors of Plot Nos 17 and 18 in Deepthi Villas each admeasuring 257 sq yards or 214.85 Sq meters in Sy.No.32/Part, situated in Muraharipalli, Yadaram village and Gram Panchayat, Medchal Mandal, RR District herein after referred as 'suit schedule property'. The mother of the Defendant Nos. 1 and 2 namely Smt C. Deepthi, the Defendant No.3 herein, to meet the financial



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requirements of the family including the welfare of the Defendant Nos.1 and 2, had approached the Plaintiff and requested to arrange a sum of Rs. 12 lakhs as hand loan. As the father of the Defendant Nos. 1 and 2 and the husband of the Defendant No.3 was known to the Plaintiff, the Plaintiff had advanced the said sum of Rs.12 lakhs to the mother of the Defendant Nos. 1 and 2 through the cheque No.690492 drawn in ING Vysya Bank Ltd., Malkajgiri Branch for Rs.12 lakhs on 12/11/2010. The said cheque was encashed by the mother of the Defendant Nos. 1 and 2. However, in spite of assuring to repay the said money, the Defendants No.3 failed to repay the same in spite of many oral requests and demands made by the Plaintiff.

3. It is further submitted that the mother of the Defendant Nos. 1 and 2 had offered the suit schedule property in lieu of her repaying the loan amount by fixing the sale consideration at Rs. 15 lakhs for selling the same. Without there being any other alternative, the Plaintiff was constrained to accept the said offer and accordingly an Agreement of Sale dated 24/01/2015 was executed by the Defendant Nos. 1 and 2 represented by their mother, the Defendant No.3, as the Defendants being the minors. Further, to instill confidence in the mind of the Plaintiff the Original Gift Deed Nos.




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78980 of 2005 and 78990 of 2005 both dated 17-06-2005 in favour of the Defendant Nos. 1 and 2 were handed over by the Defendant No.3 to the Plaintiff.

4. It is further averred that as per the Clause No.8 of the Agreement of Sale, the mother was under the obligation to obtain permission from the District Judge for selling the property. However, the Plaintiff has been ready and willing to pay the balance sale consideration of Rs.3 lakhs within the stipulated period of 100 days as per the Agreement of sale and even now the Plaintiff is ready and willing to perform his part of contract by paying the balance sale consideration and get the sale deed registered in his favour but the Defendant Nos. 1 and 2 represented by the Defendant No.3 has been dodging the matter under one pretext or the other. As such Plaintiff was constrained to issue legal notice on 04/07/2015 calling upon the Defendants to execute and register the sale deed in respect of the suit schedule property by receiving the balance sale consideration. The said Notice was replied by the Defendants on 23.7.2015 asserting false and baseless grounds. Thus the defendant No.3 having availed hand loan of Rs. 12 lakhs and entered into agreement of sale with the plaintiff, but failed to execute register sale deed nor repaid the hand



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loan amount and trying to alienate the same to third parties. Hence the suit.

5. The defendant No.1 and 2 being minors represented by their mother and natural guardian defendant No.3 filed written statement denying the plaint averments and the same is not maintainable under the law, as the schedule property belongs to the Minor's property.

6. It is admitted that the defendant 1 and 2 are the absolute owners and possessors of the schedule property. Infact, the plaintiff and father of the Defendants 1 & 2, are the close friends, and father of the Defendants had right against the mother of the Defendants, and intentionally got the false transaction before the Defendants mother, the alleged cheque transaction was only to compress the mother of these Defendants, to overcome her, but their plan was not fruitfully materialized, and finally led to the divorce between these defendant's parents. Thus, the plaintiff intentionally and to torture their defendants mother, the plaintiff and father of these Defendants 1 and 2 filed this case against minors. The sale transaction is denied preliminary, the taking of the loan and other

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allegation are false, giving original deeds by the defendant No.3, are manipulated plan against mother of the Defendants 1 and 2. Clause No.8 of the Agreement of sale as well as the other things were not concerned to these Defendants. It is well known fact that to deal with MINOR property, prior permission is required to enter into Agreement of sale, and other remaining . It is submitted that since the suit itself is malafide and is filed to gain wrongfully and to illegally squat over the property, no cause of action arose to file the present suit. It is submitted that the plaintiff is not entitled for any relief as prayed for, it is therefore humbly prayed to dismiss the suit with exemplary costs.

7. It is submitted that, the present suit has been filed by the Plaintiff against Defendants in the year 2015. At the time of filing of the suit, the Defendant Nos. 1 & 2 were minors, they were respectively aged 14 years and 17 years. In view of the same the Defendant No. 1 and 2 were represented by their mother i.e. Defendant No. 3. As on the date of filing of the present written statement, the Defendant No. 1 is studying in United Kingdom and the Defendant No. 2, having completed her education is working in United Kingdom.

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8. The Defendant No. 1 & 2 were not aware of the present case and the same was being handled by their mother, Defendant No. 3 at all times. It is further submitted that the Defendant No. 3 obtained no-objection from the previous counsel on record to engage a new counsel and as the Defendant No. 1 and 2 have attained majority, in January 2022, they were approached by the new counsel engaged by the Defendant No. 3 for obtaining their signatures on the Vakalatnama. At this juncture, the Defendant No. 1 and 2 learnt about the existence of the present suit and the false and fabricated claim of the plaintiff. As such, the Defendant No. 1 and 2 seek leave of the Court to file written statement. It is averred that Defendant No. 1 and 2 deny all the allegations made by the Plaintiff and the allegations of the Plaintiff which are not specifically denied or admitted be deemed to be have been denied. The suit filed by the Plaintiff is nothing but abuse of the process of law. The facts relevant to the Scheduled Property have been concealed to falsely create a fictitious cause of action and as such the suit is not maintainable either in facts or in law and is liable to be dismissed with costs.

9. It is submitted that the maternal grandfather of the Defendants 1 & 2, one Mr. Sreekakulam Radhaswamy, had transferred

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the Suit Schedule Property to the Defendants 1 & 2 respectively by way of registered gift deeds, bearing Nos.7890 and 7898 of 2005, dated 17.06.2005, by virtue of the above gift the defendant No.1 and 2 become absolute owners of the Suit Schedule Property. It is averred that defendant NO.3 never availed hand loan of Rs. 12 lakhs and that the said amount was paid by way of a cheque, bearing no.690492, dated 12.11.2010 and that the Suit Schedule Property was allegedly proposed to be sold by the Defendant No. 3 to the Plaintiff in lieu of repaying of the said loan.

10. The Plaintiff has made bald and unsubstantiated claims of having paid a sum of Rs. 12 lakhs as a hand loan through cheque, dated 12.11.2010, but has miserably failed to supply any proof evidencing receipt of the above amount by the Defendant No.3. The Plaintiff has conveniently chosen to not mention the date on which the alleged cheque was encashed by the Defendant No. 3. In fact, the mother of the Defendant No. 1 and 2 has always been financially secured and was never in need of any money, she has been receiving sufficient rental income from the year 2005 and she had her own source of income. Defendant No.3 has always provided the Defendant No. 1 and 2 with good education, good lifestyle and

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upbringing, In fact, the Defendant No.1 and 2 have studied in United Kingdom and the said education was funded solely by the Defendant No. 3. Therefore, it is a blatant lie that the Defendant No. 3 has taken any loan from the Plaintiff. That the Plaintiff has failed to provide any explanation as to whether he had undertaken any steps since 2010 to 2015 to recover the monies alleged lent to the Defendant No. 3 and in order to create cause of action plaintiff created Exhibit A1 on account of the fact that the limitation period in respect of recovery of the same had expired in 2013 itself. This fact is even more evident from the fact that the alleged Agreement of Sale is not even a registered document as the for the purpose of registration, the presence of Defendants 1 to 3 would be required.

11. The Defendants No.1 and 2 further state that the relationship between their parents i.e. Defendant No. 3 and their father had been on bad terms and that they had bent separated since 2013 and it appears that the father of Defendant No. 1 and 2, with an ulterior and fraudulent motive fabricate Exhibit A1 along with the Plaintiff and by forging Defendant No. 3's signature on the same.

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12. It is a settled legal position that, sale of an immovable property belonging to a minor can be effected if it is being carried out for the welfare of the minors and upon obtaining the prior permission of the Hon'ble Court before effecting such a sale as per Section 8 of the Hindu Minority & Guardianship Act, 1956, which lays down the powers of a natural guardian. As per section 8(2) of the said Act any disposal of a minor's property by a natural guardian shall only be affected with the prior permission of the court. In case a transfer is effected such transfer, as per Section 8(3), is voidable at the option of the minor. The above requirements have also been confirmed by the Hon'ble Supreme Court in the case of Saroj v. Sunder Singh & Ors. 2013 (15) SCC 727.

13. Thus the alleged Agreement of Sale is fabricated and is not at all a genuine document, it is submitted that it is the admission on part of the Plaintiff that a prior permission for the sale of the Suit Schedule Property was required, however since no prior permission was obtained, the alleged transfer of the Suit Schedule Property is voidable, as such, Exhibit A1 is a false and fabricated document and is not at all a genuine document and the plaintiff has approached the court with unclean hands and concealed several material facts and is

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not entitled to any relief. It is submitted that as per section 8 of the Hindu Minority and Guardianship Act, 1956 Ex.A1 is void and invalid in the eyes of law on account of the same being a fabricated and fraudulent document and the plaintiff forging the signature of the defendant No.3 on the same and the same to voidable. Even assuming that Ex.A1 is valid, the defendant No.1 and 2 have not consented to the sale of the schedule property to the plaintiff. Hence prayed to dismiss the suit.

14. Basing on the above pleadings, the following issues were settled for trial :

1. *Whether the defendant being the minors represented by their mother and natural guardian can be directed to execute and register the sale deed in respect of the suit schedule property in favour of the plaintiff by receiving the balance sale consideration of Rs. 3,00,000/-?*
2. *Whether the defendant can be directed to pay a sum of Rs. 12,00,000/- along with interest @ 18% to the plaintiff from 12.11.2010 till date of repayment of entire amounts as alternative relief?*
3. *Whether the plaintiff is in physical possession of the property as on the date of filing of the suit?*
4. *Whether the plaintiff is entitled for perpetual injunction as prayed for?*
5. *Whether the suit is filed by the plaintiff only to squat over the property?*



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15. During the course of trial the plaintiff examined himself as PW-1 and got examined one M. Sampath as Pw-2 and got marked Ex.A1 to A6. On behalf of the defendants defendant No.3 is examined as DW-1 and her mother is examined as DW-2 and got marked Ex.B1 and B2 on their behalf.

16. Heard counsel for the Plaintiff as well as defendants. Perused the record, so also the written Arguments filed on behalf of parties and the citations.

17. For the sake of convenience and better appreciation this court is inclined to answer Issue No.1 to 5 together.

ISSUE NO.1 to 5:

18. The factual matrix of the case are that Defendant No.1 and 2 who are the minors represented by guardian Defendant no.3 are absolute owners and possessors of the suit schedule property. Mother of defendant no.1 and 2 who is arrayed as defendant No.3 namely Smt. Deepthi approached the plaintiff and requested to arrange a sum of Rs. 12,00,000/- as hand loan to meet the financial requirements of the family including welfare of defendant No.1 and 3, as the husband of defendant no.3 and father of defendant no.1

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and 2 is known to the plaintiff, the plaintiff has advanced a sum of Rs.12,00,000/- to the mother of defendant no.1 and 2 through a cheque bearing No. 690492 drawn in ING vysya Bank Limited Malkajgiri Branch for Rs. 12 lakhs on 12.11.2010. The said cheque was encashed by Defendant no.3 on behalf of defendant no.1 and 2. According to plaintiff defendant No.3 failed to repay the same inspite of many oral requests and demands made by the plaintiff, although she assured to repay the said amount. Subsequently, in lieu of repayment of the said hand loan the defendant no.3 who is mother and natural guardian of defendant no.1 and 2 offered to sell the suit schedule property by fixing the sale consideration @ Rs.15,00,000/- by selling the same. Plaintiff, having left with no alternative accepted the proposal of defendant No.3 and agreement of sale was executed on 24.1.2015 under Ex.A1. The said agreement of sale is executed by defendant No.3 being a natural defacto guardian of defendant No.1 and 2 for the reason that defendant No.1 and 2 are minors and incapable of entering in to contract. To install the confidence in the mind of the plaintiff, defendant No.3 handed over original gift settlement deeds under Ex.A4 and A5 to the plaintiff. Inspite of lot of persuasion defendant No.3 failed to execute the register sale deed on behalf of D1 and D2 has been

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dodging the matter on one pretext or the other pretext; although the plaintiff is ready and willing to perform his part of the obligation by paying the balance sale consideration of Rs, 3,00,000/- and refused to register the regular sale deed in favour of the plaintiff. Although, the defendant No.3 is under obligation to register the sale deed on behalf of defendant No.1 and 2 in favour of the plaintiff.

19. Owing to the refusal to register the sale deed and willful violation of the contract, the plaintiff caused a legal notice under Ex.A2 to the defendants calling upon them to execute and register the sale deed in respect of the suit schedule property by receiving the balance sale consideration. In pursuance of the said notice the defendants addressed a reply notice under Ex.A3 asserting that the contents of Ex.A2 are false and baseless grounds. Therefore, the plaintiff contend that the intention of the defendants are very much clear on the face of it. According to the version of plaintiff the hand loan of Rs. 12 lakhs was availed by defendant No.3 for the welfare and interest of minor children i.e. defendant no.1 and 2 and for family necessities. It is also further asserted that defendant No.3 who is mother and natural guardian of defendant no.1 and 2 who is in deep financial crises and she has been trying to alienate the suit

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schedule property so as to deprive the right of the plaintiff over the suit schedule property.

In support of his case learned counsel for plaintiff relied upon the following judgments

1) The Judgment of Hon'ble Supreme court reported in AIR 2010 SC 3025 between Laxman Tatyaba Kankate & Anr. v. Smt. Taramati Harishchandra Dhatrak. The present judgment is not applicable to the facts on the present case.

2) The Judgment of Hon'ble Supreme court reported in AIR 1971 SC 315 between Jijabai Vithalrao Gajre vs. Pathankhan and others. Wherein the Hon'ble Supreme court of India observed in para No.11 and 12 as under:

We are not impressed with this contention of Mr. Sanghi. Mr. Sanghi referred us to certain decisions where the powers of a guardian of a minor have been considered. But in the view that we take that the contention of Mr. Sanghi in this regard is not acceptable to us, no useful purpose will be served by reference to those decisions. We have already referred to the fact that the father and mother of the appellant had fallen out and that the mother was living separately for over 20 years. It was the mother who was actually managing the affairs of her minor daughter, 'who was under her care and protection. From 1951 onwards the mother in the usual course of management had been leasing out the properties of the appellant to the tenant. Though from 1951 to 1956 the leases were oral, for the year 1956-57 a written lease was executed by the tenant in favour of the appellant represented by her mother. It is no doubt true that

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the father was alive but he was not taking any interest in the affairs of the minor and it was as good as if he was non-existent so far as the minor appellant was concerned. We are inclined to agree with the view of the High Court that in the particular circumstances of this case, the mother can be considered to be the natural guardian of her minor daughter. It is needless to state that even before the passing of the Hindu Minority and Guardianship Act, 1956 (Act 32 of 1956) the mother is the natural guardian after the father. The above Act came into force on August 25, 1956 and under s. 6 the natural guardians of a Hindu minor in respect of the minor's person as well as the minor's property are the father and after him the mother. The position in the Hindu Law before this enactment was also the same. That is why we have stated that normally when the father is alive he is the natural guardian and it is only after him that the mother becomes the natural guardian, But on the facts found above the mother was rightly treated by the High Court as the natural guardian.

It has also been found by the High Court and all the revenue tribunals that the mother was protecting the appellant and looking after her interest and was also managing the suit lands by leasing them to the tenant. There is no evidence to establish that the transaction of lease is in any way an imprudent one or not in the interest of the minor appellant. It has also been found that the lease in favour of the tenant has begun from 1951. Though the lease for some years was oral, for the year 1956-57 a written lease deed was executed on February 12, 1956 by the tenant in favour of the

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appellant represented by her mother as guardian. If so, if follow as held by the High Court that the tenancy had been created even prior" to the first day of April, 1957". Though the revenue tribunals also found that the tenant was in possession of the properties as lessee from 1951 onwards, they declined to recognise his rights, on the view that those leases were not binding on the appellant. That view, as we have already point-Mr. Sanghi that the High Court's view about the validity and legality of the lease executed by the mother on February 12, 1956 is not correct, cannot be accepted.

20. From the above observations of Hon'ble Supreme court it is clear that if father is not taking any interest in the minors interest mother is competent to represent the interest of the minors. Perused the above judgment of Hon'ble Supreme court and followed the general principles laid down. However, in the present case it is not the plea of the plaintiff that father of defendant No.1 and 2 C. Rajesh was not looking after the welfare of the their children i.e. defendant No.1 and 2 on the date of execution of Ex.A1 and no such foundation is laid in the pleadings of the plaintiff.

21. According to Defendant No.1 the plaintiff approached the court with unclean hands and suit is liable to be dismissed. It is averred that plaintiff and father of Defendant No.1 and 2 are close

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friends and father of Defendant No.1 and 2 held animosity towards his wife i.e. mother of Defendant No.1 and 2. When the plaintiff with an intention to trouble Defendant No.3 filed the suit against defendant No.1 and 2 despite knowing the fact that defendant no.1 and 2 are minor children. It is also denied by defendant No.1 that their mother Defendant No.3 had entered in to agreement of sale with respect to the suit schedule property in lieu of the repayment of alleged loan. According to Defendant No.1 prior permission is required from the District court as per section 8 of Hindu Minor and Guardianship Act, 1956 before entering to the contract with the minors more particularly in view of the fact that Defendant No.1 and 2 are minors at the time of contract. Defendant No.1 also denied the averment of the plaintiff that, Defendant No.3 had taken hand loan of Rs 12 lakhs from plaintiff for the welfare and interest of minor children and for the family necessities.

22. In order to repay the loan amount Defendant No.3 entered into agreement of sale with respect to suit schedule property and said claim of the plaintiff is created falsely only to grab the property for the purpose of creating fictitious cause of action to file the present suit. Defendant No.3 has always been financially self

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sufficient to take care of needs of Defendant No.1 and 2, as such Defendant No.3 never obtained any hand loan, much less the loan as alleged by the plaintiff. Defendant No.1 and 2 are having regular source of rental income, hence the allegation of plaintiff that Defendant No.3 has obtained hand loan of Rs. 12 lakhs from the plaintiff is a blatant lie. According to Defendant No.1 as per section 8 of Hindu Minority and Guardianship Act 1956, i.e. Ex.A1 is void and invalid in the eye of law on account of the same being fabricated and fraudulent document was created. Defendant No.1 also seriously alleged that the suit is not maintainable and the said document under Ex.A1 was invalid. It is asserted that Defendant No.1 and 2 have never assented for the sale of suit schedule property as they were incapable of giving consent at the time of the alleged contract, as such there is no right is accrued in favour of the plaintiff to sue the Defendant No.1 and 2.

23. According to learned counsel for Defendant No.2 the defendants were financially stable and secure right from their childhood and there is no occasion for Defendant No.3 to obtain any hand loan from the plaintiff; Defendant No.3 was getting sufficient rental income from 2005 onwards apart from her own source of

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income. Defendant No.3 provided good education, good life style and upbringing of Defendant No.1 and 2. In fact Defendant No.1 and 2 completed their studies in United Kingdom and education expenses was totally funded by Defendant No.3. According to Defendant No.2 plaintiff with collusion of their father C.Rajesh created and fabricated Ex.A1 so as to grab the property of Defendant No.1 and 2. It is also contended by Defendant No.2 that plaintiff has failed to provide any explanation as to whether he had undertaken any steps since 2010 to 2015 to recover the money allegedly lent to Defendant No.3 and it is asserted by Defendant No.3 that plaintiff created Ex.A3 so as to surpass the bar of limitation period in respect of the alleged hand loan of Rs. 12,00,000/- which purported to have expired in the year 2013 itself. Defendant No.2 averred that their father and Defendant No.3 had been on bad terms and they got separated since 2013. The alleged transaction under Ex.A1 is hit by section 8 of Hindu Minority and Guardianship Act, 1956 as so called transaction was alleged to have taken place without the permission of the District court.

In support of their case defendants relied upon the following judgments of Hon'ble Apex court.

1) Judgment of Hon'ble Supreme Court (1993) 4 Supreme court cases 38 held between Panni Lal vs. Rajinder Singh and another in

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Civil Appeal No.2198 of 1986 dt. 5.5.1993.

2) Judgment of Hon'ble Supreme Court (2013) 15 Supreme court cases 727 between Saroj vs. Sunder Singh and others reported in Civil Appeal No.10582 of 2013 dt. 25.11.2013.

3) Judgment of Hon'ble Supreme Court (1996) 6 Supreme court cases 218 held between Kallathil Sreedharan and others vs. Komath Pandyala Prasanna reported in Civil appeal No.11015-16 of 1996 dt. 8.8.1996.

4) Judgment of Hon'ble Supreme court held between Kallathil Sreedharan & anr. v. Komath Pandyala Prasanna & Anr. (1996) 6 SCC 218.

5) Judgment of Hon'ble Supreme court held between Bajabai & ors. V. Sunil Damodhar Potdukhe & ors., 2022 (2) Mh .L. J 337

6) Judgment of Hon'ble Calcutta High Court between Lakshmi Rani Dhar v. Falakata Industries Lrd. 2002 SCC online Cal 2345.

7) Judgment of Hon'ble High Court of AP between Mutyala Nageshwar Rao v. Reddy Rajasekhar 2024 (2) ALD 224.

8) Judgment of Hon'ble High Court of Bombay between Bank of India v. Alibhpy Mohammed & ors., AIR 2008 Bom 81.

9) Judgment of Hon'ble Supreme court between Satish Kumar v. Karan Singh (2016) 4 SCC 352.

10) Judgment of Hon'ble Supreme court between Kallathil Sreedharan v. Komath Pandyala Prasanna (1996) 6 SCC 218.

11) Judgment of Hon'ble Supreme Court between Tejram v. Patirambhau Prasanna (1997) 9 SCC 634.

12) Judgment of Hon'ble Gujarat High Court between Jayanti Paul v. Ranadhir Chandra Dey (2012) 1 GLR 214.



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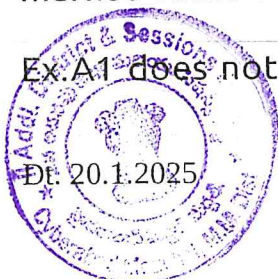
24. Perused the above judgments and followed the general principles enunciated therein.

25. In support of the case of the plaintiff he filed Ex.A1 to A6. Ex.A1 is original unregistered agreement of sale purported to have entered by defendant NO.3 on behalf of Defendant NO.1 and 2 with the plaintiff herein. On perusal of the same it merely says that the advance amount of Rs. 12,00,000/- by way of cheque bearing No.690492 dt. 25.11.2010 was drawn of ING Vyshya Bank Limited, Malkajgiri Branch and a balance amount of Rs. 3,00,000/- will be paid within 100 days from the date of agreement and get it registered the sale deed. As seen from Para No.8 of Ex.A1 which reads as follows :

" Both the parties herein agreed that the vendor / Guardian hereby undertake to deposit the market value for both minor's vendors / children share after obtaining the Hon'ble Court Decree for the development of minor children."

26. It is clear that both the parties agreed to obtain the permission from the District court under the Minority and Guardianship Act and vendor / guardian under take to deposit the market value for both minors share after obtaining the permission.

Ex.A1 does not disclose about the hand loan obtained by Defendant



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No.3 in the year 2010 for the welfare of the minor children as averred by the plaintiff in his pleadings. It also does not disclose about the oral agreement between the plaintiff and defendant to repay the amount of Rs. 12,00,000/- within the period of five years as contended by the plaintiff. Ex.A2 is the legal notice caused by plaintiff to defendant No.1 to 3 calling upon them to execute regular sale deed in favour of the plaintiff as per the terms and tenor of agreement of sale under Ex.A1 by receiving balance consideration of Rs. 3,00,000/-. It is interesting to note that the plaintiff did not whisper anything about obtaining permission from the District Court as required under section 8 of Hindu Minor and Guardianship Act, 1956. Ex.A3 is reply addressed by Defendants wherein it is clearly denied the execution of Ex.A1 dt. 24.1.2015. As seen from Ex.A3 the defendants clearly mentioned that the property is being minor's property any alienation is invalid unless the court permission for doing the same.

Defendant No.3 also here on the point that the husband of defendant No.3 and father of Defendant No.1 and 2 instigated the plaintiff with the manipulation of the documents to harass the minor children and their mother. Subsequently, the suit is filed by the

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plaintiff for specific performance of agreement of sale under Ex.A1. Ex.A6 entry dt. 27.11.2010 clearly shows that C. Deepthi received Rs.12,00,000/- through cheque No. 690492.

28. During the course of pendency of the proceedings defendant no.1 and 2 attained majority and filed a petition vide IA No.1324 of 2022 for discharge of guardianship of defendant No.3. The petition was allowed on 11.7.2023. Defendant No.1 and 2 filed separate written statements by engaging different advocates counsel. In the written statement filed by them they clearly expressed that they are not aware of the alleged transaction under Ex.A1 and even any such contract is liable to be repudiated at their option, for the reason that they are incompetent to enter the contract.

29. Before venturing into the discussion it is pertinent to refer the well celebrated judgment of Hon'ble Prevy council delivered way back in 1903 Mohar Bibee and ors Vs. Dharmadas Ghose before the Prevy counsel (1903) LR.30, which is still having the binding force in India. Wherein it at Para NO.13 to 21 Hon'ble court held as follows:

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13. The general current of decision in India certainly is that ever since the passing of the Indian Contract Act (IX of 1872) the contracts of infants are voidable only. This conclusion, however, has not been arrived at without vigorous protests by various Judges from time to time ; nor indeed without decisions to the contrary effect. Under these circumstances their Lordships consider themselves at liberty to act on their own view of the law as declared by the Contract Act, and they have thought it right to have the case re-argued before them upon this point. They do not consider it necessary to examine in detail the numerous decisions above referred to, as in their opinion the whole question turns upon what is the true construction of the Contract Act itself. It is necessary therefore to consider carefully the terms of that Act, but before doing so it may be convenient to refer to the Transfer of Property Act, IV of 1882, sec. 7 of which provides that every person competent to contract and entitled to transferable property. is competent to transfer such property in the circumstances, to the extent, and in the manner allowed and prescribed by any law for the time being in force. That is the Act under which the present mortgage was made, and it is merely dealing with persons competent to contract ; and sec. 4 of that Act provides that the chapters and sections of that Act which relate to contracts are to be taken as part of the Indian Contract Act, 1872. The present case therefore falls within the provisions of the latter Act.

14. Then, to turn to the Contract Act, sec. 2 provides (e) Every promise and every set of promises, forming the consideration for each other, is an agreement. (g) An agreement not enforceable by law is said to be void. (h) An agreement enforceable by law is a contract. (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

15. Sec. 10 provides "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration, and with a lawful object, and are not hereby expressly declared to be void."

16. Then sec. 11 is most important, as defining who are meant by "persons competent to contract;" it is as follows :--"Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which "he is subject." Looking at these sections their Lordships are satisfied that the Act makes it essential that all contracting parties should be "competent to contract," and expressly provides that a person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of the Act. This is clearly borne out by later sections in the Act. Sec. 68 provides that "If a person incapable of entering into a contract or any one whom he is legally bound to support is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person." It is beyond

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question that an infant falls within the class of persons here referred to as incapable of entering into a contract ; and it is clear from the Act that he is not to be liable even for necessities, and that no demand in respect thereof is enforceable against him by law, though a statutory claim is created against his property. Under secs. 183 and 184 no person under the age of majority can employ or be an agent. Again under secs. 247 and 248, although a person under majority may be admitted to the benefits of a partnership, he cannot be made personally liable for any of its obligations ; although he may on attaining majority accept those obligations if he thinks fit to do so. The question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in the case of an infant. Their Lordships are therefore of opinion that in the present case there is not any such voidable contract as is dealt with in sec. 64

17. A new point was raised here by the Appellants' counsel founded on sec. 65 of the Contract Act, a section not referred to in the Courts below, or in the cases of the Appellants or Respondent. It is sufficient to say that this section, like sec. 64, starts from the basis of there being an agreement or contract between competent parties ; and has no application to a case in which there never was, and never could have been, any contract.

18. It was further argued that the preamble of the Act showed that the Act was only intended to define and amend certain parts of the law relating to contracts, and that contracts by Infants were left outside the Act. If this were so, it does not appear how it would help the Appellants. But in their Lordships' opinion the Act, so far as it goes, is exhaustive and imperative ; and does provide in clear language that an infant is not a person competent to bind himself by a contract of this description.

19. Another enactment relied upon as a reason why the mortgage money should be returned is sec. 41 of the Specific Relief Act (I of 1877) which is as follows :—"Sec. 41. On adjudging the cancellation of an instrument the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require." Sec. 38 provides in similar terms for a case of rescission of a contract. These sections no doubt do give a discretion to the Court, but the Court of First Instance and subsequently the Appellate Court, in the exercise of such discretion, came to the conclusion that under the circumstances of this case justice did not require them to order the return by the Respondent of money advanced to him with full knowledge of his infancy, and their Lordships see no reason for interfering with the discretion so exercised.

20. It was also contended that one who seeks equity must do equity. But this is the last point over again and does not require further notice except by referring to a recent decision of the Court of Appeal in *Thurstan v. Nottingham Permanent Benefit Building Society L. R. (1902)1*

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Ch. 1 (1901) ; on appeal, L. R. (1903) App. Cas. 6 since affirmed by the House of Lords. In that case a female infant obtained from the Society of which she was a member part of the purchase-money of some property she purchased ; and the Society also agreed to make her advances to complete certain buildings thereon. They made the advances and took from her a mortgage for the amount. On attaining 21 she brought the action to have the mortgage declared void under the Infants Relief Act. The Court held that, as regards the purchase-money paid to the vendor, the Society was entitled to stand in his place and had a lien upon the property ; but that the mortgage must be declared void and that the Society was not entitled to any repayment of the advances. Dealing with this part of their claim Lord Justice Romer says, at p. 13 "The short answer is that a Court of Equity cannot say that it is equitable to compel a person to pay any moneys in respect of a transaction which as against that person the Legislature has declared to be void." So here.

21. Their Lordships observe that the construction which they have put upon the Contract Act seems to be in accordance with the old Hindu Law as declared in the laws of Manu, Ch. VIII, 163 ; and Colebrooke's Dig. liii 2, Vol. II, p. 181 ; although there are no doubt decisions of some weight that before the Indian Contract Act an infant's contract was voidable only, in accordance with English law as it then stood. The appeal therefore wholly fails ; and their Lordships will humbly advise His Majesty that it should be dismissed. The Appellants must pay the costs of the appeal.

30. From the above observations of the Hon'ble Prevy council it is clear that contract with regard estate of the minor is voidable at the option of the minor after attaining the majority. In the present case in hand defendant No.1 and 2 are minors at the time of contract, and defendant No.3 as natural guardian entered the contract the agreement of sale on behalf of defendant No.1 and 2 and after they attaining the majority they repudiated the contract. In the present case on hand defendant No.1 and 2 denied the knowledge of entering the contract by defendant No.3 in their pleadings. Even for the sake of discussion if it is assumed that defendant No.1 and 2 has

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knowledge of contract, in that case also the contract is voidable as per section 16 (1) illustration (A). In the instance case defendant No.3 is none other than the mother of defendant No.1 and 2 who are incompetent to enter in to contract is in a position to over power their will and cause undue influence on them who enter the contract. In such a case burden of proof has to rule out the possibility of undue influence is on the person who is in a position to dominate the will of other person ie. defendant No.3.

31. It is no doubt that on attaining the majority defendant No.1 and 2 are very much entitled to contest the suit by setting forth their pleadings. The learned counsel for D1 and D2 submitted that Ex.A1 is a fabricated document filed by the plaintiff and their father C. Rajesh in collusion with each other by forging the signature of Defendant No.3 with a fraudulent intention to knock away the suit schedule property which belonging to defendant No.1 and 2, filed the present suit. The learned counsel for the defendants also putforth the contention that plaintiff approached the court with a malafide intention to defraud defendant No.1 and 2 taking advantage of the fact that the marriage between defendant No.3 and father of defendant No.1 and 2 was broken and defendant No.1 and 2 are incapable of entering of contract.

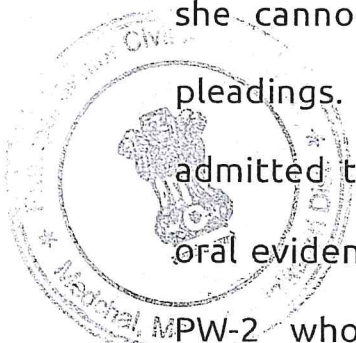
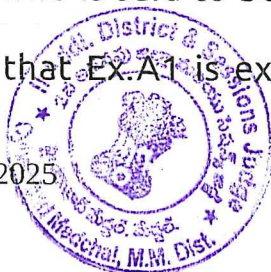
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32. Having considering the rival contentions on both sides the two questions which arises for consideration are firstly whether Ex.A1 is executed by defendant No.3 on behalf of defendant No.1 and 2 for meeting out expenses, welfare and necessities of the minor children or not? The incidental question which arises for consideration is whether defendant no.3 is having any adverse interest against the defendant No.1 and 2. The secondly whether Ex.A1 is in contravention of the provision of section 8 of Hindu Minority and Guardianship Act, 1956. Even as per Ex.A3 the execution of agreement of sale under Ex.A1 is denied by the defendants. During the course of trial defendant No.3 filed an IA 673/2023 seeking to send the original agreement of sale under Ex.A1 for handwriting expert. However, the said IA was dismissed by this court since defendant No.3 failed to lay any foundation in her pleadings by specifically denying the execution and signature of Ex.A1 and as such she cannot be permitted to travel beyond the scope of her pleadings. Even in the evidence of defendants no where she admitted the execution of Ex.A1 agreement of sale. However, the oral evidence is produced by the plaintiff the independent witness MPW-2 who is said to be the witness to Ex.A1 is examined. He clearly stated that Ex.A1 is executed by defendant No.3 in the presence of

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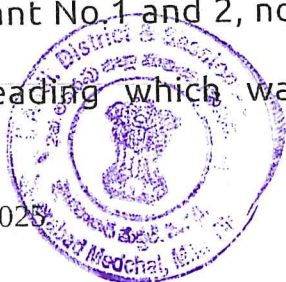

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her husband C. Rajesh, one Venkataramana, plaintiff and defendants. Therefore, the execution of Ex.A1 by defendant No.3 is proved by the plaintiff.

33. Admittedly, the suit schedule property is in the name of defendant No.1 and 2 who are the minors and as the defendant No.3 is their mother representing the estate of the minor children because of their incapacity to enter the agreement of sale. As already stated supra the incidental question is whether the defendant No.3 executed Ex.A1 for the welfare of the minors and to meet out their necessities for upbringing. On this aspect the plaintiff did not adduce any evidence to show that defendant No.3 entered the contract for the welfare of her children. Defendant No.1 and 2 categorically stated in their pleadings that they are financially well off and defendant No.3 is having independent source of income apart from her regular rental income and they completed their educations in United Kingdom, as such, there was no such need to obtain hand loan from the plaintiff or to sell away the property. The plaintiff failed to produce any evidence, to rebut the said contention of defendant No.1 and 2, not even filed any rejoinder to deny the same.

Any pleading which was not specifically denied is taken to be

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admitted. DW-3 admitted that plaintiff is family friend and known to defendant No.3 and her husband C. Rajesh. She further admitted that Ex.A4 and A5 are original gift settlement deeds in respect of the suit schedule property which is in the name of Defendant No.1 and 2. When specific question is put to DW-1 about how come Ex.A4 and A5 are in the custody of the plaintiff she replied that those documents would have handed-over by her husband to the plaintiff. Since as per her contention the plaintiff and husband of defendant No.3 colluded and created Ex.A1. If at all it is the case of the plaintiff that Defendant no.3 obtained the hand loan of Rs. 12,00,000/- for the welfare and necessities of defendant No.1 and 2 and agreed to pay the hand loan within five years, he ought to have produced the evidence on that point. For a moment it is assumed that the plaintiff provided hand loan to defendant No.3 on the basis of oral agreement, he has failed to explain how come he did not initiate any legal steps to recover the money from defendant No.3 till 2015.

Plaintiff knows the fact that defendant No.1 and 2 are minors and for entering the contracts on behalf of the minors permission of the District Court is required under Minority and Guardianship Act. In spite of which, he failed to obtain any such permission, for entering Ex.A1, as such, the contracts under Ex.A1 can be repudiated at the

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option of defendant No.1 and 2 and void and not enforceable against defendant No.1 and 2.

34. At this juncture it is pertinent to refer order 32 Rule 3(3) which reads as follows:

3. Guardian for the suit to be appointed by Court for minor defendant.

(1) Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

35. It is clear from the above provision of law that an application seeking permission of the court to appoint to guardian to the represent the interest of the minor is necessary to be made at the time of filing of the suit and an affidavit has to be filed in support of the said application verifying the facts that proposed guardian has no adverse interest in the matter in controversy in the suit adverse that of the minors and it is also obligatory on the part of the plaintiff

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to state that the guardian is a fit person to be appointed for representing the interest of the minor children.

36. As seen from the record the plaintiff has not filed any such application in the present case. Much less any affidavit verifying the facts as mandatory under above provision of law. Similarly, defendant No.3 also did not file any affidavit at the time of filing of written statement stating that she has no adverse interest against her minor children i.e. defendant No.1 and 2. In this circumstances, in the present case on hand, this court can come to the conclusion that interest of the minors/ defendant No.1 and 2 was not properly represented before the court.

37. Admittedly, the plaintiff is none other than the family friend having acquaintance with the father of defendant no.1 and 2 who happened to sign as attesting witness to Ex.A1. While Pw-1 was in witness box he categorically admitted that Defendant No.3 and her husband C. Rajesh took the divorce after 2010 but he does not know in which particular year the divorce was taken place. He also specifically expressed ignorance about the fact that the marriage between Deepthi and Rajesh was dissolved couple of years prior to

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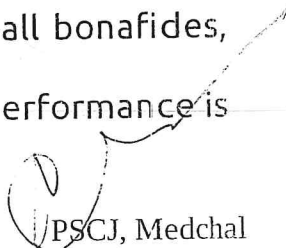
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execution of Ex.A1. The fact is not denied that plaintiff is closely acquainted with husband of Defendant No.3 and even his admission speaks that he knows Deepthi and her father and they were family friends. The evidence brought on record clearly indicate that PW-1 is trying to suppress the fact that relationship between C. Deepthi and Rajesh was strained by the time of execution of Ex.A1. When he knows, the fact that the marital relationship of Deepthi and Rajesh is broken, any one who is ordinary person of reasonable prudence will certainly enter the transaction, through guardian *ad litem* by following the procedure established under section 8 of Hindu Minority and Guardianship Act 1956, more particularly the nature of agreement in this case. But in the instance case in hand the plaintiff has utterly failed to comply the procedure, which clearly goes to show that that the plaintiff acted with malafides, so as to deprive the interest of the minor children ie. D1 and D2.

38. There are serious lapses on the part of the plaintiff which certainly disentitled the plaintiff from seeking discretionary relief of specific performance. The person who knocks the doors of the court, should approach the court with clean hands and with all bonafides, because the very foundation of the remedy of specific performance is

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based on equity, fairness and good conscience. To the contrast the plaintiff acted under misdemeanor with a dishonest intention to grab the property of defendant No.1 and 2 which is clearly evident from the evidence brought on record.

39. Had the plaintiff genuinely entered the transaction with defendant No.3 under Ex.A1 in respect of the estate of the minors for the welfare and necessities of the minors, he would have, at least, called upon father of Defendant No.1 and 2 to give evidence so as to establish his genuineness and bonafides.

40. It is context it is pertinent to refer the Judgment of Supreme court of India i.e. between Nagaiah and others vs. Smt. Chowdamma (died) represented by LRS. And others vide Civil Appeal No. 22969/2017 wherein Hon'ble Supreme court held at Para No.9 to 11.

9. *"Guardian" as defined under the Hindu Guardianship Act is a different concept from the concept of "next friend" or the "Guardian ad litem". Representation by "next friend" of minor plaintiff or by "guardian ad litem" of minor defendant is purely temporary, that too for the purposes of that particular law suit.*

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10. *There is no hurdle for a natural guardian or duly constituted guardian as defined under Hindu Guardianship Act to represent minor plaintiff or defendant in a law suit. But such guardian should not have adverse interest against minor. If the natural guardian or the duly constituted guardian has adverse interest against the minor in the law suit, then a next friend or guardian ad litem, as the case may be, would represent the minor in the civil litigation.*

11. *It is by now well settled and as per the provisions of Order XXXII of Code that any person who is of sound mind, who has attained majority, who can represent and protect the interest of the minor, who is a resident of India and whose interest is not adverse to that of the minor, may represent the minor as his next friend. Such person who is representing the minor plaintiff as a next friend shall not be party to the same suit as defendant. Rules 6 and 7 of Order XXXII of the Code specifically provide that the next friend or guardian in the suit shall not without the leave of the Court receive any money or immovable property and shall not without the leave of the Court enter into any agreement or compromise. The rights and restrictions of the natural guardian provided under the Hindu Guardianship Act do not conflict with the procedure for filing a suit by a next friend on behalf of the minor. Not only is there no express prohibition, but a reading of Order XXXII of the Code would go to show that wherever the legislature thought it proper*

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to restrict the right of the next friend, it has expressly provided for it in Rules 6 and 7 of Order XXXII of the Code. Rule 9 of Order XXXII – apart from other factors, clarifies that where a next friend is not a guardian appointed or declared by the authority competent in this behalf and an application is made by the guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded, that the guardian ought not to be appointed as the next friend of the minor. Order XXXII, Rules 12, 13 and 14 of the Code empower the minor plaintiff to take a decision either to proceed with the suit or to abandon the suit, after attaining majority. Thus, after attaining majority, if the plaintiff elects to proceed with the suit, he may do so by making an application, consequent upon which the next friend ceases to represent the minor plaintiff from the date of attaining majority by the minor. Order XXXII Rule 12 of the Code requires the minor plaintiff to have the option either to proceed with the suit or to abandon the suit and does not at all provide that if no such election is made by the minor plaintiff on attaining majority, the suit is to be dismissed on that ground. In case, if the Court discovers during the pendency of the suit that the minor plaintiff has attained majority, such plaintiff needs to be called upon by the Court to elect whether he intends to proceed with the suit or not. In other words the minor who attained majority during the

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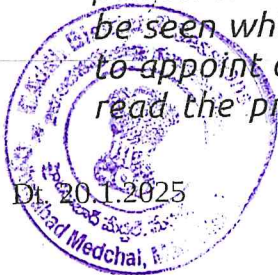
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pendency of the matter must be informed of the pendency of the suit and in the absence of such a notice the minor cannot be imputed with the knowledge of the pendency of the suit. So, before any adverse orders are to be made against the minor who has attained majority, the Court has to give notice to such person. Of course, in the present matter, under the facts and circumstances, such occasion did not arise, since plaintiff no. 2 on attaining majority has continued with the suit, which means he has elected to proceed with the suit.

41. From the observations of Hon'ble Supreme court it is clear that the guardian who is representing the minors interest should not have any adverse interest. More over no agreement of compromise can be arrived without the permission of the competent court.

42. In this context it is pertinent to refer the judgment of Hon'ble High Court of Gujarath between Sarjubhai Kantilal Patel vs Bhikhubhai Maganbhai Patel the Hon'ble Court held that :

17. First of all, we have to see whether the Court is under obligation to appoint a guardian / next friend under Order 32 Rule 3 of the CPC as Sub-rule (1) of Rule 3 of Order 32 provides that where the defendant is minor the Court on being satisfied of the fact of his minority shall appoint a proper person to be guardian for the suit for such minor. It has also to be seen whether the word "shall" gives mandate to the Court to appoint a guardian of a minor. For this purpose, we have to read the provisions of Sub-rule 4 of Rule 3 of Order 32 and



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Rule 3A of Order 32 of the CPC which have come into existence by amendment in 1976. Sub-rule 4 of Rule 3 of Order 32 of the CPC reads as under :-

"3(4) No order shall be made on any application under this rule except upon notice and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or there is no father, to the mother, or where there is no father or mother, to other natural guardian of the minor, or where there is no father, mother or other natural guardian, to the person in whose care the minor is and after hearing any objection which may be urged on behalf of any person served with notice under this Rule.

3(4A) (1) The Court may in any case, if it thinks fit issue notices under Sub rule (4) to the minor also.

3A(1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject matter of the suit adverse to that of the minor but the fact that by reason of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interest of the minor, shall be a ground for setting aside the decree.

(2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting prejudice to the interest of the minor.

18. On the basis of the statutory provisions of Rule 3A of Order 32 of the CPC, it is evident that even the next friend or guardian of a minor has adverse interest, it would not be sufficient ground for setting aside the decree passed against a minor unless it is established that prejudice has been caused to the interest of the minor by adverse interest of the guardian or next friend of the minor. It is also mandatory requirement that notice to father or mother or natural guardian or any person under whose care the minor is and minor has to be issued and served with a notice and a reasonable opportunity of hearing of any objection if raised has been provided. Thus, where a minor is properly represented by his/her father or mother or natural guardian, it is not necessary at all in all cases that guardian or next friend should be appointed by the Court. The Court is required to see that the interest of the minor is properly represented through his/her parents or guardian

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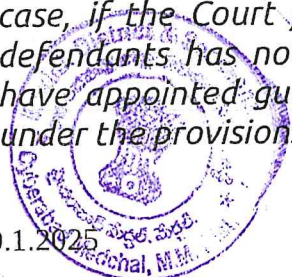
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in the suit. On the basis of the discussion, I am constrained to hold that the word "shall" referred in Sub-rule (1) of Rule (3) of Order 32 of the CPC is only directory and not mandatory. But where minor is not properly represented by his father, mother, natural guardian or father or mother natural guardian who has adverse interest in the subject matter of the suit to the interest of the minor and there is likelihood of cause or interest of the minor is jeopardized or prejudiced then the word "shall" referred in Sub-rule 3 of Rule (1) of Order 32 of the CPC is mandatory then the Court is under obligation to appoint his guardian or next friend under the procedure prescribed therefor.

19. In the present case, there is no allegation by the parents of the minors that their interest is adverse to the interest or the cause of the minors is father and mother are also parties in the suit, they have engaged counsel on behalf of themselves and on behalf of the minors and Vakalatnama on behalf of the minors and their parents has been filed and the minors are being properly represented in the suit.

20. In the present case, the trial Court has not recorded any finding that the interest of the minor defendants is not being properly represented by their parents and there is likelihood of prejudice to the cause of the minors. In absence of any finding or material on record it cannot be said that the minor children are not being properly represented by their parents. As such, the provisions O. 32 R. 3 (4) would be directory and not mandatory. Even the Court is required to satisfy itself that the minors' interest is being properly represented or not. The trial Court has not given any finding to that effect. Merely on the ground that the Court has not appointed any guardian or next friend of the minors defendant, it would not be sufficient to reject the plaint. At the most the Court if at any impression that the minors were not being properly represented by their parents, the Court could have required the parties to move any application for appointment of their guardian and to lead evidence in this respect that there is likelihood of prejudice of the interest of the minors and in the facts and circumstances of the case, if the Court finds that proper representation of the minor defendants has not been made in the suit then the Court could have appointed guardian or next friend of the minor defendants under the provisions of law.

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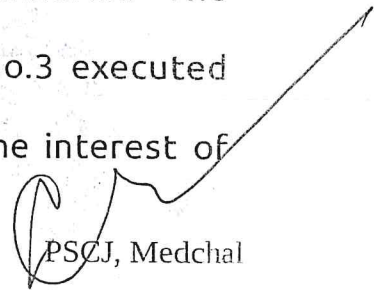
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PSCJ, Medchal

43. Even as per the observations of Hon'ble Supreme Court in the above judgment, it is obligatory on the part of the plaintiff get an appropriate guardian ad litem appointed by court for minor in case the suit is filed against the minor and the court has to ensure that minor interest is properly represented.

44. If at all it is the case of the plaintiff that he lent the money to defendant No.3 on oral agreement and no written receipt is received owing to their close association the plaintiff would have taken steps to recover the same from Defendant No.3 within the period of limitation as prescribed by the limitation Act. The facts and circumstances, clearly indicates that defendant No.3 entered such contract in her personal capacity, but some how the plaintiff has managed to obtain Ex.A1 which is giving strength to the plea of the defendant No.1 and 2 that there exists a prospected collusion of plaintiff with their father with regard to the alleged transaction under Ex.A1. Thereby, plaintiff started mounting pressure on defendant No.3 for repayment of the amount. Which clearly contravenes and adverse to the interest of the minor children. The plaintiff has also failed to establish that Defendant No.3 executed agreement of sale under Ex.A3 by duly representing the interest of

Dt. 20.1.2025




PSCJ, Medchal

the minors apart from that it is also not established that plaintiff acted fairly to enter in to contract in respect of the estate of the minors as per the permission of the court under section 8 of Minority and Guardianship Act.

45. In the light of the above discussion this court is of the considered view that the plaintiff has filed the present suit by suppressing the material facts and to deliberately to deprive the legitimate rights of Defendant No.1 and 2. The remedy of specific performance being a equitable relief, cannot be granted against the person who is at fault. In otherwords, the conduct of the plaintiff in the present case disentitles him from claiming the equitable relief of specific performance. Owing to the fundamental principle of law that *"aequitas sequitur legem"* which means who seeks equity must do equity. It is not proper on the part of the plaintiff to seek relief against Defendant No.1 to 3 on one hand for specific performance and also alternative relief only against Defendant No.3 seeking for damages and compensation. In such an event the plaintiff had taken diligent steps to prosecute Defendant No.3 for the alleged hand loan transaction or agreement to sell in her personal capacity. When defendant No.3 had no interest over the suit



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schedule property she cannot enter into agreement of sale with the plaintiff and plaintiff cannot accept such offer and enter in to Ex.A1 transaction. More particularly, in view of the fact that the plaintiff has knowledge about the broken marital relationship of defendant No.3 with her husband C. Rajesh who is none other then the close friend of the plaintiff. Accordingly Issue No.1 to 4 are answered against the plaintiff and in favour of defendant No.1 and 2.

46. IN THE RESULT, the suit is dismissed. In the circumstances of the case, parties have to bear their own costs.

Typed to my dictation, by the Stenographer, corrected and pronounced by me in the open Court on this the 20th day of January, 2025.

PRL SENIOR CIVIL JUDGE,
MEDCHAL MALKAJGIRI DISTRICT,
AT MEDCHAL
Malkajgiri District, at Medchal

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Plaintiff:

PW1 : B. Chakradhri

PW2 : M. Sampath

For Defendant:

DW1 : Deepti Balagiri

DW2 : Srikakulam Premalatha

Documents marked on behalf of Plaintiff :

Ex.A1 Original agreement of sale dt. 24.1.2015

Ex.A2 Office copy of legal notice

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Ex.A3 Reply notice

Ex.A4 Original gift deed No.78980/2005 dt. 17.6.2005

Ex.A5 Original gift deed NO.78990/2005 dt. 17.6.2005

Ex.A6 Certified extract bank statement issued by Kotak Bank, Malkajgiri Branch from 1.4.20210 dto 31.3.2011.

Documents marked on behalf of Defendant :

Ex.B1 Certified copy of decree in FCOP 261/2015 dt. 24.6.2015 on the file of Family court, Secunderabad.

Ex.B2 Copy of memorandum of understanding dt. 24.6.2015.



PRI SENIOR CIVIL JUDGE,
MEDCHAL MALKAJGIRI DISTRICT,
AT MEDCHAL
Senior Civil Judge
Malkajgiri District, at Medchal

Court Of The II Addl District & Sessions Judge
Medchal, M.M. Dist.

C.A. No. 509 of 2025
Application Filed on 24/1/25
Charges Called on 22/2/25
Charge Deposited on 4/3/25
Receipt No. 966 Rs. 3761/-
Copy Made Ready on 4/3/25
Copy Delivered on 4/3/25

Superintendent
II ADJ Court
Medchal, M.M. Dist.

READY BY:
COMPARED BY:

Certified To be Photo True Copy

Superintendent
II ADJ Court
MEDCHAL, M.M. DIST.

Dt. 20.1.2025

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