ELUMALAI @ VENKATESAN & ANR

v.

M. KAMALA AND ORS. & ETC.

(Civil Appeal Nos. 521-522 of 2023)

JANUARY 25, 2023

[K. M. JOSEPH AND HRISHIKESH ROY, JJ.]

Release Deed – Effect of – Spes Successionis *– Estoppel – Warding off, of estoppel by heirs of the person whose conduct created the estoppel – Impropriety of – Dispute regarding self-acquired property of 'S' – 'S' had married twice – From the first marriage, a son 'C' was born, whose two children were the appellants – When one child of 'C' was minor and other was not born, he executed a release deed for relinquishing his share in the property for valuable consideration in the year 1975 – It was also specified in the release deed that 'C' will not have any relation apart from blood relation with 'S' – 'C' predeceased his father in the year 1978 – Two children from the second marriage of 'S' filed suit for partition for self-acquired property of 'S' and contended to exclude the children from the first marriage of 'S' on the basis of the release deed – Trial court found the release deed to be null and void since it was executed by 'C', when his father was alive – Thus, the property was divided between the children from both the marriages equally – On appeal, the High Court found the release deed to be a valid document and excluded the appellants – High Court held that the release deed coupled with the consideration received by 'C' acted as an estoppel against the appellants – Appellants assailed the High Court judgment on two grounds – Firstly, 'C', the father of appellants, at the time of the execution of release deed merely had a right as* spes successionis*, and, thus, the release deed had no effect – Secondly, the father being a natural guardian did not have the power to bind the minor by a personal covenant – Held: On facts, the property in dispute was the self-acquired property of 'S' – Thus,*

A *at the time of execution of the release deed, 'C', the father of the appellants, did not possess any right in the property apart from being a* spes successionis *– Further, 'S', the father of 'C', paid valuable consideration in order to secure the interest of the son from the second marriage, who used to be ill – Release deed by a* B spes successionis *would be incapable to convey or relinquish any interest in the property – However, on facts, execution of the release deed relinquished every other right apart from being a blood relative – Additionally, the conduct accompanied by receipt of valuable consideration estopped 'C', the father of appellants, from claiming* C *any right in the property – On the personal covenant, the limitation in s.8 of the Hindu Minority and Guardianship Act,1956 can only be applicable when the minor possessed any independent right in the property – On facts, it was not even the case of the appellants that they had any such independent right – Thus, the release deed* D *cannot be interdicted as being a personal covenant by the natural guardian which cannot bind a minor – Further contention that when the succession opened in 1988 on the death of their grandfather 'S', appellants being sons of 'C', the predeceased son of 'S', formed part of class-I heir category under the Hindu Succession Act, not* E *acceptable – Appellants were claiming through their father 'C' and cannot ward off the estoppel created by the conduct of 'C' under whom they were claiming right in the property – Judgment of High Court accordingly affirmed –Hindu Succession Act, 1956 – Hindu Minority and Guardianship Act, 1956 – s.8 – Transfer of Property Act, 1882 – s.6(a) – s.8.*

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Transfer of Property Act, 1882 – s.6(a) – Spes successonis – *Chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or other mere possibility of a like nature – Held: Cannot be transferred – A* G *living man has no heir – Equally, a person who may become the heir and entitled to succeed under the law upon the death of his relative would not have any right until succession to the estate is opened up – Unlike a co-parcener who acquires right to joint family*

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property by his mere birth, in regard to the separate property of the Hindu, no such right exists – Transfer by an heir apparent being mere spes successonis is ineffective to convey any right.

Estoppel – Effect of – Held: The effect of estoppel cannot be warded off by persons claiming through the person whose conduct generated the estoppel – The impact of estoppel applies irrespective of the personal law applicable to the party concerned – On facts, 'C', having received valuable consideration and allowed his father 'S' to proceed on the basis that the latter was free to deal with his self-acquired property without the prospect of being haunted by any claim whatsoever as regards the property by 'C', a clear estoppel sprang into existence following the receipt of consideration by 'C' – Estoppel would shut out in equity any claim otherwise either by 'C' or his children, viz., the appellants.

Dismissing the appeals, the Court

HELD: 1. Section 6(a) of the Transfer of Property Act, 1882 declares that a chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or other mere possibility of a like nature cannot be transferred. A living man has no heir. Equally, a person who may become the heir and entitled to succeed under the law upon the death of his relative would not have any right until succession to the estate is opened up. When 'S', the father of 'C' was alive, 'C' had at best a *spes successonis*. Unlike a co-parcener who acquires right to joint family property by his mere birth, in regard to the separate property of the Hindu, no such right exists. Thus, there can be no doubt that the Release Deed may not by itself have the effect of a transfer of the rights of 'C' in favour of either his father or the minor son of his father from the second marriage. [Para 10][271-D-F]

2. The property in question was not the ancestral property of 'C'. 'C' would have acquired rights over the same only if his father had died intestate. He was, thus, only a heir apparent.

Transfer by an heir apparent being mere *spes successonis* is ineffective to convey any right. By the mere execution of Release Deed, in other words, in the facts of this case, no transfer took place. This is for the simple reason that the transferor, namely, the father of the appellants did not have any right at all which he could transfer or relinquish. [Para 14][273-G-H]

3. 'S', the father of 'C' married twice. The first union produced 'C', the father of the appellants. Thereafter, 'S' married again. It is after the second marriage and the birth of the children from the said wedlock that Release Deed came to be executed on 12th November, 1975. It would appear that from the second marriage, a son was born who incidentally was ill and in whose favour 'C', the father of the appellants executed the Release Deed. The intention of 'S' would appear to have been to secure the interest of the son from the second marriage. He wished to secure his interest created under the second marriage and for which the father of the appellants who was his son from the first marriage was given some valuable consideration, which persuaded 'C' to release all his rights in respect of property in question. The words in the 'Release Deed' that hereafter he did not have any other connection except blood relation appears to signify that the intention of 'S' was to deny any claim to 'C' in regard to the property. [Para 15][274-C-E]

4. Conjecturing that 'C' has survived his father and his succession had opened intestate in regard to the estate of his father, the conduct of executing the Release Deed though by itself may not have resulted in a lawful transfer, his conduct being accompanied by the receipt of consideration would have estopped 'C'. The very fact that C's father did not execute any document by way of Will only shows that he proceeded on the basis that the branch represented by 'C' was being cut off from inheritance from the property in question. [Para 16][274-F-G]

5.1. Section 6 of the Hindu Minority and Guardianship Act, 1956, inter alia, declares that the father and, after him, the mother, shall, in the case of a boy or an unmarried girl, be the natural guardians of the minor's person as well as in respect of the minor's property. However, the minor's property would not include the undivided interest the minor has in the joint family property. It is, thereafter, that Section 8 appears and it purports to delineate the powers of a natural guardian. The powers of a natural guardian, in other words, relate either to the person or to the minor's property or both. Section 8 purports to, inter alia, provide that the natural guardian would have the power to do all acts, which are necessary or reasonable and proper for the benefit of the minor or realisation, protection or benefit of the minor's estate. It is, thereafter, that the Law-Giver has interdicted the guardian from binding the minor by a personal covenant. [Para 20] [275-G-H; 276-A-C]

5.2. In the facts of this case, it is the case of the appellants, that 'C', their father, himself did not have any right in the plaint schedule property. This is for the reason that being the separate property of 'S', 'C' did not have any right by birth. He himself had only, what is described a *spec successionis* within the meaning of Section 6(a) of the Transfer of Property Act. It is not even the case of the appellants that they had any independent right in the plaint schedule property either at the time of their birth or at the time when their father died or even when their grandfather 'S' died in 1988. The right, which they claim, at the earliest point, can arise only by treating the property as the separate property of 'S' on his death within the meaning of Section 8 of the Hindu Succession Act. Therefore, one is unable to discard the deed of release executed by 'C' in the year 1975 as a covenant within the meaning of Section 8 of the '1956 Act.' [Para 21][276-D-F]

6. The appellants would not be in a position to claim immunity from the operation of the Principle of Estoppel on the basis of Section 8(a) of the Hindu Succession Act. If the principle

A **in *Gulam Abbas* case applies, then, despite the fact that what was purported to be released by 'C', was a mere spec successonis or expectation his conduct in transferring/releasing his rights for valuable consideration, would give rise to an estoppel. The effect of the estoppel cannot be warded off by persons claiming through**
B **the person whose conduct has generated the estoppel. Also there is no merit at all in the attempt at drawing a distinction based on religion. The principle of estoppel applies without such distinction. [Para 23][277-G-H; 278-A-B]**

C **7. Having received valuable consideration and allowed his father 'S' to proceed on the basis that he was free to deal with the property without the prospect of being haunted by any claim whatsoever as regards the property by 'C', a clear estoppel sprang into existence following the receipt of consideration by 'C'. Estoppel would shut out in equity any claim otherwise either**
D **by 'C' or his children, viz., the appellants. [Para 24][278-C-D]**

Gullam Abbas v. Haji Kayam Ali and Others, **AIR 1973 SC 554 : [1973] 2 SCR 300 – held applicable.**

E Estoppel by Representation by *Spencer Bower and Turner* **– referred to.**

Case Law Reference

[1973] 2 SCR 300	**held applicable**	**Para 4**

F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 521-522 of 2023.

From the Judgment and Order dated 20-10-2016 of the High Court of Judicature at Madras in AS Nos. 718/2009 and 883/2009.

G Siddharth Iyer, Rakesh R. Sharma, Rakesh K. Sharma, P. V. Yogeswaran, Advs. for the Appellants.

Jayanth Muth Raj, Sr. Adv., Mrs. Malavika Jayanth, S. Gowthaman, Ms. M. Venmani, Advs. for the Respondents.

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The Judgment of the Court was delivered by

K.M. JOSEPH, J.

1. Leave granted.

2. One Shri Sengalani Chettiar was married to one Rukmini. The said marriage produced a son, namely, Shri Chandran. The appellants are the sons of Shri Chandran. Sengalani Chettiar married again this time with one Smt. Kuppammal. From the second marriage Sengalani Chettiar had 5 daughters and a son. The controversy in this case relates to A-Schedule property in the suit for partition filed by two children out of the 6 children born to Sengelani Chettiar from his second marriage. The property in dispute was the self-acquired property of Shri Sengalani Chettiar. In regard to the said property, Chandran,the father of the appellants had executed a Release Deed. The terms of the Release Deed dated 12.11.1975, are as follows:

> THIS DEED OF RELEASE is executed on the 12th day of November, 1975 in favour of 1. C.Sengalani Chettiar, son of Singara Chettiar, residing at No.144, Venkatachala Mudali Street Meersapet, Mylapore, Chennai, 2. Sengalani Chettiar, as the guardian of his minor son, Vinayagarnurthy, aged about 2 years, this deed executed by S.Chandran, son of Sengalani Chettiar, residing at No.19, Santha Sahib Street, Meersapet, Mylapore, Chennai is as follows:
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> I am the son of your first wife. As I could not be with you, I had received through the transfer of mortgage gold jewellery which is worth of Rs. 10,000/- and the materials of a value of Rs.5000 /- and releasing my share in respect of the house sites situate at Manamathi Village, which belong to us and more particularly described in the schedule hereunder, through this document on this day. The mortgage amount of Rs.10,500 / - as against the above said house site, shall be settled by you. Hereafter we do not have any other connection except blood relation.
>
> In this manner I had execute this Deed of Release.

3. As destiny would have it, Shri Chandran passed away on 09.12.1978. Sengalani Chettiar died on 19.01.1988. The second wife of Sengalani Chettiar, Smt. Kuppammal breathed her last on 25.08.2005. O.S. No.8173 of 2006 came to be filed by one Uma Ravi Chandran and Vinayaga Murthy, who were, as already noticed, children of Sengalani

A Chettiar from his second marriage. Defendants 1 to 3 were the other daughters of Sengalani Chettiar from the second marriage. The appellants were subsequently impleaded as defendants 4 and 5. Defendant No.6 came to be impleaded as such and he is the son of the deceased daughter of Sengalani Chettiar from the second marriage.

B 4. The case of the plaintiffs to exclude the appellants was based on the Release Deed executed by the father of the appellants. The trial Court however found that the Release Deed in question was a void document for the reason that Chandran executed the Release Deed in 1975 while his father Sengalani Chettiar was alive. It is found that the Release Deed would not be a bar for the appellants to inherit the property C of their grandfather Sengalani Chettiar. The plaintiffs were only found to be eligible to get only 2/7 share. Plaintiffs were accordingly given a decree of 2/7 share inter alia. The suit came to be dismissed as far as 'B'schedule property is concerned. Plaintiffs filed AS No.883 OF 2009. Defendants 1, 3 and 6 filed appeal AS No.718 of 2009. By the impugned D judgment the High court has allowed these appeals and found that the appellants were not entitled to claim any share in the property of the deceased Sengalani Chettiar. The foundational premise for overturning the decree of the trial court was furnished by the dicta laid down by this court in *Gulam Abbas v. Haji Kayyam Ali and others*[1]. Briefly put, the E premise is that insofar as Shri Chandran executed a deed of Release having obtained consideration from his father, the appellants would stand estopped from laying a claim to a share in A-Schedule property. The court also noticed the death of the second plaintiff and found that the first plaintiff and her siblings namely, defendants 1 to 3 alone would entitled to succeed to the share of second plaintiff. In other words, after F finding that the plaintiffs D1 to D3 and D6 would be entitled to one-sixth share each in A-Schedule property and in view of the death of the second plaintiff, the first plaintiff and defendants 1 to 3 were found to get 5/24 share and the 6th defendant was to get 4/24 share. It is feeling aggrieved by the denial of share in A-schedule property that the defendants 4 and 5 are before this Court.

G 5. Heard Shri Sidharth Iyer, learned counsel for the appellants, Shri Umashankar, learned counsel on behalf of the first plaintiff and Shri Jayanth Muth Raj, learned senior counsel on behalf of defendant nos. 2 and 6.

H [1] AIR 1973 SC 554

6. Shri Sidharth Iyer, learned counsel for the appellants would contend that the High Court erred in drawing support from Gulam Abbas (supra). He would point out that the case arose under Mohammadan Law and the principle laid down in the said judgment could not be employed to deprive the appellants of their share as Class-I heirs under Section 8 of the Hindu Succession Act, 1956. He would, in fact, point out that the first appellant was hardly three years old in 1975 when the Release Deed was executed. What is even more noteworthy is that the second appellant was not even born. The property being the separate property of the grandfather of the appellants and the appellants being the sons of the pre-deceased son of Sengalani Chettiar, under Section 8, the law vouchsafed shares to the appellants. Reference is made to Section 6 of the Transfer of Property Act. He points out that in 1975 when the Release Deed was executed, Shri Chandran, the father of the appellant, had a mere spes successionis. The mere expectation of succeeding in future could not form the subject matter of a legitimate transfer. Therefore, the trial court is entirely right in ignoring the Release Deed as a null and void document. In other words, when succession to the estate of Sengalani Chettiar opened in the year 1988, the property in question stood in the name of Sengalani Chettiar and in terms of Section 8, the appellants' right to succeed to a legitimate share cannot be questioned on the basis of the Release Deed. He would also point out that the High court has overlooked the mandate of Section 8 of the Hindu Minority and Guardianship Act, 1956. It is contended that Shri Chandran, the father of the appellants could perhaps be treated as having entered into a covenant with his father. The covenant, however, could not operate to bind the appellants in view of Section 8. He would further submit that nothing prevented the grandfather of the appellants from executing a Will or otherwise dealing with the property. He was conscious of the consequence of Shri Chandran dying intestate but yet he did not make any safeguard known to law to eliminate the appellants from succeeding to the property. Based on the dates of the death of their father Shri Chandran in 1978 and the grandfather in 1988, it is contended that there is no scope for applying the doctrine of feeding the grant within the meaning of Section 43 of Transfer of Property Act.

7. Shri Jayanth Muth Raj, learned Senior Counsel appeared to support the appellants. He concedes that the support for the appellants is a later development. In other words, originally, the clients of Shri

A Jayanth Muth Raj, one of whom is one of the daughters of Sengalani Chettiar and the other Shri Babu, the Sixth defendant (the son of a pre-deceased daughter of Sengalani Chettiar) had contested the claim of the appellants. It would however appear that there has been a subsequent assignment in regard to the share of the appellants, made in favour of the clients of Shri Jayanth Muth Raj. This explains, apparently, the
B somersault and inevitable change in the stand of his clients. Shri Jayanth Muth Raj would contend that the judgment of this court in *Gulab Abbas* (supra) relied upon by the High Court involved facts based on which the principle of estoppel was applied. The facts of the instant case, however, did not warrant the principle of estoppel. He would contend that in the
C case of Gulam Abbas, the conduct of the co-heirs was taken into consideration by this Court to hold that they are estopped. On the other hand, in this case he would contend that there was a stark contrast. There is no conduct attributed to the appellants. The children of Sengalani Chettiar have not made out a case based on the principle of estoppel on the basis of conduct by the co-heirs as was the position in the case in
D *Gulam Abbas* (supra). No doubt, in regard to the question as to whether if estoppel did apply qua Shri Chandran, it could be invoked against the appellants to deprive them of their right as Class I heirs (being children of pre-deceased son), the learned Senior Counsel would proceed on the basis that the property involved was a separate property of Sengalani
E Chettiar. He would fervently contend that the principle in Gulam Abbas (supra) was wrongly applied by the High Court. Shri Jayanth Muth Raj would contend that this court may notice that the grandfather did not deal with the property and it did show that he wanted the succession to the property to take place in accordance with the mandate of Section 8 of the Succession Act.
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8. *Per contra*, Shri Umashankar, learned counsel appearing on behalf of first plaintiff and the other contesting respondents support the judgment of the High Court. Learned counsel drew our attention to the terms of the Release deed. He pointed out that the court should bear in mind the intention of the parties. In the second marriage Sengalani Chettiar
G had a son. He was not mentally well. Parties wanted to protect the interest of the son. This explained why the Release Deed is executed in favour of the son represented by grandfather of the appellants. This is apart from pointing out that Shri Chandran having received consideration and given up all his rights, it would not lie in the mouth of the appellants
H to stake a claim for succession to the property.

ANALYSIS

9. The property in question has been found to be the separate property of Sengalani Chettiar. He died in 1988. Sengalani Chettiar had married twice. From his first marriage, was born Shri Chandran. Shri Chandran pre-deceased his father in the year 1978. Being the children of the pre-deceased son, the appellants would ordinarily have inherited the share as decreed by the trial court in this case. The terms of the Release Deed recites that Shri Chandran has released his share in respect of the property. It is also clear that the Relinquishment made by Shri Chandran was based on his having received valuable consideration. Shri Jayanth Muth Raj, learned Senior Counsel made an attempt to contend that the Release Deed is about the property belonging to "us". Nothing turns on the same and we are inclined to proceed on the basis of the finding rendered by both the courts that the property was the self-acquired property of Shri Sengalani Chettiar.

10. Section 6 of the Transfer of Property Act enumerates property which can be transferred. It declares that property of any kind may be transferred except as otherwise provided by the Transfer of Property Act or by any other law for the time being in force. Section 6(a) declares that a chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or other mere possibility of a like nature cannot be transferred. A living man has no heir. Equally, a person who may become the heir and entitled to succeed under the law upon the death of his relative would not have any right until succession to the estate is opened up. When Shri Sengalani Chettair, the father of Shri Chandran, was alive, Shri Chandran his son had at best a spes successonis. Unlike a co-parcener who acquires right to joint family property by his mere birth, in regard to the separate property of the Hindu, no such right exists. Thus, there can be no doubt that the Release Deed may not by itself have the effect of a transfer of the rights of Shri Chandran in favour of either his father or the minor son of his father from the second marriage.

11. What however remains to be seen is whether conduct of Shri Chandran in executing the release deed and what is even more important receiving consideration for executing the Release Deed would result in the creation of estoppel. Having regard to the equity of the matter, in short, whether it is a case where the doctrine of equitable estoppel would have prevented Shri Chandran from staking a claim if he had survived

A his father. What is the effect of the existence of estoppel as against Shri Chandran if such estoppel is made out, as far as the claim of the appellants is concerned? The further question would be what is the effect of Section 8 of Hindu Minority and Guardianship Act.

12. Before we proceed to deal with the contentions, it is necessary B to take a closer look at the facts of the case of *Gulam Abbas* (supra) and what has been laid down therein. In the said case the facts involved were as follows:

In that case, a Mohammadan died leaving behind 5 sons, a daughter and a widow as his heirs. Three of his sons did well in life. Their father C had incurred debts. At the time, when their father was staring at the prospect of being completely deprived of the property as a result of his indebtedness, two of his sons came forward and they paid up the debt. It came with the price however. Two of his sons, namely the plaintiff and the fourth defendant in the deeds acknowledged receipt of some cash and movable property as consideration for not claiming any rights in D future in the property. The words relevant in this regard are as follows:

> "I have accordingly taken the things mentioned above as the equivalent of my share and I have out of free Will written this. I have no claim in the properties hereafter and if I put up a claim in future to any of the properties I shall be proved false by this E document. I shall have no objection to my father giving any of the properties to my other brothers..... ....."

13. This court went on to approve the view taken by the High Court of Allahabad in AIR 1976 Allahabad 573. The court found as follows:

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> "…With due respect, we are unable to concur with the view of the Madras High Court that a renunciation of an expectancy, as a purported but legally ineffective transfer, is struck by Section 23 of the Indian Contract Act. As it would be void as a transfer at all there was no need to rely on Section 23, Contract Act. If there G was no "transfer" of property at all, which was the correct position, but a simple contract, which could only operate in future, it was certainly not intended to bring about an immediate transfer which was all that the rule of Muslim law invalidated. The real question was whether, quite apart from any transfer or contract, the declarations in the deeds of purported relinquishment and receipt H

of valuable consideration could not be parts of a course at conduct over a number of years which, taken as a whole, created a bar against a successful assertion of a right to property when that right actually came into being. An equitable estoppel operates, if its elements are established, as a rule of evidence preventing the assertion of rights which may otherwise exist.

7. Sir Roland Wilson, in his "*Anglo Mohamadan Law"* (p. 260, para 208) states the position thus:

"For the sake of those readers who are familiar with the joint ownership of father and son according to the most widely prevelant school of Hindu Law, it is perhaps desirable to state explicitly that in Mohammedan, as in Roman and English Law, nemo est heres viventis.....a living person has no heir. An heir apparent or presumptive has no such reversionary interest as would enable him to object to any sale or gift made by the owner in possession; See *Abdul Wdhid*, L.P. 12 I.A., 91, and 11 Cal 597 (1885) which was followed in *Hasan Ali*, 11 All 456, (1889). The converse is also true: a renunciation by an exepectant heir in the lifetime of his ancestor is not valid, or enforceable against him after the vesting of the inheritance."

This is a correct statement, so far as it goes, of the law, because a bare renunciation of expectation to inherit cannot bind the expectant heir's conduct in future. But, if the expectant heir goes further and receives consideration and so conducts himself as to mislead an owner into not making dispositions of his property inter vivos the expectant heir could be debarred from setting up his right when it does unquestionably vest in him. In other words, the principle of estoppel remains untouched by this statement."

(Emphasis supplied)

14. The property, i.e., 'A' schedule, was not the ancestral property of Shri Chandran. Shri Chandran would have acquired rights over the same only if his father had died intestate. He was, thus, only a heir apparent. Transfer by an heir apparent being mere spes successonis is ineffective to convey any right. By the mere execution of Release Deed, in other words, in the facts of this case, no transfer took place. This is for the simple reason that the transferor, namely, the father of the appellants did not have any right at all which he could transfer or relinquish.

A However, if his conduct was such that he could be estopped then the execution of the Release Deed would imperil his right and therefore cast an irremovable shadow on the claim of the appellants as well unless we find merit in other submissions of Shri Siddharth Iyer, learned counsel for the appellants.

B 15. The argument of the appellants and Shri Jayanth Muth Raj that there is no evidence that the grandfather of the appellant acted on the Release Deed and that he did not execute any deed on the basis of the Release Deed does not appeal to us. Shri Sengalani Chettiar married twice. The first union produced the father of the appellants. Thereafter, he married again. It is after the second marriage and the birth of the C children from the said wedlock that Release Deed came to be executed on 12th November, 1975. It would appear that from the second marriage, a son was born who incidentally was ill and in whose favour the father of the appellants executed the Release Deed. The intention of Sengalani Chettiar would appear to have been to secure the interest of the son D from the second marriage. He wished to secure his interest created under the second marriage and for which the father of the appellants who was his son from the first marriage was given some valuable consideration, which persuaded Shri Chandran to release all his rights in respect of property in question. The words in the 'Release Deed' that hereafter he did not have any other connection except blood relation E appears to signify that the intention of Shri Chettiar was to deny any claim to Shri Chandran in regard to the property. He apparently thought that he achieved his goal and in law if the principle in *Gulam Abbas* (supra) is applied and Shri Chandran did not pre-decease his father, all would have gone according to the plan of the parties.

F 16. We are of the view that conjecturing that Shri Chandran has survived his father and his succession had opened intestate in regard to the estate of his father, the conduct of executing the Release Deed though by itself may not have resulted in a lawful transfer, his conduct being accompanied by the receipt of consideration would have estopped G Shri Chandran. The very fact that Shri Chettiar did not execute any document by way of Will only shows that he proceeded on the basis that the branch represented by Shri Chandran was being cut off from inheritance from the property in question.

17. When we queried learned counsel for the plaintiff as to why H no Release Deed was got executed from the children of Shri Chandran,

viz., the appellants, learned Counsel responded by contending that Sengalani Chettiar, apparently, proceeded on his understanding of the law.

THE IMPACT OF SECTION 8 OF THE HINDU MINORITY AND GUARDIANSHIP ACT

18. Section 8 (1), (2) and (3) of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as, 'the 1956 Act'), inter alia, reads as follows:

"8. Powers of natural guardian. —

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

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

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or by any person claiming under him."

19. The appellants rely upon the prohibition against the natural guardian of a Hindu minor, binding the minor by a personal covenant. In view of the said embargo, the principle enunciated in *Gulam Abaas* (supra) would not apply it is contended. We would think that it is a contention, which may not pass muster on a proper interpretation of Section 8.

20. Section 6 of the 1956 Act, *inter alia*, declares that the father and, after him, the mother, shall, in the case of a boy or an unmarried girl, be the natural guardians of the minor's person as well as in respect of the minor's property. However, the minor's property would not include the undivided interest the minor has in the joint family property. It is,

A thereafter, that Section 8 appears and it purports to delineate the powers of a natural guardian. The powers of a natural guardian, in other words, relate either to the person or to the minor's property or both. Section 8 purports to, inter alia, provide that the natural guardian would have the power to do all acts, which are necessary or reasonable and proper for the benefit of the minor or realisation, protection or benefit of the minor's B estate. It is, thereafter, that the Law-Giver has interdicted the guardian from binding the minor by a personal covenant. In short, in order that we pour meaning into the words in question, the backdrop must be provided by the existence of the minor and who has a right to some property. If, in regard to the property of the minor, the natural guardians were to enter C into a covenant, then, it may be open to the minor to invoke the prohibition against the natural guardian, binding the minor by a personal covenant.

21. In the facts of this case, the case of the appellants may be noted. It is their case, that Shri Chandran, their father, himself did not have any right in the plaint schedule property. This is for the reason that D being the separate property of Shri Sengalani Chettair, Shri Chandran did not have any right by birth. He himself had only, what is described a spec successionis within the meaning of Section 6(a) of the Transfer of Property Act. It is not even the case of the appellants that they had any independent right in the plaint schedule property either at the time of their birth or at the time when their father died or even when their E grandfather Shri Sengalani Chettair died in 1988. The right, which they claim, at the earliest point, can arise only by treating the property as the separate property of Shri Sengalani Chettair on his death within the meaning of Section 8 of the Hindu Succession Act. Therefore, we are unable to discard the deed of release executed by their father Shri F Chandran in the year 1975 as a covenant within the meaning of Section 8 of the '1956 Act.'

22. As far as the argument of the appellants that the appellants would have an independent right, when succession open to the estate of Shri Sengalani Chettair, when he died in 1988, in view of the fact that the G appellants are the children of the predeceased son, *viz*., Shri Chandran, who died on 09.12.1978, we are of the view that there is no merit in the said contention. It is true that under Section 8(a) of the Hindu Succession Act, 1956, property of a male Hindu, dying intestate, will devolve, firstly, upon the heirs, being the relatives specified in Class I of the Schedule. The son of a predeceased son, it is true, is a Class I heir. Therefore, it H

could be argued that since Shri Sengalani Chettair died intestate, a right was created in the property in favour of the appellants, being the children of the predeceased son. What estoppel brings about, however, is preventing a party from setting up the right, which, but for the estoppel, he would have in the property. In this regard, we may notice the following discussion under the caption 'Death or disability of the representor' (pages 125-126) in the work Estoppel by Representation by Spencer Bower and Turner:

> "Death or disability of the representor
>
> 128. In case of the death, or the total or partial disability (whether by reason of insolvency, infancy, lunacy, coverture, or otherwise), of the representor at the time of the proceedings in which the question of estoppel is raised, the liability to the estoppel, speaking generally, devolves upon, or is transmitted to, the same persons, in accordance with the same rules, and subject to the same conditions, as the liability of such a representor to proceedings for the avoidance of a contract procured by the representation.
>
> Where the representor has died between the date of the representation and the date of the raising of the estoppel, the executor or administrator, or (in case of title to, and estates in, land) the heir or devise, of the deceased representor is bound by the representation to the same extent as the representor would have been, and succeeds to all the burdens of estoppel in respect thereof to which, at the date of his decease, such representor was subject…"

23. It will be noticed that the father of the appellants, by his conduct, being estopped, as found by us, is the fountainhead or the source of the title declared in Section 8(a) of the Hindu Succession Act. It is, in other words, only based on the relationship between Shri Chandran and the appellants, that the right under Section 8(a) of the Hindus Succession Act, purports to vest the right in the appellants. We would think, therefore, that appellants would also not be in a position to claim immunity from the operation of the Principle of Estoppel on the basis of Section 8(a) of the Hindu Succession Act. If the principle in *Gulam Abbas* (supra) applies, then, despite the fact that what was purported to be released by Shri Chandran, was a mere spec successonis or expectation his conduct in transferring/releasing his rights for valuable consideration, would give

A rise to an estoppel. The effect of the estoppel cannot be warded off by persons claiming through the person whose conduct has generated the estoppel. We also find no merit at all in the attempt at drawing a distinction based on religion. The principle of estoppel applies without such distinction.

B 24. The only further contention which remains to be dealt with is that raised by Shri Jayanth Muth Raj, learned Counsel. He made an attempt to contend that the principle in *Gulam Abbas* (supra) may not be available in view of the factual matrix. It is his case that in the said case, the brothers received a benefit and thereafter gave-up the rights, which, as it was found, they did not possess at the time. The position in C this case, however, is not similar. We are of the view that this argument ignores the play of the facts. Having received valuable consideration and allowed his father Shri Sengalani Chettair to proceed on the basis that he was free to deal with the property without the prospect of being haunted by any claim whatsoever as regards the property by Shri D Chandran, a clear estoppel sprang into existence following the receipt of consideration by Shri Chandran. Estoppel would shut out in equity any claim otherwise either by Shri Chandran or his children, *viz*., the appellants.

In such circumstances, we find no merit in the appeals. The E appeals will stand dismissed. Parties will bear their own costs.

Bibhuti Bhushan Bose Appeals dismissed.
(Assisted by : Shubhansh Thakur, LCRA)