Smt. Lajwanti, it was mentioned in the written statement by the petitioner that Anant Ram was the owner of the property. This *ex facie* appears to be erroneous. The written statement has to be read as a whole. One paragraph or line cannot be read in isolation of the rest. The petitioner's claim was that Smt. Lajwanti had executed a registered Will in his favour and he has become the owner by virtue of the said Will. He had even produced the conveyance deed in favour of Smt. Lajwanti. Keeping in view the said fact, the particular line that Anant Ram was the owner of the property was out of context. In this background, if the amendment is disallowed, it would be patently doing injustice because defence of the petitioner is known. He should not have admitted Anant Ram to be the owner. The trial Court in these circumstances fell into error in disallowing the application.

(11) For these reasons, the revision petition is allowed and the impugned order is set aside. Instead, the amendment is allowed subject to payment of Rs. 500 as costs.

R.N.R.

Before T. H. B. Chalapathi, J.

RAJINDER KUMAR,—*Petitioner.*

versus

SANATAN DHARAM MAHABIR DAL & OTHERS,—*Respondents.*

C. R. No. 4595 of 1997

9th October, 1998

Code of Civil Procedure, 1908—Ss. 47 & 151, O. 21, Rl. 35—Execution of decree—One of the judgment debtors objecting to the decree on the ground that he was minor at the time of institution of suit and was not properly defended in the proceedings—In the suit, Court appointing guardian who engaged the counsel appearing for mother and brother of the objector—Appeal against the decree decided in 1992 when objector had already become major—Decree upheld upto the Supreme Court—No objection taken before High Court or in Supreme Court that the decree is invalid on ground of defective representation—Objector did not get himself declared as

major—Inference can be drawn that the objector was sufficiently represented and the decree is binding on him.

Held that when the appeal was pending in this Court, the petitioner became major. When the appeal was decided in this Court in the year 1992, the petitioner was aged about 29 years. It is not as though the petitioner was not aware of the pendency of the appeal in this Court. But the petitioner did not choose to get himself declared as major. When admittedly, the petitioner had knowledge of the proceedings for eviction, it is the duty of the petitioner to get himself declared as major. When a defendant becomes a major during the pendency of the suit, he can himself come on record as a major or inform the Court that he has attained majority. If he does not move in the matter, he may be deemed to have adopted the proceedings and will be bound by the result of the litigation.

(Para 5)

Further held, that the suit property was taken on lease by the father of the petitioner. On his death, all the defendants became entitled to the tenancy rights of his father. There is also no dispute of the fact that the petitioner and other members form Hindu joint family along with his father. After the death of his father, the elder brother of the petitioner became the Manager of the family. When the suit was filed against the Manager of the Hindu joint family, it is binding on the minor members of the family as well.

(Para 7)

Further held, that this is not a case where there is no representation of the minor at all. If a minor defendant is not represented at all in the suit, the decree as against him may be said to be a nullity but that must be distinguished from cases where the Court had appointed a guardian *ad-litem* on an application filed by the defendant. Though there is some irregularity in appointing the guardian it does not amount to no-representation at all. The minor cannot avoid the decree unless it is shown that the defect in procedure has prejudiced him.

(Para 8)

Further held, that one can understand if the petitioner makes a greivance immediately on attaining the majority but he kept quiet for more than a decade after attaining majority. If he wants to have

the decree set aside, he has to necessarily file a suit asserting his rights on attaining majority.

(Para 10)

Manmohan Singh, Sr. Advocate, with T. S. Pàntel, Advocate,—*for the Petitioner.*

S. P. Gupta, Sr. Advocate, with P. N. Pandey, Advocate,—*for the Respondents.*

JUDGMENT

T. H. B. Chalapathi, J.

(1) This revision petition is filed against the order of the Additional Civil Judge, (Junior Division) Bathinda, dated 3rd October, 1997, on an objection petition under section 47 read with section 151 of the Code of Civil Procedure filed by the petitioner to the execution of the decree.

(2) The first respondent, which is a Trust, filed a suit for recovery of possession of shops. The said suit was decreed by the trial Court. Against the said decree, the defendants filed an appeal to the Additional District Judge, Bathinda, which was dismissed. Against the decree and judgment of the Additional District Judge, a second appeal was also filed in this Court, which was also dismissed. The defendants carried the matter to the Apex Court. The Apex Court also confirmed the decree. To execute the said decree for possession, the petitioner (decree-holder) filed an application for execution of the same, out of which the present revision petition arises. The petitioner, who is one of the judgment-debtors, is objecting to the execution of the decree on the ground that he was a minor at the time when the suit was instituted in January, 1972 and he was not properly represented through a proper guardian in the proceedings. Therefore, the decree is not binding on him and cannot be executed.

(3) There is no dispute of the fact that the petitioner was a minor when the suit was filed. The suit was filed against his brother, mother, himself and his sisters. The mother and the brother of the petitioner refused ot receive the notice on behalf of the petitioner. Therefore, an application was filed for appointment of a Cóurt-guardian and the Court appointed a Court-guardian for the petitioner. The Court-guardian engaged Shir Jagmohan Lal Syal, Advocate, who was also appearing for the mother and the brother

of the petitioner, who also contested the suit. The Advocate appearing on behalf of the Court-guardian, representing the mother of the petitioner, adopted the written statement filed by other defendants. After contest, the suit was decreed. The brother of the petitioner initially filed an appeal before the Additional District Judge, Bhatinda. In that appeal, his mother, brothers and sisters have been impleaded as respondents 2 to 8. Respondents 2 to 8 including the present petitioner moved an application on 17th July, 1976 before the learned Additional District Judge to transpose them as appellants. On that application, the learned District Judge passed the following order :—

> "Respondent No. 2 to 8 who are defendants along with the appellant in the lower court and are along with the appellants the heirs of deceased Om Parkash Garg, have moved an application for being transposed as appellants. Shri Manmohan Lal Gupta counsel for the plaintiff respondent No. 1 has made a statement that he did not oppose the application. The names of these respondents namely 2 to 8 be removed from the list of respondents and be transposed as appellants."

(4) The learned District Judge dismissed the appeal. A regular second appeal was filed in this Court by all the defendants including the present petitioner Rajinder Kumar, who was the third appellant. The appeal was heard and decided on 15th May, 1992.

(5) There is also no dispute of the fact that all the respondents are living together. Admittedly, the petitioner was born on 7th August, 1963 as evidenced by the certificate of date of birth produced by the petitioner himself, which is marked as Exhibit Order 1. Therefore, by the appeal in this Court was decided on 15th May, 1992, the petitioner already became a major. There is also no dispute of the fact that against the judgment of this Court in R.S.A. No. 933 of 1979, dated 15th May, 1992, an appeal was also filed before the Apex Court. Either in the Court or in the Apex Court, no objection has been taken by the petitioner that the decree passed against him, when he is a minor, is not validly passed, on the ground that he was not properly represented in the suit. When the appeal was pending in this Court, the petitioner became major. When the appeal was decided in this Court in the year 1992, the petitioner was aged about 29 years. It is not as though the petitioner was not aware of the pendency of the appeal in this Court. But the petitioner did not

choose to get himself declared as major. When admittedly the petitioner had knowledge of the proceedings for eviction, it is the duty of the petitioner to get himself declared as major. When a defendant becomes a major during the pendency of the suit, he can himself come on record as a major or inform the Court that he has attained majority. If he does not move in the matter, he may be deemed to have adopted the proceedings and will be bound by the result of the litigation. It has been held in *Lanka Sanyasi* v. *Lanka Yerran Naidu and others* (1), as follows :—

> "No provisions have been made in the Civil Procedure Code, in respect of a minor defendant attaining majority. Therefore, the minor defendant who comes of age may, if he thinks fit, come on the record and conduct the defence himself. If, however, he does not do so and allows the cases to proceed as though he was still a minor without bringing to the notice of the Court, the fact of his having attained majority, then he must be deemed to have elected to abide by the judgment or adjudication by the Court with respect to the matters in controversy on the basis of the suit at the time."

(6) The same view has also been taken in *Savithri* v. *Vasudevan Nambudiri* (2), and also in *V. K. Murugappa Mudaliar* v. *P. M. Desappa Nayanim Varu and others* (3) and *N. M. Rayulu Iyer Nagasami Iyer and Co. through one of its Partners N. M. R. Venkatakrishnba Iyer* v. *Chockanarayanan Chettiar* (4). It is also pertinent to note that after he became major, an appeal was also filed in the Apex Court. The appeal was also on behalf of the petitioner. The petitioner, therefore, cannot contend that the decree was against him during his minority and is not binding on him on the ground that he was not properly represented. The decree attained finality long after he attained the majority and he never objected, neither in the appeal before this Court nor in the Supreme Court. The appeals are in continuation of the suit. The petitioner has not taken any objection that the decree passed against him during his minority is not binding against him and, therefore, it is liable to be set aside.

(1) A.I.R. 1928 Madras 294
(2) A.I.R. 1959 Kerala 387
(3) A.I.R. (37) 1950 Madras 314
(4) A.I.R. 1954 Madras 237

(7) Admittedly the suit property was taken on lease by the father of the petitioner. On his death, all the defendants became entitled to the tenancy rights of his father. There is also no dispute of the fact that the petitioner and other members from Hindu joint family along with his father. After the death of his father, the elder brother of the petitioner became the Manager of the family. When the suit was filed against the Manager of the Hindu joint family, it is binding on the minor members of the family as well. In this context reference may be made to the decision of Rajasthan High Court in *Mahabir Prasad* v. *Sawai Chand and others* (5) and also to the decision in *C. K. S. Krishnamurthi and others* v. *Chidambram Chettiar and others* (6).

(8) I am also of the opinion that this is not a case where there is no representation of the minor at all. If a minor defendant is not represented at all in the suit, the decree as against him may be said to be a nullity but that must be distinguished from cases where the Court had appointed a guardian *ad litem* on an application filed by the defendant. Though there is some irregularity in appointing the guardian, it does not amount to no-representation at all. The minor cannot avoid the decree unless it is shown that the defect in procedure has prejudiced him.

(9) The learned counsel for the petitioner contended that the provisions of Rule 3 of Order 32 of the Code of Civil Procedure as amended in the Punjab have not been followed and, therefore, the decree is a nullity. I am not able to agree with this contention of the learned counsel for the petitioner. In this connection, it is useful to refer to the Full Bench decision of this Court in *Amrik Singh and another* v. *Karnail Singh and others* (7), wherein it has been observed as follows :—

> "The object of Order 32 is to see that no decrees are passed against minors where they are not effectively represented. I have deliberately used the words 'effectively represented' in contradistinction to the 'representation' contemplated by order 32, Rule 3. If a minor is represented by a guardian *ad litem* and the interests of the other major defendants are identical with him and those defendants are effectively prosecuting the litigation it can hardly be said that a minor

(5) A.I.R. 1958 Rajasthan 107
(6) A.I.R. (33) 1946 Madras 243
(7) A.I.R. 1974 P & H 315

is nor effectively represented. Too much insistence on technical provisions of a procedural law can at times lead to absurd results and cause injustice to the parties."

(10) On the facts of the present revision petition, the interest of the petitioner is identical with that of the other defendants and the suit has been contested on every conceivable ground and the matter was taken upto the Apex Court by the defendants unsuccessfully. The suit was filed in the year 1972. The decree became final only after a period of two decades. When the plaintiff is seeking to execute the said decree, the petitioner filed this application to further delay the execution. The plaintiff is not able to recover possession of the property for more than two and a half decades. One can understand if the petitioner makes a grievance immediately on attaining the majority but he kept quiet for more than a decade after attaining majority. If he wants to have the decree set aside, he has to necessarily file a suit asserting his rights on attaining majority. It has been held by the Apex Court in *Smt. Kameshwari Devi @ Kaleshwari Devi & Ors.* v. *Smt. Barhani & Ors.* (8), that if the interest of the estate of the minor is not protected, necessarily the minor on his attaining majority or within 3 years thereafter is entitled to file the suit under section 7 of the Limitation Act, after cessation of the disability, to question the correctness of a decree which is sought to be made binding on him, and in such a case, the limited defence that could be open to him is that either the decree in the earlier suit was obtained by fraud/collution or by negligence on the part of the Court guardian or that the guardian *ad litem* did not safeguard the interest of the estate of the minor. It has also been held by the Apex Court that if the defence was common to all the defendants in earlier suit including that of the minor and the estate of the minor was sufficiently represented by appointing the Court-guardian, the decree is binding on the minor.

(11) In view of my foregoing discussion, I do not find any ground warranting interference with the impugned order of the Executing Court. The revision petition, therefore, fails and is accordingly dismissed.

R.N.R.

(8) J.T. 1997 (3) S.C. 403