

However, de facto
with the de jure



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However, such person, if he does not make application to the court, but manages the property of minor, he is referred to as de facto guardian. He is also referred to as de facto manager of the property, because a de facto guardian of a minor, is neither a legal guardian nor a testamentary guardian and nor a guardian appointed by the court, but he is a person, who himself, has taken over the management of the affairs of the minor, as if he were a natural guardian. He had no lawful authority but can dispose of the property in case of emergency. But such de facto guardian's power to dispose of the property is abolished by Section 11 of the Hindu Minority and Guardianship Act, 1956. Under old Hindu law nothing has been said about the de facto guardian, but this type of guardian was quietly recognised in practice.

The Privy Council in *Anuman Prasad* case, as early as in 1856 observed that under Hindu law, the right of a bona fide incumbrancer, who has taken from a de facto guardian a charge of land, created honestly, for the purpose of saving the estate, or for the benefit of the estate, is not affected by the union of the de facto with the de jure title. With this judgment a silent recognition was extended to the status of de facto guardian. Later in *Kandamundi v. Myneni*, Justice Kania observed that Hindu law tried to find a solution out of two difficult situations: one, when a Hindu child has no legal guardian, there would be no one who would handle or manage his estate in law and thus without a guardian the child would not receive any income from his property, and secondly, a person having no title could not be permitted to intermeddle with the child's estate so as to cause loss to him. The Hindu law found a solution to this problem by according legal status to de facto guardians. In *Arvindo Society Pondicherry v. Ramdas Naidu*, the Madras

High Court observed that de facto guardian is in juxtaposition to de jure guardian.

Both are related to the minor in normal course not causally. But the de facto guardian has no legal authority to meddle with the property of the minor in any way whereas the de jure guardian has all such powers to his credit.

Powers of De Facto Guardian:

Powers of De Facto Guardian are as follows: The Hindu Minority and Guardianship Act, 1956 does not recognise a de facto guardian. Section 11 of the Act expressly negates the power of de facto guardian to alienate or deal with the property of a Hindu minor.

Section 11 provides as under: “ After the commencement of the Act, no person shall be entitled to dispose of, or deal with the property of Hindu minor merely on the ground of his or her being the de facto guardian.” After the enforcement of the Act of 1956, a de facto guardian, thus, cannot deal with the property of a minor. Such property may be his separate or undivided interest in joint family. It is not correct to restrict the application of this section only to separate property merely because Section 11 of the Act does not mention “ undivided interest in joint family” as the expression occurs in Section 8 and Section 9 of the Act.

Thus Section 11 in effect has abrogated the class of de facto guardian. Any alienation by such guardian after the commencement of the Act would be void ab initio and the alienee would acquire no title to the property. In law the class of de facto guardian is not recognised. Any one claiming himself to

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be the de facto guardian would be incompetent to make alienation of the minor's property. This view was reiterated by Madras High Court which held that a person, having the care of properties of a minor but who is neither a natural guardian, or testamentary guardian nor a guardian appointed by the court is only a de facto guardian and the restrictions under Section 11 will apply to his acts.

Where the father is alive and is not disqualified, it is incompetent for the mother to interpose herself as the guardian (de facto) of the minor. Any alienation or disposal of the property by the mother acting as the guardian of the minor is unauthorised and is totally devoid of any effect. As such, where the mother of the minor sons acting as their guardian disposed of their shares in a property held by the minors and their father jointly during the lifetime of the father, the alienation would be held void.