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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: September 20, 2016

+ **RFA 551/2005 & C.M.13059/2006**

AJAY VIR SINGH Appellant
Through: Mr. Pravir K. Jain, Advocate

versus

MASTER JHONEY SINGH & ORS. Respondents
Through: Mr. Raman Kapur, Senior
Advocate with Mr. Dhiraj
Sachdeva, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Appellant's suit for specific performance in respect of sale of half-undivided share of entire second floor of plot B-11, Housing Society, N.D.S.E. Part-I, measuring 370 sq. yards stands dismissed by trial court vide impugned order of 24th May, 2005 while holding that the two Agreements to Sell of 27th November, 1995 in respect of half-undivided share of defendant No.1/respondent No.1, who was a minor, cannot be enforced. Although on the pleadings of the parties, seven issues were framed, but trial court vide impugned order has decided the main issue No. V by relying upon Section 8 of *the Hindu Minorities and Guardianship Act, 1956 (hereinafter referred to as 'the Act')*. Impugned

order holds that statutory permission under Sub-section (2) of Section 8 of the Act has not been taken and so, specific performance has been declined.

The factual matrix of this case, as noted in the impugned order, is reproduced hereunder:-

“In brief, facts material for the consideration are that the plaintiff has filed this suit for specific performance of the Agreement to Sell. It is the case of the plaintiff that he had been introduced to defendant No.2 for negotiation of the sale of a residential flat for himself in October/November, 95. The defendant no.2 represented that his minor son namely defendant no.1 was the sole and absolute owner of 1/2 undivided share of the entire second floor along with proportionate undivided ownership rights in the land on the plot measuring 370 sq. yds bearing No.B-11, Housing Society N.D.S.E. Part I, New Delhi and the remaining 1/2 share was owned by Smt. Harwant Kaur and Smt. Harjeet Kaur having 1/4th undivided share each in the said property. Accordingly, four Agreements to Sell dated 27.11.95 were executed in favour of plaintiff i.e. one by Smt. Harwant Kaur; defendant no.3; one by Smt. Harjeet Kaur; defendant no.4; and two by defendant no.2 on behalf of defendant no.1 as his father and natural guardian. Each Agreement to Sell was for sale of 1/4th undivided share of the entire second floor along with proportionate share rights in the land beneath. Each agreement was for a sale consideration of Rs.2.10 Lacs each, totaling to Rs.8,40,000/-. As per the agreement, a sum of Rs.6 Lacs (Rs.1.5 Lacs for each share) were to be paid by way of four cheques, thereafter, the actual physical vacant and peaceful possession of the suit property was to be handed over to the plaintiff.”

The challenge to the impugned order by learned counsel for appellant is on the ground that Sub-section (3) of Section 8 of the Act makes it abundantly clear that the sale of a share of a minor by the guardian without permission from the court, is voidable at the instance of the minor or any person claiming under him. It is contended that the minor has to come forward within three years of attaining the majority to challenge the sale of his share, but he has not done so and therefore, the bar under Sub-section (2) of Section 8 of the Act is not attracted to the instant case and so, the impugned order deserves to be set aside and appellant's suit ought to be decreed as appellant is in possession of the suit property since the date of the agreement i.e. November, 1995. In support of the above submissions, reliance is placed upon Supreme Court's decisions in *Vishwambhar & Ors. v. Laxminarayana (Dead) through LRs and Anr.*, JT 2001 (5) SC 539, *V. Lakshmanan v. B.R. Mangalagiri & Ors.*, 1 (1995) DMC 213 (SC) and *Nagappan v. Ammasai Gounder and Others*, (2004) 13 SC 480. Lastly, it is submitted by appellant's counsel that Sub-section (3) of Section 8 of the Act makes it clear that it relates to conveyance of immovable property, be it may by a sale or any other instruments, like agreement to sell, GPA, etc..

On the contrary, it is submitted by learned senior counsel for contesting respondent No.1 that the sale of the share of a minor without the requisite permission of the Court is directly hit by the bar provided under Sub-section (2) of Section 8 of the Act and so, appellant's suit has been rightly dismissed by the trial court. To submit so, reliance has been placed upon Supreme Court's decision in *Kallathil Sreedharan and Another v. Komath Pandiyala Prasanna and Another*, (1996) 6 SCC 218.

Learned senior counsel for contesting respondent No.1 submits that the decisions relied upon by appellant's counsel relate to transfer of property by sale and so, they are not applicable to instant case.

Upon hearing and on perusal of impugned order, the evidence on record and the decisions cited, it becomes evident that appellant's suit has been decided on a legal issue without adverting to other issues. It is a matter of record that contesting respondent was *ex parte* before trial court and had not led any evidence. The burden to prove the first three issues was upon respondent/defendant, which he had failed to discharge. Learned counsel for appellant on instructions did not press issues No.6 and 7. So, this appeal is confined to the decision of the main issue No.5.

The two Agreements to Sell of 27th November, 1995 have been held to be unenforceable on account of want of permission from the court as required under Sub-section (2) of Section 8 of the Act. Though trial court has reproduced Section 8 of the Act, but has erred in not taking notice of Sub-section (3) of Section 8, which reads as under: -

“8 . Powers of natural guardian.-

(1) XXXXXX

(2) XXXXXX

(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 any person claiming under him.”*

The aforesaid provision has been interpreted by the Supreme Court in *Vishwambhar (supra)* and it has been reiterated that alienation of property of a minor by guardian without the permission of the court would be voidable and not void. In *V. Lakshmanan (supra)*, Supreme

Court has made it clear that the sale by way of Agreement to Sell is voidable at the instance of minor and upon minor attaining the age of majority during the pendency of the suit, the permission becomes redundant. It is a matter of record that in the instant case, the minor upon attaining the age of majority had not challenged the alienation of his share made by his natural guardian and so, in such a case, obtaining of permission becomes unnecessary. The pertinent observations of the Supreme Court in *V. Lakshmanan (supra)* on this aspect are as under: -

“.....When the minor had attained majority pending the suit and had elected to abide by the terms of the agreement of sale, the need to obtain sanction from the Court became unnecessary.”

In *Nagappan (supra)*, the Supreme Court has again reiterated that reading of Section 8 of the Act itself shows that the sale made by natural guardian in contravention of Sub-sections (1) and (2) of Section 8 of the Act, is voidable at the instance of the minor and it was held in the said case that prayer for setting aside alienation was not made and so, the suit seeking possession was held to be not maintainable.

In the light of the afore-noted legal position, reliance placed upon earlier decision of Supreme Court in *Kallathil Sreedharan (supra)* by learned senior counsel for contesting respondent No.1 is of no avail as Sub-section (3) of Section 8 of the Act clearly provides that any disposal of immovable property by natural guardian without the requisite permission being in contravention of Sub-sections (1) and (2) of Section 8 of the Act, is voidable at the instance of minor or any other person claiming under him.

Indisputably, sale consideration is already received and physical possession has already changed hands, so what is material is disposal of immovable property, be it by sale deed or Agreement to Sell or the like. The stand of appellant remains unshaken in cross-examination. As already noted above, the minor upon attaining majority has not come forward to challenge the disposal of the immovable property. In such a situation, trial court was not justified in dismissing appellant's suit for specific performance of the suit property.

Consequently, impugned order is set aside and appellant's appeal is allowed and appellant's suit for specific performance is hereby decreed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

SEPTEMBER 20, 2016

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