

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No.2762 of 1988 (O&M)
Date of Order:16.08.2018**

Lajwanti and others

..Appellants

Versus

Lekh Ram @ Lekh Raj (deceased) through his LRs

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.S.Rana, Advocate, for
Mr. Ashish Kapoor, Advocate,
for the appellants.

Mr. D.K.Tuteja, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing the suit for specific performance of the agreement to sell dated 22.10.1964, executed by appellant no.1-Smt. Kajwanti, on behalf of herself and her minor children.

It is the case of the plaintiff that he was allotted a shop being part of property no.B-II-1070, whereas remaining property including 4 shops and house was allotted to Lurind Chand.

Defendant no.1 i.e. the wife Lajwanti of Lurind Chand was co-allottee. A dispute arose between the parties and the plaintiff filed a proceedings before the Deputy Chief Settlement Commissioner. A settlement was arrived at, according to which allotment would be made in favour of Lajwanti and her minor children as by that time Lurind Chand

had died. It was further agreed that the plaintiff would withdraw his claim but Lajwanti would execute the agreement to sell with regard to one shop already in possession of the plaintiff along with upper storey thereon. The agreement was executed on 22.10.1964. As per the agreement to sell, sale deed was to be executed and registered after 2 months from the date of certificate of sale is issued in favour of Lajwanti and her minor children. Plaintiff claim that he came to know of the sale certificate, when Lajwanti filed a proceedings for eviction of the plaintiff.

Defendants-appellants contested the petition on the ground that Lajwanti was not entitled to enter into an agreement to sell on behalf of her minor children. Execution of the agreement to sell was also denied. Defendants further asserted that the plaintiff has illegally constructed a stair case inside the shop and a wall in the upper storey. It was further pleaded that Lurind Chand had taken some loan from the plaintiff.

Both the courts on appreciation of evidence decreed the suit after recording a finding that agreement to sell has been proved as both the marginal witnesses have been examined. The courts have further noticed that Lajwanti did make a statement before the Rehabilitation authorities that she would sell one shop along with upper storey thereon in favour of the plaintiff.

Learned first appellate court further found that the aforesaid deal was for the benefit of the minors and, therefore, defendants-appellants cannot take benefit of absence of permission of the competent court.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellants has submitted that as per Section 8 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as 'the Act') a natural guardian of a Hindu minor has no power to sell the property of a minor without permission of the Court. He submitted that, thus, Lajwanti had no right to enter into any agreement to sell on their behalf.

On the other hand, learned counsel for the respondent-plaintiff has submitted that it was Joint Hindu Family property and as per Section 12 of the Act of 1956, guardian is not required to seek permission of the court with respect to undivided interest of the minors in the joint family property. He relied upon a judgment passed by the Hon'ble Supreme Court in the case of Narayan Bal v. Sridhar Sutar, (1996) 8 SCC, 54.

This court has considered the submissions of respective counsels and carefully examined the provisions of the Act.

From reading of Section 8 of the Act of 1956, it is clear that natural guardian is not entitled to mortgage, transfer by sale, gift, exchange or lease any part of such property for a term exceeding 5 years without previous permission of the court, however, this Section deals with the property which is individually owned by the minor. Further from reading of Section 8(3) it is clear that such disposal of immovable property in violation of sub-section(1) or (2) is voidable at the instance of minor and not void ab initio. Meaning thereby that any act of natural guardian in violation of deal in the immovable property of the minor only voidable at the instance of minor or any person claiming under him. Whereas Section 12 of the Act of 1956 deals with the property where a minor has an undivided interest in the joint family property and the property is under management of adult

members of the family.

In the present case, it is apparent that originally the property was allotted to Lurind Chand and Smt. Lajwanti. After the death of Lurind Chand, Lajwanti and her minor children became joint owners of the property. Smt. Lajwanti, the only adult member of the family, was managing the affairs of Joint Hindu Family. In such circumstances, the step taken by Lajwanti so as to get rid of the litigation and secure the allotment of the property in favour of the family members was in fact in the interest of the family. This is what the first appellate court has found even while examining the issue, whether the agreement to sell with respect to a shop and upper storey was in interest of a minor or not?

Still further Smt. Lajwanti is appellant no.1. The minors have never repudiated the action of their mother agreeing to sell Joint Hindu Family Property. Even the present appeal has been filed jointly by Lajwanti and her children. Thus, it is clear that all the family members are joint and there is no inter-se clash between them.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

C.M.No.3069-C-1999 &
C.M.No.2684-C-2002

Both the applications have become infructuous in view of the judgment passed above.

August 16, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No