

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.160 of 2003**

1. Ku.Jyoti Singh Bais, D/o late Mahendra Singh Bais, aged about 23 years, R/o Indira Ward Jagdalpur, District Bastar (CG)
2. Rahul Singh Bais, S/o late Mahendra Singh Bais, aged about 20 years, R/o Indira Ward Jagdalpur, District Bastar (CG)
3. Rohit Singh Bais, S/o late Mahendra Singh Bais, aged about 22 years, R/o Indira Ward Jagdalpur, District Bastar (CG)

---- Appellants/Plaintiffs**Versus**

1. Prem Lal Halwai, S/o Yashwant Lal Halwai, Aged about 52 years, R/o Sadar Ward Jagdalpur, Distt. Bastar (CG)
2. Musmat Vidyavati, Wd/o Late Mahendra Singh Bias aged about 40 years, R/o Indira Ward Jagdalpur, District Bastar
3. State of Chhattisgarh, Through Collector Bastar, District Jagdalpur

--- Respondents/Defendants

For Appellants/ Plaintiffs	:	Mr. Manoj Paranjpe with Mr. Shubhank Tiwari, Advocate
For Respondents/Defendants	:	Mr. B.P. Gupta, Advocate with Ms. Seema Golchha, Advocate
For State	:	Mr. Ankur Kashyap, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****14/11/2019**

Heard.

1. This second appeal arises out of impugned judgment and decree dated 13.12.2002 passed by the Second Additional District Judge, Jagdalpur, District Bastar in Civil Appeal No.18-A/2002, by which, judgment and decree dated 13.03.2001 passed by the Trial Court in Civil Suit No.17-A/2000 has been affirmed, dismissing the appeal.
2. The appellants/plaintiffs filed a suit seeking declaration that sale deed dated 24.04.1981 be declared void and inoperative and also for recovery of agriculture land being subject matter of the said sale deed on the pleadings

inter alia, that the property in dispute originally belonged to one Mahendra Singh Bais. After death of Mahendra Singh Bais, the plaintiffs, who were the minor sons and daughters of Mahendra Singh, succeeded to the property of deceased Mahendra Singh, along with their mother Vidyawati. As per the pleadings of the plaintiffs, even though, there was no legal necessity, their mother Vidyawati/ defendant No.2 kept on selling joint family property including the property in dispute being subject matter of disputed sale deed dated 24.04.1981. According to the appellants, the mother had not taken any permission from the Court in terms of legal requirement as mandated in Section 8 of the Hindu Minority and Guardianship Act, 1956 (for short 'the Act of 1956'). Therefore, the sale deed was voidable at the option of the plaintiffs being sons and daughters of the deceased Mahendra Singh.

3. Vidyawati/defendant No.2 despite having served with the notices, did not file any written statement and remained ex-parte. Defendant No.1/the purchaser Premlal Halwai, however, contested the suit by filing written statement stating that Vidyawati lost her husband Mahendra Singh on 04.10.1980 and she had minor sons and daughters to maintain. She was in need of money for maintenance of her minor children and towards legal necessity for maintenance and other requirements of the family, she sold disputed property vide sale deed dated 24.04.1981 in favour of defendant No.1/Premlal Halwai in the year 1981, when all these sons and daughters were minor. Making other pleadings with regard to necessity, the defendants resisted the suit and prayed for dismissal of the suit.

4. Defendant No.1 also raised a counter claim praying for relief that in the interest of justice and equity, the entire property be partitioned between the plaintiffs and defendant No.2 and disputed property being subject matter of sale deed be declared as share of defendant No.2 and it be declared that defendant No.1 is entitled to hold that property.

5. After allowing the parties to lead oral and documentary evidence, learned Trial Court, vide judgment and decree dated 13.03.2001, dismissed plaintiffs' suit recording a finding that the property in dispute was sold for legal necessity and therefore, sale deed could not be assailed. The counter claim was also allowed.

6. Aggrieved by the judgment and decree, the appellants/plaintiffs preferred an appeal, which was dismissed by the learned Lower Appellate Court, concurring with the finding of the learned Trial Court on the aspect of the legal necessity.

7. This appeal was admitted on following two substantial questions of law:

“(1) Whether the respondent No.2 i.e. the mother of the plaintiffs/appellants was not entitled to execute the sale deed dated 24.04.1981 (Ex.D-1C) in favour of respondent No.1 Premlal on her behalf and on behalf of the appellants without obtaining permission as required under Section 8 of the Hindu Minority and Guardianship, Act 1956 ?

(2) Whether the respondent No.1/ defendant is entitled to retain property sold to him by the respondent No.2 i.e. mother under the sale deed dated 24.04.1981 without claiming partition ?”

8. At the outset, learned counsel for the appellant argued for framing an additional question of law to the effect that the Courts below committed gross perversity and patent illegality in returning a finding of existence of legal necessity only on the basis of recitals of the sale deed without there being any other clinching evidence. It was argued that as per settled legal position, the burden of proving legal necessity was on the transferee/ defendant No.1. However, defendant No.1 failed to discharge his burden. It is argued that defendant No.1 did not lead any clinching evidence as to what was that legal necessity for which, defendant No.2/ Vidyawati had to sell off part of the joint family property admeasuring 3.07 acres of land when she was possessed of extensive properties and was also earning agriculture income. He would argue that as far as Vidyawati is concerned, she did not enter the witness box. She has not resisted the claim of the plaintiffs. Defendant No.1 did not choose to examine Vidyawati as defendant witness to prove existence of legal necessity. Only on the basis of recitals contained in the sale deed, learned Courts below have jumped to the conclusion that there was legal necessity. Therefore, substantial question of law does arise for consideration in this appeal on the aspect of legal necessity. In support of this contention, learned counsel for the appellant placed reliance upon the judgments in the case of **Ramkrishna Maniram Lende & Others V. Vithalrao alias Baboo & others, 1978 MPLJ 500, Rupa V. Ramchandra, 1984 MP Weekly Notes 13 & Hazarilal Vs. Jugal Kishore, 1998(2) MPLJ 266.**

9. Per contra, learned counsel for the respondents would argue that the appellants have not proposed any such substantial question of law by filing present appeal. He would submit that at this belated stage, prayer for framing additional substantial question of law on the aspect of legal necessity is liable to be turned down because whether or not there was legal

necessity, is essentially an issue of fact and as both the Courts below have recorded concurrent finding on this aspect, no substantial question of law arises for consideration because apart from recitals in the sale deed, there are other evidences on record in the evidence led by both the parties which proved that Vidyawati had no source of income through any other vocation, at the time when Mahendra Singh died and property was sold. There were four minor sons and daughters, that she required money for maintaining these children, that the marriage expenses of Jyoti Singh were also met with from sale proceeds.

10. There can be no quarrel with the settled legal position, in view of the decisions which have been cited by learned counsel for the appellants that the burden to prove legal necessity is always on the transferee. Moreover, there is abundance of authority that mere recitals contained in the sale deed by itself, without anything more, would not constitute proof of legal necessity in discharge of burden of proof of that fact by the transferee. Their Lordships in the Supreme Court in the case of **Smt. Rani & another vs. Santa Bala Debnath & Ors. AIR 1971 SC 1028**, have clearly held by observing in Para 11 of the judgment that recitals of legal necessity in a deed do not, by themselves, prove legal necessity. It has also been held that the recitals may be used to corroborate other evidence of legal necessity. This view has been consistently followed in other decisions which has been cited by learned counsel for the appellant at the bar. However, present is not a case where except recitals in sale deed, there is no other evidence. From the evidence of the plaintiffs and defendants both, it has come that Vidyawati had no other independent source of income, she was to maintain four minor children, marriage of Jyoti Singh was also solemnized by her and that the financial condition of Vidyawati was not very sound. This coupled with the recitals in the sale deed definitely constitutes evidence to record a finding of legal necessity. Both the Courts below have minutely scrutinized the evidence and recorded concurrent finding of fact in this regard. Therefore, it cannot be said to be a perverse finding in the sense that the finding is not based on any evidence. Sufficiency or insufficiency of evidence could not be made a basis to examine the correctness of this finding as that would not be substantial question of law. Therefore, prayer for framing additional substantial question of law is rejected.

11. Learned counsel for the respondents raised three preliminary objections, though, no specific substantial question of law was framed by

this Court while admitting the appeal. The first is with regard to correctness of finding regarding the adoption aspect. This objection is liable to be rejected at the threshold in view of order of this Court passed on 19.03.2019, by which, this Court has not permitted respondent to raise any issue of adoption holding that defendant No.1 being stranger cannot be permitted to raise the plea of adoption. The cross objection on this count has been dismissed. As that order has not been challenged, it has attained finality. Therefore, the prayer that first objection may be formulated as a substantial question of law is rejected. The next submission of learned counsel for the respondents is that the suit was not filed through natural guardian but on behalf of three minor sons, Jyoti Singh filed suit not only on her behalf but also as next friend without there being any permission. It is argued that for that reason, an additional question of law is required to be framed as to whether the suit filed by Jyoti Singh was at all maintainable. On this aspect, it is found that the respondent-defendant has not taken any objection in the trial Court on this aspect and not even in the learned lower Appellate Court. Even before this Court, at the time of argument, this new objection has been raised. Therefore, at this stage, when objection to maintainability of the suit was not taken, it cannot be allowed to be raised, therefore, the contention is liable to be rejected.

12. On the first substantial question of law, learned counsel for the appellant would argue that the requirement of Section 8(2) of the Act of 1956 are mandatory. He would submit that the defendants have failed to plead and prove that before selling joint family property vide sale deed dated 24.04.1981, any prior permission of the Court was obtained.

13. Relying upon the judgment of the Supreme Court in the case of **Saroj Vs. Sunder Singh and others, 2013(15) SCC 727**, and judgment of the learned Single Judge of a coordinate Bench of this Court in the case of **Smt. Agra Bai and another Vs. Rajendra Kumar Awadhiya and others, AIR 2015 Chh 98**, it is contended that only on this count, the sale deed is liable to be declared void at the option of the plaintiffs. He would argue that even if it is held that there was legal necessity, as the permission under Section 8 (2) of the Act of 1956 was not obtained, the sale deed can always be declared void at the option of the minors, in whose name, the property was sold. Learned counsel for the appellants would argue that it hardly makes any difference whether the property, at the time of sale, continued as undivided family property or there was a partition affected amongst all the

share holders.

14. Replying to this argument, learned counsel for the respondents would argue that the application under Section 8 of the Act of 1956 would depend upon whether, at the time of sale of the property, it was part of undivided family property or it had already been partitioned. Learned counsel for the respondents would further submit that where the property remains undivided, legal requirement of seeking prior permission of the Court, as amended under Section 8(2) of the Act of 1956, would not arise as has been held by the Supreme Court in the case of **Sri Narayan Bal and others V. Sridhar Sutar and others, AIR 1996 SC 2371**. According to him, there is distinction between two circumstances, one dealt with in the aforesaid decision and the other, as dealt with in the case of Saroj (supra).

15. On the second substantial question of law, argument of learned counsel for the appellants is that once it is held that the permission was not obtained, irrespective of legal necessity, the sale of the property in dispute could be held to be valid only to the extent of undivided share of Vidyawati in the joint family property and, therefore, what would validly pass on in favour of defendant is not a particular parcel of the joint family property as shown in the sale deed but only undivided share of Vidyawati and in that case, the defendants cannot claim to retain the possession of the specific parcel of joint family property. Therefore, the Courts below were not justified in law in decreeing his counter claim.

16. Per contra, learned counsel for the respondents would argue that present is not a case where the property was sold by Vidyawati in her personal capacity only to the extent of her share but present is a case of sale of property for legal necessity of the family as a whole and therefore, the sale cannot be said to be of undivided share of Vidyawati alone but sale on behalf of all the shareholders including the minors and Vidyawati, the mother, therefore, the sale deed would result in sale of specific parcel of the property not joint family property as shown in the sale deed and the respondent, therefore, would be entitled to the relief which has been rightly granted in his favour by learned Courts below.

17. Learned counsel for the respondents also argued that insofar as appeal of Jyoti Singh is concerned, her appeal is liable to be dismissed because none of the question of law, can be said to be substantial question

of law because as far as her suit is concerned, it has been held to be barred by limitation by the learned Trial Court. This finding having not been assailed nor any favourable finding returned in favour of that appellant by the learned Lower Appellate Court, the said finding has attained finality. Even if, therefore, two questions of law are decided in favour of appellant Jyoti Singh, for want of challenge to the finding that suit by Jyoti Singh is barred by limitation, it will have no material bearing on the ultimate decision of this case.

18. I have heard learned counsel for the parties and perused the records of the case.

19. At the outset, as far as appellant Jyoti Singh is concerned, this Court finds that the learned Trial Court has recorded a very specific finding in its judgment that as far as suit of Jyoti Singh is concerned, the same is barred by limitation. In the judgment of the learned Lower Appellate Court, I do not find that the learned Lower Appellate Court reversed this finding and recorded a finding that the suit filed by Jyoti Singh was within limitation. On this aspect, learned Lower Appellate Court has not traversed the finding of the learned trial Court. Even this Court has not framed any question of law on this aspect. Therefore, even if other two questions of law are decided in favour of Jyoti Singh, for want of challenge to the finding that suit filed by Jyoti Singh is barred by limitation, such finding will have no material bearing on the ultimate decision of the case, because irrespective of the merits of the case, suit filed by Jyoti Singh has been held to be barred by limitation. Therefore, no substantial question of law arises for consideration in so far as appeal of Jyoti Singh is concerned and therefore, appeal of Jyoti Singh is dismissed only on this ground.

20. As far as other appellants are concerned, on the first question of law as to whether it was mandatorily required for Vidyawati to seek prior permission of the Court in terms of Section 8(2) of the Act of 1956, before selling the disputed property in favour of defendant No.1 vide sale deed dated 24.04.1981 is concerned, it requires consideration of the relevant provision and various decisions which have been cited at the bar before me by learned counsel for the respective parties. Section 8 of the Act of 1956, being relevant, is extracted herein below :

“S.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 realization, 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 any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining the permission of the Court under sub-section (2) in all respects as if it were an application for obtaining the permission of the Court under section 29 of that Act, and in particular—

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the Court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, “Court” means the City Civil Court or a District Court or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.”

21. The scheme of Section 8, particularly Sub-Section 2 & 3 thereof provides that the natural guardian shall not, without the previous permission of the Court, dispose or create charge over the property of the minor as has been enumerated in clause (a), (b) thereof.

22. However, what has been provided in Sub-section 3 makes it clear that mere want of permission will not make those sale deeds *void ab initio* but only voidable at the option of the minor. Sub-Section 3 clearly provides that 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.

23. The scope, ambit and legal requirement of obtaining prior permission as mandate under Section 8(2) of the Act of 1956 has arisen for consideration in several decisions. Two decisions of the Supreme Court have been cited at the bar by learned counsel for the respective parties. Learned counsel for the respondent has relied upon a decision in the case of **Sri Narayan Bal (supra)**. In that case, the Supreme Court spelt out the situations when legal requirement of seeking prior permission before selling of the property of minor would not arise, upon examination of the legislative scheme of Section 8 of the Act of 1956 in following words :

“5. With regard to the undivided interest of the Hindu minor in joint family property, the provisions afore-culled are beads of the same string and need be viewed in a single glimpse, simultaneously in conjunction with each other. Each provision, and in particular [Section 8](#), cannot be viewed in isolation. If read together the intent of the legislature in this beneficial legislation becomes manifest. Ordinarily the law does not envisage a natural guardian of the undivided interest of a Hindu minor in joint family property. The natural guardian of the property of a Hindu minor, other than the undivided interest in joint family property, is alone contemplated under [Section 8](#), whereunder his powers and duties are defined. [Section 12](#) carves out an exception to the rule that should there be no adult member of the joint family in management of the joint family property, in which the minor has an undivided interest, a guardian may be appointed; but ordinarily no guardian shall be appointed for such undivided interest of the minor. The adult member of the family in the management of the Joint Hindu Family property may be a male or a female, not necessarily the Karta. The power of the High Court otherwise to appoint a guardian, in situations justifying, has been preserved. This is the legislative scheme on the subject. Under [Section 8](#) a natural guardian of the property of the Hindu minor, before he disposes of any immovable property of the minor, must seek permission of the Court. But since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under [sections 6](#) and [12](#) of the Act, the previous permission of the Court under [Section 8](#) for disposing of the undivided interest of the minor in the joint family property is not required. The joint Hindu family by itself is a legal entity capable of acting through its Karta and other adult members of the family in management of the joint Hindu family property. Thus [section 8](#) in view of the express terms of [Sections 6](#) and [12](#), would not be applicable where a joint Hindu family property is sold/disposed of by the Karta involving an undivided interest of the minor in the said joint Hindu family property. The question posed at the outset therefore is so answered.”

24. The ratio of law as laid down the aforesaid judgment is that in a case where property remains undivided joint property and it is sold for a legal

necessity either by the natural guardian or Karta or other adult members, prior permission may not be necessary. Other decision cited by the learned counsel for the appellant in the case of **Saroj Vs. Sunder Singh and others, 2013 (15) SCC 727**, was on the facts when the Court found that the partition had taken place and each of the party had got his own share duly recorded and also in possession. In this peculiar factual background, the Supreme Court ruled that prior permission under Section 8 of the Act of 1956 before sell of property would be necessity of law, for want of which, the sale deeds itself would become voidable at the option of the minor. The finding recorded in that regard by the Supreme Court as contained in para 12,13 & 14 reads as below :

“**12.** [Section 8](#) of the Hindu Minority and [Guardianship Act](#), 1956 deals with the powers of natural guardian of a Hindu minor and the said section mandates that the natural guardian has power 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, etc. The provision 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 realization, 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 any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

As per clause (a) of sub-section (2) of [Section 8](#) no immovable property of the minor can be mortgaged or charged, or transferred by sale, gift, exchange or otherwise without the previous permission of the Court. Under sub-section (3) of [Section 8](#) disposal of such an immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2) of [Section 8](#), is voidable at the instance of the minor or any person claiming under him.

13. In the present case, though it is stated that the property has been sold for the proper benefit of the minors, their protection, education and marriage, there is nothing on record to suggest

that previous permission of the Court was obtained by the natural guardian before transfer by sale in question.

14. Where the father dies leaving behind only minor daughters and their mother as natural guardian, the share of the daughters became definite; the question of family partition retaining the character of joint Hindu Family property does not exist. In the present case, after the death of the father, the property has been shared amongst each member of the family and recorded in the mutation register having 1/4th share each. In such circumstances, the provision of sub-section (3) of [Section 8](#) shall attract as the mother sold the property without previous permission of the Court. Hence, both the sale deeds executed by the second respondent in favour of the first respondent shall become voidable at the instance of the minor i.e. the appellant and the Proforma Respondent Nos.4 & 5.

25. The two decisions of the Supreme Court; one in the case of *Sri Narayan Bai (supra)* and the other in *Saroj (supra)*, dealt with two different situations. The first case deals with situation where property remained undivided and only undivided share is sold and it has been held that prior permission would not be necessary. In the other case, once the shares are divided, the legal requirement of seeking prior permission under Section 8 of the Act of 1956 becomes mandatory and unavoidable. In that situation, sale without prior permission would be voidable at the option of the minor.

26. Upon factual premise of the present case and the pleadings and evidence available on record, the present case falls under the first category because there is no amount of evidence much less pleadings that after death of Mahendra Singh when property devolved upon his widow Vidyawati and four sons and daughters, the plaintiffs, at a later point of time and before sale deed was executed in the present case, a partition had actually taken place.

27. In view of the above, the first question of law has to be decided against the appellant and in favour of defendant.

28. As far as the second question of law is concerned, this Court finds that the necessity of deciding this question of law would arise only when the first question of law is in favour of appellant with the consequence that this Court was required to hold that by virtue of sale deed dated 24.04.1981, interest of Vidyawati, as holder of undivided share, alone passed in favour of defendant. Having held that sale deed by Vidyawati did not suffer from any illegality or invalidity, the sale of property by sale deed dated 24.04.1981 would be treated as sale on behalf of all the share holder and therefore, sale of any particular parcel of land in favour of defendant would be in accordance with law and defendant will hold it in absolute interest without

seeking any further partition as it is not case of sale of undivided share only.

29. In the result, I do not find any merit in the appeal and the appeal is therefore dismissed.

30. Parties shall bear their respective costs.

31. Let appellate decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)

Judge

Rekha