

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.636 of 2003**

Parmatma, aged 21 years, S/o Ramji Sahu, R/o Village Saloni, Tahsil Gunderdehi, District Durg (CG) **----Appellant**

Versus

1. Ramjee Sahu, aged about 55 years, S/o Sadhram Sahu, R/o Village Saloni, Tahsil Gunderdehi, District Durg (CG)
2. Sohanlal, S/o Khetamal Jain, R/o Sadar Bazar, Balod, Tahsil Baloda District Durg (CG)
3. Annuram, Aged about 55 years, S/o Budhram, R/o Village Saloni, Tahsil Gunderdehi, District Durg (CG)
4. State of Chhattisgarh, Through, District Judge (CG)

--- Respondents/Defendants

For Appellant	:	Mr. Rakesh Jha, Advocate
For Respondents No. 2 & 3	:	Mr. Praveen Dhurandhar, Advocate
For State/ Respondent No.4	:	Ms. S. Harshita, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****27/11/2019**

Heard.

1. This appeal is directed against impugned judgment and decree dated 31.07.2003 passed by the District Judge, Durg in Civil Appeal No.11-A/2003, by which, the learned District Judge has reversed the judgment and decree dated 17.02.2003 passed by the Trial Court in Civil Suit No.7-A/2002, thereby dismissing suit of the plaintiff.
2. The appellant/plaintiff Parmatma filed a suit seeking declaration and possession on the pleadings *inter alia* that the property in dispute, which belonged to the plaintiff Parmatma, was sold by his father defendant No.1 Ramji Sahu in favour of defendant No.2 Sohanlal by registered sale deed on 18.07.1985 without there being any legal permission granted to him from the Court. According to the plaintiff's pleadings, later on, defendant No.2 Sohanlal sold the property in dispute to defendant No.3 Annuram. The

plaintiff's case was that his father defendant No.1 was a drunkard and a gambler and only to fulfill the needs of his bad habits, the property in dispute which belonged to the plaintiff, was sold.

3. Defendant No.1, the father of the plaintiff filed separate written statement, wherein, he pleaded that he did not receive any consideration. He, however, stated that he only repaid loan taken by him. According to his pleadings though in the sale deed, sale consideration amount is stated to be Rs.96,500/-, he only received Rs.38,000/-. The other pleadings where that the entire land of defendant No.1 was mortgaged with land development Cooperative Bank and Irrigation Department and towards repayment of such loan liability, property was sold by defendant No.1 in favour of Sohanlal.

4. In the written statement filed by defendants No.2 & 3, it was stated that the property was sold by defendant No.1/ Ramji for legal necessity and they are bonafide purchaser. According to defendant, the plaintiff and defendant No.1 are members of joint family and the suit has been filed in a collusive manner.

5. Learned Trial Court framed as many as four issues which are reproduced as below :

वादविषय	निष्कर्ष
1अ. क्या प्रतिवादी क्रमांक 1 द्वारा वादग्रस्त भूमि खसरा क0 91 नया खसरा क्रमांक 24 खसरा क.302/4, नया खसरा क्रमांक .33 रकबा .67 एकड़ और .99 एकड़ को दिनांक 18.07.85 को आधिकारितारहित विक्रय किये थे ?	विक्रय पत्र दिनांक 18.07.85 वादी की प्रेरणा पर शून्यकरणीय है।
1ब. यदि हाँ तो क्या उक्त विक्रय अवैध और शून्य है ?	विक्रय शून्यकरणीय है।
2. क्या वादी का दावा अवधि बाह्य है ? यदि हाँ तो प्रभाव	दावा परिसीमा अवधि के अंदर है।
3. क्या विक्रय दिनांक 18.07.85 निरस्त किए जाने योग्य है ?	हाँ
4. अन्य सहायता एवं व्यय	निर्णय की कंडिका 17 के अनुसार
6. Learned Trial Court held that no permission was obtained from the	

competent Court nor it can be said that sale was made out of legal necessity. On such consideration, the learned Trial Court decreed the suit. The sale deed executed by defendant No.1 in favour of defendant No.2 and thereafter, sale deed executed by defendant No.2 in favour of defendant No.3 was cancelled. The decree of possession was also granted in favour of the plaintiff.

7. Aggrieved by the judgment and decree passed by the Trial Court, defendant filed an appeal. Learned Lower Appellate Court took the view that as the property remained in a joint Hindu Family property, there was no requirement of legal necessity. Learned Lower Appellate Court also recorded a finding that the property was sold for legal necessity i.e. for repayment of loan.

8. This appeal was admitted on following sole substantial question of law :

“Whether finding of the lower appellate Court upholding the execution of the registered deed of sale dated 18.07.1985 (Ex.P/1) executed in contravention of Clause (a) of Sub-section (2) of Section 8 of the Hindu Minority and Guardianship Act, 1956 by Ramji, plaintiff's father, in favour of Sohanlal, is perverse ?”

9. Learned counsel for the appellant would argue that learned Lower Appellate Court recorded a perverse finding that there was no legal requirement of obtaining permission of the competent Court as required under Section 8 of the Hindu Minority and Guardianship Act, 1956, even though, specific evidence was led before the Court below that the property in dispute which was sold, was purchased in the name of plaintiff. He would also submit that once there is a sale deed in favour of plaintiff, the requirement of law that a permission is to be obtained from the competent Court before selling the property gets attracted and any sale without such permission would be void.

10. On the other hand, learned counsel for the respondent would argue that the learned Lower Appellate Court has recorded finding of fact that even though a sale deed was executed in the name of plaintiff and he was a minor, it was being held as a joint family property by the family of Ramji, defendant No.1 with his son plaintiff and other members of the family. He would submit that on such finding, legal position has been rightly considered that in such a situation where the property has held jointly and the members of the family are holding the share which is undivided, the sale would not

require permission.

11. The issue raised in this appeal as has been answered by this Court in the case of **Ku. Jyoti Singh Bais and others V. Prem Lal Halwai and others in Second Appeal No.160 of 2003 decided on 14.11.2019**. In that case, also this Court examined the legal position as to under what circumstances, permission of the competent jurisdiction as required under Section 8 of the Hindu Minority and Guardianship Act, 1956 would be necessary. A distinction was drawn in cases where the property held jointly as undivided share and where the property stand exclusively in the name of minor. It was observed :

“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.”

12. Applying the aforesaid legal position, a perusal of the impugned judgment of the learned Lower Appellate Court shows that the learned Lower Appellate Court, upon assessment of oral and documentary evidence on record, recorded a finding of fact that the property was held jointly under the Hindu undivided family and no partition had taken place and plaintiff and his father Ramji defendant No.1 were holding undivided share in the property. In view of the said finding of fact, the legal position would be that permission of the Court of competent jurisdiction as envisaged under Section 8 of the Hindu Minority and Guardianship Act, 1956 would not be necessary. Whether or not it was a case of legal necessity, need not be answered because it is outside of the scope of the substantial question of law as framed before this Court.

13. In the result, the appeal is without merit and is therefore dismissed.

Sd/-

(Manindra Mohan Shrivastava)

Judge