

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

**RSA No.5666 of 2015 (O&M)
Date of Order: 31.01.2019**

Ankit

..Appellant

Versus

Kanwar Pal and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepak Kundu, Advocate,
for the appellant.

Mr. Ajay Ghangas, Advocate
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

Defendant no.1-appellant is in the regular second appeal against the judgment passed by the learned first appellate court decreeing a suit for symbolic possession by way of specific performance of the agreement to sell dated 26.10.2005.

Appellant, a minor at that time, entered into an agreement to sell through his mother Smt. Suman, who was defendant no.2 in the suit agreeing to sell the property in dispute in favour of the plaintiff for a sum of Rs.70,000/- vide agreement to sell dated 26.10.2005. Total payment was paid and possession of the property was delivered. As per the agreement to sell, the mother, a natural guardian, was required to take permission from the Guardian Judge before execution and registration of the sale deed. It is undisputed that such petition under Section 8 of the Hindu Minority and Guardian Act, 1956 (hereinafter referred to as 'the Act of 1956') was filed and the permission was granted subject to certain conditions. However, the sale deed was not executed which forced the plaintiff to file the present

suit.

Learned first appellate court after appreciating the evidence has decreed the suit while reversing the judgment of the trial 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.

Learned counsel for the appellant submitted that as per Section 8(2) of the Act of 1956, no guardian without previous permission of the court is entitled to mortgage or charge or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor. He submitted that in the present case the agreement to sell would fall within the scope of otherwise and, therefore, the agreement to sell itself was void and not permissible.

This court has considered the submission, however, find no substance therein.

A reading of Section 8 of the Act of 1956 clearly proves that before a document is executed, which either creates charge on the property or amount to conveying/transferring the immovable property, prior permission of the Guardian Judge is necessary. Sub-section(3) of Section 8 of the Act of 1956 provides that if such disposal of the immovable property as made in contravention of sub-section (1) or sub-section (2), such disposal of the property shall be voidable and not void. Section 8 of the Act of 1956 is extracted as under:-

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 realisation, 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 by 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 the 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 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.

Transfer of Property is defined under Section 5 of the Transfer of Property Act, 1882, which is extracted as under:-

5. Transfer of property defined

In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

In this section "living person includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

The agreement to sell is defined as a contract for sale, under Section 54 of the Transfer of Property Act, 1882, which is extracted as under:-

54. "Sale" defined.—*"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made.—3Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. 1In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.*

Contract for sale.—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

On co-joint reading of Section 5 and Section 54 of the Transfer of Property Act, 1882, it is apparent that the contract for sale or agreement to sell does not, of itself, create any interest in or charge on such property. In such circumstances, the argument of learned counsel that the agreement to sell will fall within the meaning of word “otherwise” is not correct as specified in Section 8 of the Act of 1956.

Still further, any disposal of the immovable property by a natural guardian without permission of the Guardian Judge is not void but is voidable at the instance of the minor or any person claiming under him. Thus, the transaction is not void *ab-initio*. In the present case, permission has been granted by the Gurdian Judge and it is thereafter the present suit has been filed.

In view thereof, this court does not find any good ground to interfere. The regular second appeal is dismissed.

January 31, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No