

RSA No. 3012 of 2018 (O&M)

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

**RSA No. 3012 of 2018 (O&M)
Date of decision: 26.9.2019**

Radhika Malhotra

... Appellant

Versus

Meenakshi Malhotra and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. G.C. Shahpuri, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 5.8.2013, and as even the appeal preferred against the said decree failed and was dismissed on 28.8.2017, she is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for separate possession by way of partition by metes and bounds of eastern portion of plot bearing No.E-8, measuring 2025 square yards situated in Industrial Area, Yamuna Nagar. And, also prayed for injunction restraining the defendants from changing the nature and character of the suit property.

In brief, the case of the plaintiff has been that she was aged about 17 years and was daughter of late Sunil Kumar Malhotra and defendant No.3, and was under the care and custody of her real maternal uncle, namely, Naresh Kumar Vohra. It was alleged that there was a firm: M/s Mulakh Raj Madhu Sudan Lal Malhotra, which purchased a plot bearing No. E-8, situated in Industrial Area, Yamuna Nagar, pursuant to a

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sale deed dated 22.7.1965. Subsequently, the said firm was dissolved and the suit property was partitioned between the brothers. Madhu Sudan Lal Malhotra happened to be the grandfather of the plaintiff, who post partition, became the absolute owner of his share. Grandfather of the plaintiff died on 8.2.1996, whereafter the suit property and the residential house No. 5321 was inherited by her father, and his real brother, namely Vimal Kumar Malhotra and sister Veena Arora (defendant No.2) daughter of Madhu Sudan Lal Malhotra. Father of the plaintiff died on 29.8.1998, and his estate was succeeded by the plaintiff and defendant No.3, therefore, they acquired 1/6th share in the suit property. Vimal Kumar Malhotra died on 5.4.2006, leaving behind defendant No.1 and son, Raghav, and during his lifetime, vide a gift deed dated 11.7.2005, he bequeathed his 1/3rd share in favour of his wife (defendant No.1), therefore, post death of Vimal Kumar and Sunil Kumar, the plaintiff and defendants have become joint owners in possession of the suit property. Plaintiff required the defendants to partition the suit property but to no avail. Thus, the suit.

In defence, defendants No.1 and 2 pleaded, *inter alia*, that alleged maternal uncle, Naresh Kumar, was never appointed as guardian of the plaintiff or her property by any court of law. Rather, mother of the plaintiff (defendant No.3), namely Sunita Malhotra, was appointed as her court guardian as also of her property, under Section 8 of the Hindu Minority and Guardianship Act, 1956 ('Act of 1956' for short), by the Court. Further, the plaintiff had no right, title or interest in the suit property, as her natural guardian (defendant No.3) had already received the amount of the share of the minor from Vimal Kumal Malhotra (her real brother-in-law), vide draft dated 27.9.2000 for a sum of Rs. 49,875/-. Similarly, she also received a sum

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of Rs.3 lacs, vide draft dated 27/29.9.2000 in the name of Kumari Radhika Malhotra, drawn at State Bank of Patiala. Further, the plaintiff through her guardian, appointed by the Court in the case titled as 'Sunil Malhotra Vs. General Public', sold her 1/6th share in the residential house vide a registered sale deed dated 13.12.2001 in favour of one Saurab Aggarwal, as also the 1/6th share possessed by defendant No.3 herself. Veena Arora (defendant No.2) had given up her share in the property, vide a release deed dated 1.5.2006 in favour of Raghav Malhotra son of Vimal Malhotra. Thus, plaintiff and defendant No.3 were left with no title in the suit

Upon consideration of the matter in issue and evidence on record, both the courts concurrently concluded that indisputably, the suit property was originally owned by Madhu Sudan Malhotra and post his death on 8.2.1996, it was inherited by his two sons and daughter in equal shares, i.e. 1/3rd share each. Veena Arora (defendant No.2), vide release deed dated 12.4.2006 (Ex.D6), relinquished her 1/3rd share in favour of her nephew (son of Vimal Malhotra). 1/3rd share of Vimal Malhotra was transferred by him during his lifetime in favour of his wife, vide a registered sale deed dated 7.9.2005. Owing to the death of Sunil Malhotra on 29.8.1998, his share was inherited by his wife and daughter to the extent of 1/6th share each. Therefore, the plaintiff filed the present suit for separate possession qua her 1/6th share in the suit property.

The evidence on record showed that Sunita Malhotra, being mother of the plaintiff and her natural guardian, received a sum of Rs.3,49,875/-, vide a draft dated 27.9.2000. Vide another draft dated 29.9.2000, in the name of plaintiff, a further sum of Rs.3,49,370/- in lieu of the share of the plaintiff in a residential house bearing No. 532L, Model

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Town, Yamuna Nagar. Sunita Malhotra had also furnished a duly sworn affidavit (Ex.D1) in this regard. The authenticity of the said affidavit was proved in the testimony of Surjit Mehta, Advocate, (DW1), who had notarised the document. Further, case of the plaintiff stood falsified as her mother, Sunita Malhotra, had filed petition No. 32, under Section 8 of the Act of 1956, for permission of sell 1/6th share of minor Radhika, daughter of Sunil Malhotra, in residential house No. 532-L, and also 1/6th share in factory plot bearing No. E-8, against Vimal Malhotra and Veena Arora. A copy of the judgment dated 1.2.2002 (Ex.D2) showed that said petition was accepted, as the sale of share of the plaintiff-minor was found to be in her interest. Not just that, mother of the plaintiff (defendant No.3), had also filed another petition, i.e. Petition No. 62 on 2.11.2000, under Section 8 of the Act of 1956 and obtained permission of the Court, pursuant to a judgment dated 8.11.2001, to sell the share of minor. The plaintiff withheld all these documents from the Court, although apparently, vide sale deed dated 13.12.2001 (Ex.D3), defendant No.3 had already sold the share of the plaintiff to Saurabh Aggarwal on the basis of judgment dated 8.11.2001. No evidence was led by the plaintiff to show if the sale deed and agreement, which were executed by her mother as her lawful guardian did not enure to her benefit.

Undoubtedly, the plaintiff was minor at the time when the settlement was arrived at by her mother, Sunita Malhotra, on her behalf as also on behalf of the plaintiff. However, Section 8 of the Act of 1956 postulates that natural guardian shall not, without prior permission of the court, transfer any part of the immoveable property of the minor. Sub-section 3 of the said provision provides specifically that alienation of the

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immoveable property by a natural guardian, in contravention of Sub Section (2), is voidable at the instance of the minor. The sale of the said land to the extent of the share of plaintiff was therefore not void but voidable at her instance. Hence, if the plaintiff wanted to assail or avert the sale transaction, she was required to get the same set aside. While relying upon a decision of this Court in **Hari Singh through LRs Vs. Avtar Singh, Sandhya Rajan Antapurkar Vs. State of Maharashtra, 2000 (2) CCC-60 (Bombay)**, it was concluded that in the matter at hands, records showed that plaintiff had not made any such prayer to set aside the sale deed dated 13.12.2001 (Ex.D3) at any stage. Thus, once the plaintiff was left with no right, title or interest, the present suit for separate possession by way of partition was wholly misconceived. Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

September 26, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO