

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 26.11.2019****Judgment delivered on 30.01.2020****Second Appeal No. 256 of 2001**

1. Rishikesh Sengupta S/o Hridaya Ranjan Sengupta, Caste - Brahmana, R/o M.P.E.B. Colony, Korba, Tahsil And District Korba Chhattisgarh.
2. Kamlesh Sengupta S/o Hridaya Sengupta, Caste - Brahmana, R/o M.P.E.B. Colony, Korba, Tahsil And District Korba Chhattisgarh.
3. Reetarani Sengupta D/o Hridaya Ranjan Sengupta, Caste - Brahmana, R/o M.P.E.B. Colony, Korba, Tahsil And District Korba Chhattisgarh.
4. Reenarani Sengupta D/o Hridaya Ranjan Sengupta, Caste - Brahmana, R/o M.P.E.B. Colony, Korba, Tahsil And District Korba Chhattisgarh. (Plaintiffs)

---- Appellants**Versus**

1. Firatu Ram (**Died and Deleted**) Through Lrs.
- 1.a Mohitram S/o Late Firturam Aged About 62 Years R/o Rampur Basti, Sichai Colony, ITI Thana, Tahsil And District Korba Chhattisgarh.
- 1.b Sohitram S/o Late Firturam Aged About 60 Years R/o Rampur Basti, Sichai Colony, ITI Thana, Tahsil And District Korba Chhattisgarh.
- 1.c Ganeshram S/o Late Firturam Aged About 55 Years R/o Rampur Basti, Sichai Colony, ITI Thana, Tahsil And District Korba Chhattisgarh.
- 1.d Prakash Miri S/o Late Ram Kumar Aged About 20 Years R/o Rampur Basti, Sichai Colony, ITI Thana, Tahsil And District Korba Chhattisgarh.
- 1.e Rajkumar S/o Late Firturam Aged About 48 Years R/o Rampur Basti, Sichai Colony, ITI, Thana, Tahsil And District Korba Chhattisgarh.
- 1.f Smt. Mangali Bai D/o Late Firturam Aged About 65 Years W/o Panchuram Sonwani, R/o Rampur Basti, Sichai Colony, ITI Thana, Tahsil And District Korba Chhattisgarh.
- 1.g Smt. Rajkumari D/o Late Firturam Aged About 48 Years W/o Kailash Kurre, R/o Rampur Basti, Sichai Colony, ITI Thana, Tahsil And District Korba Chhattisgarh.
2. State Of Chhattisgarh Through District Collector Bilaspur., District : Bilaspur, Chhattisgarh

---- Respondents

For the appellants: Shri HB Agrawal, Sr. Advocate with Shri
Parag Kotecha, Advocate
For respondents : Shri Malay Kumar Bhaduri, Shri HS Patel,
and Shri Shubham Dev Mallick, Advocates

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against judgment and decree dated 09.5.2001 passed by Additional District Judge Korba, Distt. Korba, (CG) in Civil Appeal No.1A/1998 wherein the said Court affirmed the judgment and decree dated 24.12.1997 passed by the Court of Civil Judge Class-II, Korba (MP) (Now CG) in Civil Suit No.160A/1994 wherein the said Court dismissed the suit filed by the appellants for possession of land bearing Survey No.87, area 3.79 acre situated at Patwari Halka No.21 village Rampur.

2. Both the Courts below have recorded finding that property in question was owned by Smt. Jyoti Rani Sengupta who died on 24.7.1973. After her death, her husband namely Hriday Ranjan Gupta and her minor legal representatives, who are the appellants, inherited the property. The said land was sold by father of the appellants vide registered sale deed dated 13.3.1978 for a cash consideration of Rs.10,000/- to respondent No.1. Both the Courts below recorded finding that father of the appellants was having joint interest in the property, therefore, it is not a case where permission was required under Section 8 of the Hindu Minority and Guardianship Act, 1956. Both the Court below also recorded finding that the land was sold for legal necessity, i.e. for

maintenance of the appellants, therefore, sale deed executed by their father is not invalid. Both the Courts further recorded finding that no suit was filed for cancellation of the sale deed executed by father of the appellants and without declaring sale deed void possession of respondent No.1 cannot be disturbed because he is the possessor of the property on the basis of valid sale deed.

3. This appeal is admitted vide order dated 18.5.2005 on the following substantial questions of law:-

(i) Whether without seeking the relief of declaring registered sale-deed dated 13.3.1978 void, suit for possession was not maintainable?

(ii) Whether the sale without permission from the Court by natural guardian Hriday Ranjan Sengupta is void?

(iii) Whether without impleading Hriday Ranjan Sengupta the suit was not maintainable?

4. The first substantial question for consideration before this Court is whether without seeking the relief of declaring registered sale deed dated 13.3.1978 void, suit for possession was not maintainable?

Admittedly the sale deed was executed by the father of the appellants, but the appellants have not made party to their father before the trial Court. Both the Courts below decided that father who executed the sale deed is a necessary party and without impleading him as party, the suit is faulty for want of necessary party. When the father has executed sale deed, the appellants

were under obligation to make him party so that he may submit his defence as to whether the property is alienated for legal necessity or not. The trial Court recorded finding that the property was sold for legal necessity, therefore, it was necessary to implead the seller as party to submit his case. When it is admitted that respondent No.1 is in possession of the property on the basis of sale deed, the seller is the necessary party before making the transaction void, but that is not done in the present case and no relief was sought for declaring the sale deed void. Respondent No.1 is in possession of the property because of the sale deed and unless the sale deed is declared void, his possession cannot be disturbed because possession is followed by sale deed executed in his favour. If the sale deed is valid, then possession of respondent No.1 is also valid. In view of the above, this substantial question of law is answered in affirmative.

5. Now the second question for consideration before this Court is whether the sale without permission from the Court by natural guardian Hriday Ranjan Sengupta is void?

Admittedly on the date of passing of Jyoti Rani Gupta, her husband and the appellants inherited all the property as per Section 15 of the Hindu Succession Act, 1956. The property is not the exclusive property of the appellants who claiming to be the minors. The interest was joint interest and Section 8 of the Hindu Minority and Guardianship Act, 1956 applies only when the property is exclusive property of the minor. In the matter of **Smt.**

Sugga Bai v. Smt. Hiralal reported in **1968 MP LJ 840** it is held as under:-

“6. In the present appeal it is urged by the learned counsel for the appellants that section 8 of the Hindu Minority and Guardianship Act, 1956 is not at all attracted with reference to the joint interest of a minor in the joint family property. Therefore, no permission of the District Judge was necessary, as the property was not the exclusive property of the minor. So far as this contention is concerned, I am in agreement with the suggestion of the learned counsel for the appellants. Section 8 of the Act does not apply to the joint interest of a minor in a family property which the manager is competent to dispose of under the general provisions of the Hindu Law, namely, for the benefit of the minor or for family need etc. Thus, there can be no doubt that the learned appellate Judge was wrong in holding that the plaintiffs did not become the landlords for want of permission of the District Judge under section 8 of the said Act.”

Looking to the factual and legal aspects of the matter, when father of the appellants and the appellants, both having joint interest in the property, permission from the Court before alienating the property by the father was not necessary and therefore, sale deed executed by him is not void. Accordingly, the second substantial question of law is answered in negative.

6. The third substantial question of law is whether without impleading Hriday Ranjan Sengupta the suit was not maintainable?

Learned counsel for the appellants submits that the property in question was the property of the minor, therefore, it cannot be alienated without the permission of the Court as per Section 8 of the Act 1956. He further submits that the property

was not alienated for legal necessity, therefore, finding arrived at by both the Courts below are not sustainable. He placed reliance in the matters of **Saroj vs. Sunder Singh and Others** reported in **(2014) 1 AD (SC) 25**; **Mallikarjuna Vs. Mareppa and others** reported in **(2008) 1 KCCR 546**; **Gurdev Singh and others vs. Harbinder Singh** decided on 25.4.1968 by **Punjab and Haryana High Court** in **SA No.967 of 1967**; **Agra Bai and others. vs. Rajendra Kumar Awadhiya and others** reported in **(2015) AIR (Chhattisgarh) 98**; **John Peter Vs. Balraj Yadav** reported in **(2014) 3 CGLJ 203 & FA No.146 of 2006** passed on 09.5.2019 by **High Court of Chhattisgarh**.

7. In the present case, father of the appellants was having joint interest. Being father of the appellants he had all the rights to alienate the property for legal necessity. Both the Courts below have decided the issues that the property is sold for legal necessity, i.e. for maintenance of the appellants which includes their food, education and other necessities. After going through the evidence on record, this Court has no reason to take a contrary view. When the father had executed sale deed, he was necessary party because in absence of his pleading and evidence, he was deprived of the opportunity to establish that the property is alienated for legal necessity, therefore, both the Courts are right in holding that in absence of father, the suit is faulty for want of necessary party. Accordingly, the third substantial question is answered in affirmative.

8. As a fall out of the above discussion, the appeal is liable to be and is hereby dismissed. The decree granted by the trial Court in favour of the respondents as affirmed by the first appellate Court would stand affirmed. No order as to cost.

Sd/-

(Ram Prasanna Sharma)

JUDGE