

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 320 of 2008****Judgment reserved on 09/10/2020****Judgment delivered on 27/10/2020**

Rohit Kumar, Aged about 23 years, S/o Vishnu Sahu, R/o Village Piparchhedi, Tahsil Rajim, District Raipur, Chhattisgarh.

--- Appellant/Plaintiff

Versus

1. Krishna Bai W/o Adhar Sahu (Died) through LRs. :-

(B). Ballu Sahu @ Mansingh Sahu S/o Adhar Sahu, Aged about 40 years (now).

2. Adhar Sahu S/o Ramcharan Sahu, Aged about 55 years.

Both are R/o Village Piparaud, Tahsil Abhanpur, District Raipur, Chhattisgarh.

3. Vishnu S/o Bodhan Sahu, Aged about 58 years, R/o Village Piparchhedi, Tahsil Rajim, District Raipur, Chhattisgarh.

4. State of Chhattisgarh, Through Collector, Raipur, District Raipur, Chhattisgarh.

--- Respondents

For Appellant	:-	Mr. Siddharth Dubey, Advocate
For Respondents	:-	None
For State	:-	Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal preferred by the appellant/plaintiff was admitted for hearing on 25/09/2019 on the following substantial question of law :-

“Whether both the Courts below were justified in dismissing the suit of the plaintiff and granting the counter-claim of defendant No. 1 by recording a perverse finding ignoring the fact that the suit property owned by the appellant/plaintiff (minor on the date of sale) was sold by his natural guardian i.e. defendant No. 3 on 14/06/1996 (Ex. P/1) without the previous permission of the Court in violation of Section 8(2) of the Hindu Minority and Guardianship Act, 1956 making the sale voidable under Section 8(3) of the Act of 1956 ?”

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. The suit property situated at Village Piparchhedi, Tahsil Rajim, Distt. Raipur was originally owned by the plaintiff during his

minority but the said suit property was sold by his father i.e. defendant No. 3 in favour of defendant No. 1 by registered sale deed dated 14/06/1996 (Ex. P/1) and he is said to have delivered the peaceful possession thereof to defendant No. 1.

3. Plaintiff filed a suit on 29/06/2001 for declaration of title, possession and permanent injunction stating *inter alia* that when his father was in need of money, he contacted defendant No. 2 and obtained a sum of Rs. 10,000/- as loan and subsequently, executed sale deed dated 14/06/1996 (Ex. P/1) in favour of defendant No. 1 for security of loan, as such, defendant No. 1 has no right title over the suit property by virtue of that nominal sale deed (Ex. P/1) executed by his father defendant No. 3 for the purpose of security of loan and defendants No. 1 and 2 have also never been in possession of the suit property. It was also pleaded that the suit property was held by him while he was a minor and his father i.e. defendant No. 3 had no right or title to alienate the suit property in favour of defendant No. 1 by sale deed dated 14/06/1996 (Ex. P/1), therefore, plaintiff is

entitled for declaration that sale deed dated 14/06/1996 (Ex. P/1) is a nominal sale deed executed merely for the purpose of security of loan and it has not conferred any right, title upon defendant No. 1 and 2 and he is further entitled for decree for possession and permanent injunction also.

4. Resisting the suit, defendants No. 1 and 2 filed their written statement stating that plaintiff's father i.e. defendant No. 3 executed registered sale deed dated 14/06/1996 (Ex. P/1) in favour of defendant No. 1 and sold the suit property to her for a cash consideration of Rs. 12,000/- and thereafter, defendants No. 1 and 2 came into possession of the suit property. They also filed a counter-claim for permanent injunction stating that the sale deed (Ex. P/1) was never intended for the purpose of security of loan and it is a real and outright sale and has conferred full title over the suit property upon defendants No. 1 and 2, therefore, plaintiff's suit deserves to be dismissed. Defendant No. 3 filed his written statement supporting the plaintiff thereby.

5. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit of the plaintiff and allowed the counter-claim of defendants No. 1 and 2 vide its judgment and decree dated 20/02/2007, and held that the sale deed dated 14/06/1996 (Ex. P/1) is a real sale deed and not a nominal sale deed. The trial Court also held that plaintiff has not questioned the sale deed and has also not sought its cancellation.

6. On appeal being preferred by the plaintiff, learned first appellate Court affirmed the judgment and decree of the trial Court and dismissed the appeal vide its impugned judgment and decree dated 04/04/2008 against which this second appeal has been preferred by the appellant/plaintiff under Section 100 of the CPC wherein one substantial question of law has been framed and set out in the opening paragraph of this judgment.

7. Mr. Siddharth Dubey, learned counsel appearing for the appellant/plaintiff, would submit that both the Courts below have concurrently erred in dismissing the suit of the plaintiff ignoring the

fact that while plaintiff was a minor, his father i.e. defendant No. 3 had no right or title to alienate the suit property without legal necessity and that too, without obtaining prior permission of the competent Court in view of the provisions contained under Section 8(2) of the Hindu Minority and Guardianship Act, 1956, as such, the transaction of sale (Ex. P/1) is voidable, which the plaintiff has challenged by filing the suit for declaration of title along with the reliefs of possession and permanent injunction, therefore, the instant appeal be allowed and the judgment and decree passed by both the Courts below deserve to be set aside. He would further rely upon the judgments rendered by this Court in Agrabai v. Rajendra Kumar¹ and by the Supreme Court in Saroj v. Sunder Singh².

8. None appeared on behalf of the respondents/defendants No. 1 to 3, though served.

9. Sections 8(2) and 8(3) of the Hindu Minority and Guardianship Act, 1956 (hereinafter, "the Act of 1956") state as under :-

"8. Powers of natural guardian. - (1) XXX

¹ AIR 2015 Chhattisgarh 98

² (2013) 15 SCC 727

(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."

10. Thus, by virtue of sub-section (2) of Section 8 of the Act of 1956, no immovable property of minor can be transferred by way of sale, gift, exchange or otherwise without previous permission of the Court and 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.

11. In the matter of Saroj (supra), Their Lordships of the Supreme Court have clearly held that for sale of minor daughters' share of immovable property by mother, as natural guardian after death of father (owner of property) for necessity

of their sustenance, maintenance, education and marriage, previous permission of court is required under Section 8(2) of the Act of 1956 and in case it has not been done, suit for cancellation of transaction of sale has to be filed by the daughters after attaining the age of majority. Paragraphs 13 and 14 of the report state as under :-

"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 becomes 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 be attracted 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 pro forma Respondents 4 and 5."

12. Reverting to the facts of the present case in light of Sections 8(2) and 8(3) of the Act of 1956 and the decision rendered by this Court in

Agrabai (supra) following the judgment of the Supreme Court in **Saroj** (supra), a careful perusal of the plaint would show that plaintiff has not claimed the relief of cancellation of sale deed dated 14/06/1996 (Ex. P/1). The prayer clause in the plaint states as under :-

“18. यह कि, वादी माननीय न्यायालय से निम्न अनुतोष की मांग करता है :-

(1) यह कि, ग्राम - पीपरछेड़ी, प. ह. नं. - 11, तहसील राजिम, जिला रायपुर स्थित कृषि भूमि ख. नं. - 127, 123, 320 रकबा क्रमशः 0.13, 0.04, एवं 0.04 हे. जो नाबालिग रोहित कुमार के स्वामित्व एवं कब्जा की भूमि थी को प्रतिवादी क्र. - 3 के द्वारा प्रतिवादी क्र. 1 के पक्ष में प्रतिवादी क्र. 3 द्वारा प्रतिवादी क्र. 2 से लिए गए ऋण के एवज में नाममात्र के विक्रय पत्र दिनांक 14/6/1996 से प्रतिवादी क्र. 1 को कोई हक हासिल नहीं होता है माननीय न्यायालय यह घोषित करे |

(2) यह कि, दिनांक 14/6/1996 को प्रतिवादी क्र. 3 द्वारा प्रतिवादी क्र. 1 के पक्ष में निष्पादित दस्तावेज (विक्रय पत्र) वादी पर बंधनकारी नहीं है तथा दाविया भूमि ख. नं. - 127, 123, 320 रकबा क्रमशः 0.13, 0.04, एवं 0.04 हे. लगान 0.60 पैसे भूमि वादी के स्वत्व की है, माननीय न्यायालय आज्ञाप्ति वादी के पक्ष में एवं प्रतिवादीगण के विरुद्ध पारित करें |

(3) यह कि विवादित भूमि जो उपरोक्त कंडिका 1 में वर्णित है इस भूमि का कब्जा वादी को प्रतिवादी क्र. 1 से दिलाया जावे |

(4) यह कि उपरोक्त विवादित भूमि के वाद लंबन काल में प्रतिवादी क्र. 1 कृषि कार्य कर लाभ अर्जित कर रहीं है वह कीमती करीबन 10,000/- रुपये (अक्षरी दस हजार रुपये) है | वह राशि जब तक वादी को कब्जा प्राप्त न हो तब प्रति वर्ष 10,000/- रुपये अतःकालीन लाभ वादी को प्रतिवादी क्र. 1 से दिलाया जावे |

(5) यह कि, दाविया भूमि ख. नं. - 127, 123, 320 रकबा क्रमशः 0.13, 0.04, एवं 0.04 हे स्थित ग्राम पीपरछेड़ी, प.ह. नं. - 11, तहसील राजिम, जिला रायपुर में प्रतिवादी क्र. 1 एवं 2 को दखल, कब्जा एवं अन्य किसी भी प्रकार से किसी दीगर के द्वारा हस्तछेप करने से हमेशा-हमेशा के लिए रोका जावे | ऐसा आज्ञाप्ति माननीय न्यायालय प्रतिवादी क्र. 1 एवं 2 के विरुद्ध पारित करे |

(6) वाद व्यय एवं अन्य सहायता जो माननीय न्यायालय उचित समझे दिलाई जावे | ”

13.The question that arises for consideration is, whether the plaintiff is entitled for the reliefs as claimed by him without seeking the relief of cancellation of sale deed dated 14/06/1996 (Ex. P/1) ?

14.The issue involved herein is no longer res integra. The Supreme Court in the matter of Vishwambhar and Ors. v. Laxminarayan (dead) through LRs. and Anr.³ has clearly held that by virtue of Section 8(3) of the Act of 1956, transactions are not void, but merely voidable at the instance of the minor and it has also been held that such a suit for cancellation of sale made by the guardian of a ward must be filed within a period of three years from the date of attaining majority by the ward under the

3 (2001) 6 SCC 163

provisions contained under Article 60 of the Limitation Act, 1963. Paragraph 9 of the judgment states as under :-

"9. ... The question is in such circumstances are the alienations void or voidable? In Section 8(2) of the Hindu Minority and Guardianship Act, 1956, it is laid down, inter alia, that the natural guardian shall not, without previous permission of the Court, transfer by sale any part of the immovable property of the minor. In sub-section (3) of the said section it is specifically provided that any disposal of immovable property by a natural guardian, in contravention of sub-section (2) is voidable at the instance of the minor or any person claiming under him. There is, therefore, little scope for doubt that the alienations made by Laxmibai which are under challenge in the suit were voidable at the instance of the plaintiffs and the plaintiffs were required to get the alienations set aside if they wanted to avoid the transfers and regain the properties from the purchasers. As noted earlier in the plaint as it stood before the amendment the prayer for setting aside the sale deeds was not there, such a prayer appears to have been introduced by amendment during hearing of the suit and the trial court considered the amended prayer and decided the suit on that basis. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold then a suit without such a prayer was of no avail to the plaintiffs. In all probability realising this difficulty the plaintiffs filed the application for amendment of the plaint seeking to introduce the prayer for setting aside the sale deeds. Unfortunately, the realisation came too late. Concededly, plaintiff no.2 Digamber attained majority on 5th August, 1975 and Vishwambhar, plaintiff no.1 attained majority on 20th July, 1978. Though the suit was filed on 30th November, 1980 the prayer seeking setting aside of the

sale deeds was made in December, 1985. Article 60 of the Limitation Act, prescribes a period of three years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. Therefore, the trial Court rightly dismissed the suit filed by Digamber. The judgment of the trial court dismissing the suit was not challenged by him. Even assuming that as the suit filed by one of the plaintiffs was within time the entire suit could not be dismissed on the ground of limitation, in the absence of challenge against the dismissal of the suit filed by Digambar the first appellate court could not have interfered with that part of the decision of the trial court. Regarding the suit filed by Vishwambhar it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December, 1985) by introducing such a prayer by amendment of the plaint the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances the amendment of the plaint could not come to the rescue of the plaintiff."

15. The principle of law laid down by the Supreme Court in the matter of Vishwambhar (supra) has been followed with approval by the Supreme Court in the matter of Nangali Amma Bhavani Amma v.

Gopalkrishnan Nair and Ors.⁴ and it has been held

as under :-

"7. But the learned counsel for the appellant is right in contending that the High Court had misconstrued the provisions of Section 8 of the Act. Section 8 (1) empowers the natural guardian of a Hindu minor to do all acts which are necessary or reasonable and proper for the benefit of a minor or for the realisation, protection or benefit of the minor's estate subject to two exceptions of which we may only note the exception carved out in sub-section (2) of Section 8. Section 8 (2) provides that the natural guardian shall not without the previous permission of the Court, inter alia, transfer by way of a sale any part of the immovable property of a minor. The effect of violation of this provision has been provided for in the section itself under sub-section (3). This sub-section reads:

"8. (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."

8. In view of the express language used, it is clear that the transaction entered into by the natural guardian in contravention of sub-section (2) was not void but merely voidable at the instance of the minor. To hold that the transaction in violation of Section 8(2) is void would not only be contrary to the plain words of the statute but would also deprive the minor of the right to affirm or ratify the transaction upon attaining majority. This Court in Vishwambhar v. Laxminarayan has also held that such transactions are not void but merely voidable. IT was also held that a suit must be filed by a minor in order to avoid the transaction within a period prescribed under Article 60 of the

Limitation Act. The High Court did not consider the issue of limitation at all in view of its finding on the effect of a violation of Section 8(2) of the Act. As the conclusion of the High Court on this aspect of matter is unsustainable, the impugned decision must be set aside."

16. The judgment of the Supreme Court in Vishwambhar (supra) was then followed in a recent judgment by the Kerala High Court in the matter of Thankomoni Amma Padmakumari Amma and Ors. v. Ganapathi Suresh and Ors.⁵ wherein it has been held that on alienation of minor property is voidable at the instance of the guardian by virtue of Section 8 of the Act of 1956, but if in the suit filed by the minor after attaining the age of majority, no relief for setting aside the document of alienation has been sought, then the said suit would not be maintainable for exercise of option available under Section 8(3) of the Act of 1956.
- Paragraph 7 of the report states as under :-

"7. The legal position can be summarised that it is necessary to seek for a relief of setting aside the document to exercise option by a minor to avoid a disposal of immovable property by natural guardian. If the minor, after attaining majority wants to avoid the transaction, by exercising the option under Section 8(3) of the Act, he should file a suit to set aside the document of transfer. In the instant suit, no relief of setting aside the document incorporated and hence the suit itself as

framed is not maintainable. Further, the suit was filed after seven years on attaining majority. Without seeking a relief of setting aside a document of alienation made either by the natural guardian or by any other person representing the minor, if it was without the sanction of the court, no suit can be maintained for the exercise of option under Section 8(3) of the Act. A suit filed without seeking a relief to set aside the document of alienation cannot be entertained. The relief to set aside the transaction forms an integral part of option available under Section 8 (3) of the Act, to be exercised either by the minor or by any person litigating under him. Since the relief of setting aside the document of alienation, cannot be avoided in a suit exercising the option under Section 8(3) of the Act, challenging the disposal of immovable property, the period of limitation would be the one available for setting aside a document of transfer under the Limitation Act, but a separate provision is made under Article 60 of the Limitation Act to set aside a transfer of property made by the guardian of a ward as three years from the date of attainment of majority. The maximum time available to institute a suit for exercising the option under Section 8(3) of the Act is only three years from the date of attainment of majority and not twelve years and hence the suit is hopelessly barred by limitation."

17. Reverting to the facts of the present case, it is quite vivid from the relief clause quoted herein-above that the plaintiff has failed in seeking the relief of cancellation of sale deed dated 14/06/1996 (Ex. P/1) and he has simply sought the declaration that the said sale deed is

a nominal sale deed executed by defendant No. 3 for the purpose of security of loan and therefore, the sale deed (Ex. P/1) is not binding on the plaintiff. He has omitted to seek cancellation of sale deed (Ex. P/1) which he was required to seek mandatorily within the period of limitation under Section 60 (a) of the Limitation Act. The suit, as framed and filed by the plaintiff, is not duly constituted on account of non-seeking of the relief of cancellation of sale deed (Ex. P/1). He ought to have sought for cancellation of transaction of sale (Ex. P/1) as the sale, if any, made by the guardian of a minor's property is voidable at the instance of the minor under Section 8(3) of the Act of 1956, after attaining the age of majority within the period of limitation prescribed under Section 60(a) of the Limitation Act, which can be challenged by seeking cancellation of sale deed. As such, both the Courts below have rightly dismissed the suit by recording the findings which are neither perverse nor contrary to the record. I do not find any merit in the instant appeal warranting interference of this Court under Section 100 of the CPC.

18. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed. No order as to cost(s).

19. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 320 of 2008

Appellant

Rohit Kumar

Versus

Respondents

Krishna Bai & Ors.

POST FOR PRONOUNCEMENT OF THE JUDGMENT ON 10/2020

J U D G E
/10/2020