

AFR IN THE HIGH COURT OF ORISSA AT CUTTACK

O.J.C. No.9819 of 1999

In the matter of an application under Articles 226 & 227 of the
Constitution of India.

Raja Prasad Basita & Anr. Petitioners

Versus

Commissioner of Consolidation & Ors. Opposite Parties

For Petitioners ... Mr.N.P.Patnaik, Advocate

For Opposite Party ... Mr. S.P.Panda, Additional
Nos. 1 to 3 Government Advocate

For Opposite Party None
Nos. 4 to 7

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 13.10.2022

Biswanath Rath, J. For there is already service of notice except
A.D. did not return notice on L.Rs. of Opposite Party No.4 be treated
as sufficient. Heard learned counsel appearing for rest of the Parties.

2. Undisputed facts remains Petitioner succeeded in both the proceedings under Section 9(3) as well as Section 12 of O.C.H. & P.F.L Act, 1972. It is however in the revision both the orders under Section 9(3) as well as Section 12 of O.C.H. & P.F.L Act, 1972 are reversed on the specific findings at paragraph-5 at Annexure-5 herein. Learned counsel for the Petitioners taking this Court to the observations therein particularly involving creation of sale deed involving minors property without permission under Section 8(1) of the Hindu Minority and Guardianship Act, 1956, the revisional authority finds the sale deed as void and as a consequence allowing the revision reverses the orders of both the lower authorities.

3. Taking this Court to the provision at Section 8 of the Hindu Minority and Guardianship Act, 1956 (hereinafter called as Act, 1956), an attempt is made to satisfy that once a document is voidable unless it is challenged by aggrieved party and set it aside by competent court of law. Such documents remain binding all such persons as well as authorities. It is in this view of the matter, Mr.Patnaik, learned counsel for the Petitioner submitted the finding in allowing the revision becomes illegal.

4. Learned State Counsel however taking to the finding and again reading through the provision at Section 8(1) of the Act, 1956 attempted to justify the impugned order. Mr.Panda, learned Additional Government Advocate further also taking this Court to the findings in the impugned order at Annexure-5 urged this Court not to interfere in the impugned order.

5. Considering the rival contentions of the Parties, this Court finds, there is no dispute that property involving minor has been sold by the guardian by way of registered deed. There is also no dispute that beneficiaries of such property minor at the time of transaction have not challenged such sale even after attaining majority. It is looking to the contest between the Parties and the finding based on the provision at Section 8(1) of the Act, this Court finds Section 8(1) to 8(3) of the Act reads as follows:-

8. Power 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."

Reading the provision at Section 8(1), this Court finds, there is strength in the submission of learned counsel for the Petitioner that instrument involved herein is voidable. It is in this circumstance for the support of provision at Section 8(3) of the Act, 1956, this Court finds sole ground involving the instrument involved and foundation in the revisional order, the instrument since not challenged and declared to be bad by appropriate forum, such document is binding not only on

the parties but also the authorities. In the result, this Court observes the observation and findings of the revisional authority is based on erroneous reading of the provision of law taken note hereinabove.

6. In the result this Court interferes in the impugned order at Annexure-5 sets aside the same in restoration of the orders of the competent authority vide Annexures-3 & 4.

7. The Writ Petition succeeds but there is no order as to cost.

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 13th day of October, 2022/Swarna, Junior Stenographer*

