

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

AND

THE HON'BLE SMT. JUSTICE M.G. PRIYADARSINI

F.C.A. No.75 of 2022

JUDGMENT: *(Per the Hon'ble Smt. Justice M.G. Priyadarsini)*

Assailing the order dated 03.12.2021 in G.W.O.P. No.20 of 2021 passed by the Judge, Family Court-cum-Additional District & Sessions Judge, Nizamabad, the appellant preferred the present appeal.

2. *Vide* aforesaid order, the Court below dismissed the application filed by the appellant under Section 29(a) & (2) of the Guardians and Wards Act, 1890 (for short 'the Act, 1890') r/w Section 8(2) of the Hindu Minority and Guardianship Act, 1956 (for short, 'the Act, 1956') seeking ratification of sale transaction covered by registered sale deed vide document No. 2086 of 2017 entered between the appellant and Kede Lachmanna in respect of the schedule property as absolute sale transaction on her behalf and also on behalf of her minor children i.e., Kumari Aripally Harini, Master Harshith and Kumari Hasini.

3. The appellant herein is the petitioner before the Court below. She is the mother of three minor children i.e., Kumari Aripally Harini, Master Harshith and Kumari Hasini. According to the

appellant, her husband, Aripally Chinna Narasaiah, was absolute owner and possessor of petition schedule property i.e., land to an extent of Ac.0.26 guntas in Sy. No. 621/EE, situated at Pipri Village, Armour Mandal, Nizamabad District having purchased the same from its original owner through an unregistered sale deed. Upon the death of her husband on 29.05.2015 leaving the appellant and the three minor children as his legal heirs, the appellant got the property mutated in her name, converted the said land into house site plots and sold the same in favour of Kede Lachanna vide registered sale deed document No. 2086 of 2017 by delivering the vacant possession in his favour. In light of the fact that the minor children of appellant are equally having share in the subject property but the sale deed was executed exclusively by the appellant, since the bank authorities rejected the request of the purchaser for grant of housing loan, the appellant had approached the Court below with the present O.P. seeking ratification of the sale transaction contending that she being the Karta of the Hindu Joint Family, has sold the property and the sale consideration of 3/4th share was utilized only for the benefits of the minors.

4. Before the Court below, apart from marking 21 documents such as title deeds, pahanies, death certificate of husband of appellant, aadhar cards of parties of sale transaction & minors, the appellant got examined P.Ws.2 and 3. The evidence of P.Ws.2 and

3 is to the effect that the late husband of appellate was owner and possessor of the petition scheduled property, upon his death on 29.05.2015, the appellant got the property mutated on her name, converted the land into house site plots, sold away the plots in favour of Kede Lachanna by executing a registered sale deed and utilized the sale consideration for the benefit of minors. Considering the said evidence, the Court below was of the view that the sale transaction covered by the registered sale deed document No. 2086 of 2017 is in contravention of Section 29 of the Act, 1890 as enunciated under Section 30 of the Act, 1890 and therefore, the said transaction cannot be approved by the Court at this juncture and accordingly dismissed the O.P.

5. The only contention of the learned counsel for the appellant is that the appellant is none other than the mother and the natural guardian of the minors, who has executed the sale deed vide document No. 2086 of 2017 in favour of Kede Lachmanna in the capacity of Karta of joint family by selling away the petition schedule property, which is the undivided property of the joint family, for the benefit of minors and as such, the Court below ought to have granted permission ratifying the sale transaction as the said sale transaction is not void under the Act, 1956 or under Act, 1890. Since the sale is not absolute void, but is voidable, it is contended that even subsequent to the sale deed, the sale can be

validated by granting permission. It is lastly contended that inasmuch as the minors and their mother (appellant) constitute a Joint Hindu Family upon the death of late Aripally Chinna Narsaiah, each of the member is having undivided share in the property and in the absence of late Aripally Chinna Narsaiah, the appellant being the natural guardian of minors can alienate even the share of the minors in the property being Kartaa of the Joint Hindu Family.

6. There is no dispute that upon the death of Aripally Chinna Narsaiah in the year 2015, the appellant-wife and the three minor children, being his legal heirs, got undivided share over the petition schedule property. Even as per the admissions of appellant, the property that was sold by her through registered sale deed vide document No. 2086 of 2017 is a joint family property in which her minor children, three in number, are having $3/4^{\text{th}}$ share. She had executed the registered sale deed in her individual capacity. It is only when the bank officials refused to grant housing loan in favour of the purchaser as against the petition schedule property, the appellant approached the Court below seeking ratification of the said sale transaction. As rightly pointed out by the Court below, even the appellant did not bother to make the minor children as parties to the O.P. nor has she shown their names in the cause title.

7. In the present case, sale transaction that took place in 2015 is sought to be ratified by the appellant by invoking the provision under Section 29 of the Guardians and Wards Act, 1890 and Section 8 of the Hindu Minority and Guardianship Act, 1956. As seen from the impugned order, the Court below dismissed the O.P. mainly on the ground that since the appellant had not obtained prior permission of the Court to sell the property of the minors as required under Section 29 of the Act, 1890 subsequently, she cannot seek for ratification of such sale transaction. In this context, it is relevant to refer the provisions of Section 29 of the Act, 1890 which deals with the limitations of powers of guardian of property.

“29. Limitations of powers of guardian of property appointed or declared by the Court.—Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he 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 his ward, or*
- (b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.”*

8. Thus, a reading of Section 29 of the Act, 1890 clearly indicates that the limitations prescribed thereunder are applicable only in cases where a person has specifically been appointed or declared to be a guardian of the property of a minor. However, in

the case on hand, upon the death of Aripally Chinna Narasaiah, the appellant, being his wife, became the natural guardian of their three minor children. Therefore, the limitations/prohibitions contained under Section 29 of the Act are not applicable to the case on hand.

9. Now, the other contention of the learned counsel for the appellant is that as per Section 8 of the Act, 1956, no previous permission of Court is required to be obtained before disposing of an immovable property wherein the minor's interest/share is involved in respect of a joint Hindu family property

10. At this juncture, it is relevant to refer Sections 6 & 8 of the Hindu Minority and Guardianship Act, 1956. Section 6 prescribes the natural guardians of a Hindu minor, which reads as under:-

“6. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother;

provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother:

(b) xxx

(c) xxx”

(emphasis added)

11. Thus, as per Section 6 of the Act, 1956, the appellant is no doubt, natural guardian of her minor children. The words “*excluding his or her undivided interest in joint family property*” which have been put in brackets make it clear that undivided interest of a Hindu minor is excluded from the purview of the operation of the provisions of the Act, 1956 and the subject-matter with which the Act deals is limited to guardians in respect of minor’s person or in respect of minor’s property other than his undivided interest in joint family property, whether they be natural guardians or testamentary guardians or guardians appointed or declared by Court. The concept of a guardian in respect of undivided interest in the joint family property is specifically excluded from the scope of the Act.

12. Section 8 deals with “*powers of natural guardian*” and the same is extracted as follows:

“8. Powers of natural guardian. -(1) *The natural guardian of a Hindu minor has a 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.

(4) No Court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890, shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court u/s 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.

(6) In this section, "court" means the city civil court or an district court or a court empowered u/s 4A of the Guardians and Wards Act, 1890 within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

13. It is also relevant to refer Section 12 of the Act, 1956, which reads thus:

“12. Guardian not to be appointed for minor’s undivided interest in joint family property.—Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

Provided xxx”

14. Thus, Section 8 of the Act, 1956, prevents natural guardian of Hindu minor to transfer by sale, gift, exchange or otherwise any part of immovable property of the minor without previous permission of the Court. This restriction on the natural guardian in

relation to the property of the minor applies only to the separate or absolute property of the minor. It does not include the minor's undivided share in the joint family property, as, under Section 6, there cannot be a natural guardian in respect of such property which is specifically excluded. The restriction contained in Section 8 do not apply in respect of the undivided interest of a minor in joint family property and consequently Section 8 does not debar the manager or Karta of a joint Hindu Family from alienating joint family property, including the interest of minor without obtaining the previous permission of the Court, even if the manager or Karta, happens to be the natural guardian in respect of the separate property of any one or more of the minor coparceners. Section 8 does not require that any previous permission of the Court should be obtained before effecting such alienation. Under Hindu law a manager and Karta of a joint Hindu family can alienate joint family property so as to bind the interest of minor coparceners in such property provided the alienation is either for legal necessity or for the benefit of the minor. The composite High Court of Andhra Pradesh in the case of **Koutarapu Venkata Chenchayya v. Koutarapu Ramalingam and Others**¹ has observed that '*the Karta of a joint Hindu family is entitled to alienate for value, joint family property, so as to bind the interest of both adult and minor*

¹ AIR 1957 AP 744

coparceners in the property, provided the alienation is made for legal necessity and/or the benefit of the estate’.

15. While answering the reference whether the provisions of [Section 8](#) of the Hindu Minority and Guardianship Act, 1956 were applicable to the Joint Hindu Family property sold or disposed of by the Karta, the Apex Court in **Narayan Bal & Ors. V. Sridhar Sutar & Ors.**², considering Sections 6, 8 & 12 of the Act, has observed as under:-

“With regard o the undivided interest of the Hindu minor in joint family property, the provisions afore-culled are beads of the same string and need be viewed in a single glimpse, simultaneously in conjunction with each other. Each provisions, and in particular [Section 8](#), cannot be viewed in isolation. If read together the intent of the legislative in this beneficial legislation becomes manifest. Ordinarily the law does not envisage a natural guardian of the undivided interest of a Hindu minor in joint family property. The natural guardian of the property of a Hindu minor, other than the undivided interest in joint family property, is alone contemplated under [Section 8](#), whereunder his powers and duties are defined. [Section 12](#) carves out an exception to the rule that should there be no adult member of the joint family in management of the joint family property, in which the minor has an undivided interest, a guardian may be appointed; but ordinarily no guardian shall be appointed for such undivided interest of the minor. The adult member of the family in the management of the Joint Hindu Family property may be a male or a female, not necessarily the Karta. The power of the High Court otherwise to appoint a guardian, in situations justifying, has been preserved. This is the legislative scheme on the subject. Under [Section 8](#) a natural guardian of the property of the Hindu minor, before he disposes of any immovable property of the minor, must seek permission of the court. But since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under [sections 6 to 12](#) of the Act, the previous permission of the Court under [Section 8](#) of disposing of the

² AIR 1996 SC 2371

undivided interest of the minor in the joint family property is not required. The joint Hindu family by itself is a legal entity capable of acting through its Karta and other adult members of the family in management of the joint Hindu family property. Thus [section 8](#) in view of the express terms of [Sections 6 and 12](#), would not be applicable where a joint Hindu family property is sold/disposed of by the Karta involving an undivided interest of the minor in the said joint Hindu family property. The question posed at the outset therefore is so answered.”

16. The Apex Court in a recent decision reported in **M.R. Vinoda vs. M.S. Susheelamma**³ dealing with the issue has categorically held that Section 8 of the Act, 1956 which requires a guardian of a Hindu minor to seek necessary permission of the Court before he/she disposes of any immovable property of the minor, but the same is not applicable when a Karta or adult head/member of the family alienates joint Hindu family property. In the case on hand, admittedly the appellant is the head of the family after the death of her husband; that after the death of the husband, the property in question was devolved upon the appellant and the minor children as the legal heirs of the deceased. In the present case, the appellant has asserted, apart from examining P.W.2, that the sale proceeds were utilized for the benefit of the minors. However, no details or particulars in this regard or the ages of the minors were furnished by the appellant in the O.P.

17. For the forgoing reasons, we are of the view that the sale transaction entered by the appellant in the capacity of karta is not

³ (2021) SCC Online SC 1258

bad either under the provisions of Section 29 of the Guardians and Wards Act, 1890 or under the Hindu Minority and Guardianship Act, 1956. However, we are of the view that while a minors (being members of a joint Hindu family) are entitled to (a) object to sale of their share in the joint family property, and (b) get the sale made in favour of a third party purchaser declared void, such right of the minors is subject to (a) limitation provided under the Limitation Act, 1963 i.e., within three (3) years from the date of attaining majority and (b) the minors proving that the alienation made by the Karta of the joint Hindu family was without any legal necessity and/or for benefit of the estate.

18. In the result, the appeal stands disposed of as indicated above. No order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

DR. CHILLAKUR SUMALATHA, J

M.G. PRIYADARSINI, J

27-01-2023
tsr

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

AND

THE HON'BLE SMT. JUSTICE M.G. PRIYADARSINI

F.C.A. No.75 of 2022

DATE: -01-2023