

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 21 OF 2021
WITH
INTERIM APPLICATION NO. 1503 OF 2023
WITH
INTERIM APPLICATION NO. 2204 OF 2021
IN
SECOND APPEAL NO. 21 OF 2021**

Shriniwas Vidyananad Alias ... Applicants
Nilesh Shirodkar and Others

Vs.

Smt. Gayatri Vidyanand Alias ... Respondents
Nilesh Shirodkar and Another

Mr. Bhushan Ulhas Deshmukh for the Appellant.

Mr. S. S. Patwardhan i/b. Ms. Rajeshwari Patil for Respondent No. 2.

Mr. I. M. Khairdi for Respondent No.3.

CORAM : GAURI GODSE, J.

DATE : 12th JUNE 2024

ORDER:

1. This Second Appeal challenges concurrent Judgments and decrees dismissing the appellants' suit for challenging the mortgage document and cancellation of the same. The mortgage document was

executed by the mother of the plaintiff as karta of the Joint Hindu Family in favour of respondent no. 2 – Credit Society. Respondent no. 1 is the original defendant no. 1 - mother of the plaintiff who executed the mortgage document.

2. Learned counsel for the appellants submitted that they had an undivided share in the mortgaged property through their father, who had purchased the property. He submitted that the appellants' mother executed the mortgage deed without seeking permission under Section 8 of the Hindu Minority and Guardianship Act, 1956 ["the said Act"]. Hence, the mortgage deed was voidable at the instance of the appellants.

3. By referring to the findings recorded by the First Appellate Court, the learned counsel for the appellants submitted that the First Appellate Court had misread the provision of Section 8 of the said Act and erroneously held that the permission of the court was not required before execution of the mortgage deed by respondent no.1. He thus submitted that on the point of the mortgage document being voidable for want of permission under Section 8 of the said Act, the Second Appeal would require consideration as it raises a substantial question

of law.

4. Learned counsel appearing for respondent no. 2 submitted that the mortgaged property was purchased by the father of the appellants on 27th July 2005 from his brother, who was a co-sharer, who, along with respondent no. 1, executed the mortgage document. He further submitted that the appellant's father expired on 7th May 2006, and after his death, the appellants and respondent no. 1 had an undivided share in the property, being the Joint Hindu Family property. Respondent no. 1, being the mother, was the natural guardian of the appellants and, as their natural guardian and karta of the Joint Hindu Family, had a right to execute the mortgage document. Thus, the mortgage document executed on 28th July 2006 was a valid document, and there was no requirement for prior permission as contemplated under Section 8 of the said Act.

5. He submitted that the requirement of the court permission with regard to the undivided share of minors in the Joint Family property being disposed of by the natural guardian is explained by the Hon'ble Supreme Court in the case of ***Sri Narayan Bal and Others vs.***

Sridhar Sutar and others¹. He submitted that the law with regard to the requirement of permission under Section 8 is explained in the said decision being that if the undivided share of the minor is to be disposed of by the natural guardian, permission under Section 8 would not be necessary in view of Section 12 of the said Act. He submitted that the said decision of the Hon'ble Supreme Court is followed by this Court in the case of ***Vasant Rao Gulabrao Thakre (through his Legal Heirs) vs. Sudhakar Wamanrao Hingankar and Others***². He relied upon specific observations of the Hon'ble Supreme Court reproduced in the said decision in paragraphs 11 and 13. He thus submitted that the legal principle with regard to the requirement of permission under Section 8 is well settled. In view of the undisputed facts of the present case, the well-settled legal principles are squarely applicable to the present case. He thus submitted that the question of law sought to be raised by the learned counsel for the appellant is well settled in the aforesaid decisions. Hence, the second appeal would require no further consideration by this Court.

6. I have considered the submissions made by the parties.

¹ (1996) 8 SCC 54

² 2018 (5) Mh. L. J. 121

Perused the papers. It is not in dispute that the mortgage deed is executed by respondent no. 1, who is the mother of the appellants and, being a natural guardian, executed the mortgage deed in favour of respondent no. 2 – credit society. The appellants challenged the mortgage deed on the ground that they had an undivided share in the Joint Hindu Family property. The appellants could not claim any independent right in the property, as rightly pointed out by the learned counsel for respondent no.2. It is not even the case of the appellants that having independent interest in the mortgaged property they attempted for any redemption by making payment of the amount borrowed by respondent no. 1 at the time of execution of the mortgage document.

7. In view of the aforesaid facts regarding the execution of the mortgage by respondent no. 1 as natural guardian and Karta of Joint Hindu Family, permission under Section 8 of the said Act would not be necessary as is explained in the decision of this Court in the case of **Vasantrao Gulabrao Thakre** by following the legal principles settled by the Supreme Court in the case of **Sri Narayan Bal**. In view of the aforesaid well-established principles of law regarding permission under

Section 8 of the said Act and the facts of the present case, the question of law sought to be argued on behalf of the appellants is already well settled. Hence, no further consideration would be necessary in the Second Appeal.

8. The second Appeal does not raise any other substantial question of law. Hence, the Second Appeal is dismissed.

9. In view of the dismissal of the Second Appeal, Interim Application No. 1503 of 2023 and Interim Application No. 2204 of 2021 are disposed of as infructuous.

[GAURI GODSE, J.]

Digitally
signed by
RAJESHWARI
RAMESH
PILLAI
Date:
2024.06.25
12:51:16
+0530