IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-2631-1989 (O&M)
Reserved on : 13.03.2024
Pronounced on: 15.04.2024
2024:PHHC: 051177

ANIL KUMAR MEHTA THROUGH HIS LRS AND ANOTHER

. . . . APPELLANTS

Vs.

SUKHWINDER SINGH AND ANOTHER

. . . . RESPONDENTS

****

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Argued By:- Mr. Manmohan Saroop, Advocate with
Mr. Dalel Singh, Advocate,
for the appellants.

Mr. Vishal Gupta, Advocate,
for the respondents.

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DEEPAK GUPTA, J.

Civil Suit N: T-169 of 1983/1984 filed by the plaintiffs-Anil Kumar Mehta and Parwin Kumar *(appellants herein),* seeking decree for specific performance of agreement, was decreed in their favour by the Court of Ld. Senior Sub Judge, Rupnagar on 20.09.1986. However, in the appeal (CA N: T-239/1986/1989) filed by contesting defendant - Sukhwinder Singh (*respondent No.1 herein*), the judgment and decree of the trial Court was set aside by Appellate Court of Ld. Additional District Judge, Ropar. Accepting the appeal, the suit was dismissed on 19.09.1989. It is against the said judgment and decree dated 19.09.1989 of the First Appellate Court that the present Regular Second Appeal has been filed.

2. In order to avoid confusion, parties shall be referred to as per their status before the trial Court.

Admitted Facts:

3. Karnail Singh and Jarnail Singh sons of Bachan Singh, to the extent of 2/3rd share; defendant No.1 Sukhwinder Singh along with his mother Ranjit Kaur, sister-Baljit Kaur and brother Kuldeep Singh to the extent of remaining 1/3rd equal share, were the co-owners in possession of the land measuring 1 bigha 12 biswas comprised in Khasra No.4628, situated in the area of Village Morinda, Tehsil and District Rupnagar. The share of defendant No.1-Sukhwinder Singh, who was minor at the relevant time, was 1/12th share. All these co-sharers entered into an agreement to sell the entire land measuring 1 bigha 12 biswas in favour of plaintiffs-Anil Kumar Mehta and Parwin Kumar vide an agreement dated 05.05.1981 at the rate of ₹700/- per biswa and received an amount of ₹5000/- as earnest money. The said agreement, on behalf of minor defendant-Sukhwinder Singh was executed by her mother/guardian Smt. Ranjit Kaur. In the agreement, it was stipulated that sale deed in respect of minor the share shall be executed after obtaining requisite permission from the Guardian Court by Smt. Ranjit Kaur. Later on, the sale deed in respect of 11/12th share was executed by the co-sharers in favour of plaintiff No.2-Parwin Kumar and Smt. Renu Mehta wife of plaintiff No.1 vide sale deed dated 22.05.1981 for consideration of ₹20,530/- and earnest money of ₹5,000/- was adjusted in the sale consideration. The remaining sale consideration of ₹15,530/- was paid before the Sub-Registrar. As stipulated in the agreement, Smt. Ranjit Kaur applied under Section 8 of the Hindu Minority and Guardianship Act, 1956 [for short 'the Guardianship Act'] to obtain permission of the Guardian Court to execute sale deed in respect of the minor's share. Said permission was granted on 06.09.1981.

Case of Plaintiffs:

4. Plaintiffs brought the suit for specific performance against minor-Sukhwinder Singh through his mother/guardian Ranjit Kaur by alleging that despite grant of permission by the Guardian Court, said defendant instead of executing sale deed in their favour as per the agreement, had executed an agreement regarding 1/12 share on 19.06.1982 in favour of defendant No.2 - Rattan Chand *(respondent No.2 herein through his LRs)* at the rate of ₹4300/- per biswas. Said agreement in favour of defendant No.2-Rattan Chand was alleged to be null and void. Plaintiffs sought the agreement dated 05.05.1981 in their favour to be specifically enforced by executing the sale deed in their favour in terms of the agreement, by submitting that plaintiffs have always been ready and willing to perform their part of the contract; whereas, defendants had failed to do so.

Stand of defendants:

5.1 Defendants resisted the claim of the plaintiffs. As per defendant No.1-Sukhwinder Singh, there was no subsisting agreement and even if there was any, the same was illegal and void. He pleaded further that a private partition had already been effected amongst the co-sharers on 15.06.1980 and the memorandum of partition was reduced in writing on 31.12.1980. He pleaded further that he was not bound by any agreement to sell, as it was against his interest, because the property was of much more value than the price mentioned in the agreement. As per him, 3 biswas of land, which had come to his share, was agreed to be sold at the rate of ₹4300/- per biswas in favour of defendant No.2 - Rattan Chand and possession thereof was handed over to said Rattan Chand at the time of execution of the agreement in his favour. It was also pleaded that agreement with Rattan Chand was with specific boundaries and dimensions. Though, it was admitted that permission had been granted by the Guardian Court, but it was submitted that sale deed in favour of defendant No.2-Rattan Chand was in the interest of the minor, as he had offered him the land for more price.

5.2 Similar pleas were taken by defendant No.2-Rattan Chand, who also denied having knowledge of any prior agreement to sell dated 05.05.1981 in favour of the plaintiffs.

Issues for adjudication:

6. On pleadings of the parties, following issues were framed by the ld. trial Court: -

> "1. Whether defendant No. 1 through his mother and guardian Smt. Ranjit Kaur executed an agreement of sale dated 5.5.1981 with plaintiffs with respect of land including suit land?
>
> 2. Whether the plaintiffs are and have been ready and willing to perform their part of contract of sale dated 5.5.1981? OPP.
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> 3. Whether the suit is not maintainable in the present form? OPD
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> 4. Whether plaintiffs are estopped from filing the suit by their act and conduct?
>
> 5. Whether any private partition was effected between the co-sharers on 15.6.1980 as alleged? If so its effect? OPD
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> 6. Whether the agreement by defendant No. 1 through his mother and natural guardian in favour of Defendant No. 2 is null and void and ineffective against the rights of the plaintiffs? OPP
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> 7. Whether the plaintiffs are entitled for specific performance of agreement of sale dated 5.5.1981? OPP
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> 8. Whether the suit is barred under Order 2 Rule? OPD
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> 9. Whether the plaintiffs have locus standi to file the present suit? OPD
>
> 10. Whether the alleged agreement is against the interest of minor is illegal, null and void? OPD
>
> 11. Relief."

Decision by Trial Court:

7.1 After taking evidence produced by the parties, ld. trial Court decreed the suit.

Findings by First Appellate Court:

7.2 However, in the appeal, though execution of agreement dated 05.05.1981 was found to have been proved, but it was observed that said agreement was not for the benefit of the minor. The reliance of the trial Court on the permission granted by the Guardian Court was held to be misplaced, as it was nowhere mentioned either in the application for seeking permission or in the order of the Guardian Court, as to what was the market value of the land proposed to be sold and as to at what rate and to whom the same was being sold. Ld. Appellate Court observed further that it was simply mentioned in the application that land was of inferior quality and yielding no produce, without noticing the fact that land was situated in the heart of the city and so, being non-agricultural land, it could not yield any produce. It was further observed that sale consideration (earnest money) regarding the share of the minor had not been paid at the time of execution of the agreement to him. Ld. appellate Court further found that market value was much more at the time of agreement dated 05.05.1981 and so, under no stretch of imagination, agreement could be held to be in the interest and benefit of the minor. Ld. Appellate Court further found that property in dispute, as agreed to be sold, was minor's undivided share and therefore, application under Section 8 of the Guardianship Act in itself was not maintainable, in view of the bar contained in Section 6 of the Guardianship Act.

7.3 Ld. Appellate Court further found that the entire earnest money having already been adjusted at the time of execution of the sale deed dated

22.05.1981 regarding remaining 11/12 share, so no agreement subsisted for the purpose of enforcement and as such, there remained no privity of contract between the plaintiffs and minor defendant and as such, no such agreement could be executed.

7.4 First Appellate Court further found that the minor defendant-Sukhwinder Singh, on attaining majority, had repudiated the contract as the agreement on his behalf was voidable, by making a statement to that effect in the Court.

7.5 Ld. First appellate Court further found that in the suit filed by the plaintiffs for specific performance, there was no pleading to the effect that proposed sale was in the benefit of the minor and as such, specific performance could not be granted.

7.6 With these findings, the judgment of the trial Court was set aside and the appeal was accepted, dismissing the suit of the plaintiffs.

Contentions for appellants – plaintiffs:

8.1 Assailing the aforesaid findings of the First Appellate Court, it is contended by ld. counsel that as per the settled legal position, specific performance of contract cannot be denied on account of rise in prices and that a contract entered by the guardian on behalf of the minor is enforceable, as has been held by Hon'ble Supreme Court in ***Manik Chand and Anr Vs. Ramchandra, 1981 AIR (Supreme Court) 519***.

8.2 It is further argued that findings of the appellate Court are mutually destructive, as on one hand the Appellate Court finds that there was partition and on the other hand, it holds that in the case of undivided interest of a minor in the joint property, the provisions of the Guardianship Act are not applicable. It is contended that even if no such permission was required from the Guardian Court, that does not debar the suit for specific performance, when execution of contract is proved.

8.3 Ld. counsel for the appellants also contend that as per Indian Majority Act, 1875, minor of whose person or property, a guardian has been appointed, attains the age of majority at 21 and therefore, defendant-Sukhwinder Singh could not have repudiated the contract by appearing in the witness box, as at that time, he had not attained the age of majority.

8.4 Still further, it is contended that partition of the land was not proved and that each co-sharer is an owner of every parcel of the land and therefore, the agreement of sale between the parties was subsisting, even if sale deed regarding 11/12 share was already concluded and the earnest money was adjusted towards the sale consideration.

8.5 With these submissions, prayer is made to set aside the impugned judgment and decree passed by the First Appellate Court; and to restore the judgment passed by the trial Court.

9. Needless to say, ld. counsel for the respondents-plaintiffs defended the impugned judgment of the First Appellate Court on all aspects.

10. Along with the appeal, an application bearing CM No.4262-C of 1989 was also moved under Order 41 Rule 27 CPC seeking permission to tender a copy of the mutation so as to contend that mutation with regard to the alleged private partition amongst the co-sharers was rejected by the revenue officer by order dated 16.05.1988 during pendency of the appeal. However, said application was not pressed during arguments before this Court.

11. I have considered submissions of both the sides and have appraised the record carefully.

Analysis by this Court:

12. The execution of agreement dated 05.05.1981 in favour of the plaintiffs is duly proved on record and the said findings of the Courts below is a concurrent finding. The said agreement on behalf of defendant-Sukhwinder Singh was executed by his mother Ranjit Kaur. It is also undisputed that in terms of the stipulation of agreement, Ranjit Kaur moved an application Ex.P7 seeking permission of the Guardian Court to sell the share of minor and necessary permission was granted on 06.09.1982 vide Ex.P8. However, the question is that whether Court is bound to order specific performance of contract in respect of a share of a minor, if it finds that transaction is not in the interest and benefit of the minor. Answer to this question is NO.

13. Section 20 of the Specific Relief Act, 1963 enunciates certain principles for guidance of the Courts while exercising their discretion in decreeing or refusing to decree suits for specific performance. The necessary condition is that contract in itself must be legally valid and capable of enforcement, otherwise the Court's discretion in granting or refusing its specific performance will not arise.

14. The question as to which agreements made by the guardian of the minor are enforceable in law, has been answered by Hon'ble Privy Council in ***Shri Kakulam Subrahmanyam and another Vs. Kurra Subba Rao,*** *AIR 1948 Privy Council 95,* wherein their Lordships approved the following passage in Pollock and Mulla's Indian Contract and Specific Relief Acts, 7th Edition:-

> "It is, however, different with regard to contracts entered into on behalf of a minor by his guardian or by a manager of his estate. In such a case it has been held by the High Courts of India, in cases which arose subsequent to the governing decision of the Privy Council, that the contract can be specifically enforced by or against the minor, if the contract is one which it is within the competence of the guardian to enter into on his behalf so as to bind him by it, **and**, further, if it is for the benefit of the minor. **But if either of these two conditions is wanting, the contract cannot be specifically enforced at all**."

15. Above said judgment was later on relied upon by Hon'ble Supreme Court in ***Sunder Singh and others Vs. Jiwan Singh and others,*** *1970 PLR 218,* and after referring to the aforesaid passage of Pollock and Mulla's Indian Contract and Specific Relief Acts, referred in ***Shri Kakulam Subrahmanyam and another (Supra)*** by Privy Council, it was held as under:

> "According to this ruling, therefore, such contracts can be specifically enforced by or against the minors, if two conditions are satisfied : (i) if the contract is one which it is within the competence of the guardian to enter into on his behalf so as to bind him by it and (ii) if it is for the benefit of the minor. If either of these two conditions is not satisfied, that contract cannot be specifically enforced at all. The powers of a natural guardian are dealt with in section 8 of the Hindu Minority and Guardianship Act, 1956. Particular attention is invited to the provisions of sub-section (1) of that section, according to which the natural guardian of a Hindu minor has power, subject to the provisions of that section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant."

16. It is thus clear from the aforesaid legal position that in order to specifically enforce a contract entered into by a guardian on behalf of the minor, it is necessary that: (i) contract should be within the competence of the guardian to enter into on his behalf so as to bind him; and (ii) it is for the benefit of the minor. If either of these two conditions are not satisfied, the Contract cannot be specifically enforced at all.

17. In the present case, the First Appellate Court has found that none of the aforesaid two conditions were satisfied. As has been rightly found by the First Appellate Court that it is the share of the minor in the joint family property, which was agreed to be sold to the plaintiffs. The question is that whether any permission for selling such share could have been granted or not.

18. Section 6 of the Hindu Minority & Guardianship Act 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) xxxxxxxxxxxx"

19. Thus, though the natural guardian of a Hindu minor in respect of his person as well as property have been mentioned in Section 6 of the Guardianship Act, but it is by excluding his or her undivided interest in joint family property.

20. Section 12 of the Hindu Minority & Guardianship Act also provides as under:

> **"12. Guadian 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.
>
> Provide that nothing in this section shall be deemed to affect the jurisdiction of High Court to appoint a Guardian in respect of such interest."

21. In view of the aforesaid provisions, application under Section 8 of the Guardianship Act for appointment of guardian in itself was not

maintainable. As such, the mother of defendant No.1-Sukhwinder Singh was not competent to sell the share of the minor in the joint Hindu family property.

22. Apart from above, let it be assumed for the sake of arguments that being a natural guardian, the mother was competent to sell the share of the minor in the property, still the Court was required to look into the aspect, as to whether the agreement was in the interest and benefit of the minor, before ordering for specific performance. By way of agreement dated 05.05.1981, the share of the minor was agreed to be sold on ₹700/- per biswa. As rightly observed by the First Appellate Court that there was no material before the trial Court to come to the conclusion, as to what was the actual market price of the land proposed to be sold, compared to the price at which it had been agreed to be sold. The trial Court only referred to the application Ex.P7 moved under Section 8 of the Guardianship Act, wherein it was simply mentioned that land was of inferior quality and not yielding any produce, without considering the fact that land being situated in the heart of the city and not being an agricultural land could not yield any produce. It was no where mentioned in the application as to what was the market value of the land proposed to be sold or as to at what rate the same was to be sold and to whom. Except the contents of the application, there was no data before the Guardian Court while granting permission under Section 8 of the Guardianship Act and as such, simply on the basis of permission granted to the guardian, it cannot be assumed that agreement was in the interest of benefit of the minor.

23. Ld. Appellate Court has also rightly observed that just after about 1 year of the agreement dated 5.5.1981 i.e., on 19.06.1982, defendant No.2 agreed to purchase the share of the minor at the rate of ₹4300/- per biswa,

compared to ₹700 per biswas at which the mother of the minor had agreed to sell the same to the plaintiffs. Not only this, ld. Appellate Court has also taken into account the statement of the witnesses examined by the plaintiffs themselves, inasmuch as PW1 Bhagwan Singh admitted that market value of similar land was ₹5 lakh per bigha. PW2 Sardara Singh admitted that 1 bigha of land for abadi fetched at least ₹1 lakh or so. These admissions clearly indicated that market value of the suit land was much more than the price for which guardian of the minor had agreed to sell the share of the minor.

24. No doubt, it is true that rise in price cannot be a reason to decline specific performance of the contract, but when the interest and benefit of the minor is involved, Court is certainly bound to see as to whether the proposed sale is in the interest and benefit of the minor or not. As such, it is held that ld. First Appellate Court, based upon the aforesaid evidence, did not commit any error in coming to the conclusion that the proposed sale was not in the interest of the minor-defendant and so, rightly refused to enforce specific performance of the contract.

25. Reliance can be placed on ***Mohinder Singh and others*** Vs. ***Paramjit Singh Major and another***, *1983 PLR 677,* wherein it has been held by this Court that the contract is not enforceable, if it is against the interest of the minor, though it will be enforceable if it benefits him.

26. ***Sh. Daya Ram*** Vs. ***Smt. Raksha Kumari and another,*** *1985 (2) PLR 615,* can also be referred, wherein it was observed by this Court that there is no law forcing the minor to file a suit to avoid the contract; and that after attaining majority, he can repudiate the contract even without filing the suit. This Court also held that in order to succeed in a suit for possession

based upon the specific performance of contract, regarding the share of a minor, it is necessary to establish two facts, firstly that natural guardian had entered into the contract on behalf of the minor and secondly that contract was for the benefit of the minor. In the case before this Court, though the first ingredient had been established, but the second was neither alleged not proved. It was held that vendee could not be held to be entitled to specific performance of contract regarding the share of the minor, as the proposed sale was not in the interest of the minor-defendant

27. Apart from above, this is the admitted position than an amount of ₹5000/- was paid as an earnest money at the time of execution of agreement to sell dated 05.05.1981 in respect of the entire land i.e. 1 bigha 12 biswas at the rate of ₹700/- per biswa, which included the share of the minor defendant. The total sale price works out to be ₹22,400/-. The sale deed in respect of 11/12 share by the other co-sharers was executed on 22.05.1981 for consideration of ₹20,530/-, which is the proportionate sale price for the 11/12 share of the land at the rate of ₹700/- per biswas. It is not disputed that the entire earnest money of ₹5000/- was adjusted in the sale consideration and that at the time of registration of the sale deed, an amount of ₹15,730/- was paid.

28. It is, thus, clear that even proportionate earnest money to the extent of share of the minor defendant had been adjusted in the sale price for 11/12 share. Thus, as far as the share of minor is concerned, no earnest money was left. In these circumstances, the question is as to whether any sale agreement was still subsisting, which could have been specifically enforced.

29. A similar question arose before the Division Bench of Delhi High Court in ***Ravindra Kishore Sinha Vs. Smt. Manjula Bhushan,*** *2009(22) RCR (Civil) 624*, wherein it was observed as under: -

> "Undisputed facts on record are that as per the Agreement of Sale, Rupees Four Lac was an earnest money for the specific performance and the balance sale consideration of Rs.1.96 crores was to be paid at the time of execution and registration of the Sale Deed in respect of second and third floors, etc. of the property in question. Once the entire earnest money stands adjusted, towards the sale consideration of the basement, ground and first floor of the property in question, then in the absence of the earnest money, for the subject property, i.e., second and third floor etc., the Agreement of Sale does not survive and in fact stands abandoned. There is irrefutable substance in the opinion of the learned Single Judge that once the earnest money of Rupees Four Lacs was adjusted, the agreement for purchase of the second and third floors would be reduced to an unenforceable contract for want of consideration. Although, it is the plea of the Appellate that the said adjustment of the entire earnest money was done with the mutual consent of the parties, but this is all oral and it does not stand reflected either in the aforesaid Notices or Replies thereto."

30. Thus, once the entire earnest money stands adjusted towards the sale consideration of part of the property agreed to be sold, the agreement of sale will not survive in respect of the remaining part of the property and will become redundant, inasmuch as no earnest money is left for the remaining part of the property regarding which sale deed has not been executed so far and so, the specific performance of such remaining part cannot be allowed.

31. In the present case also, since the entire earnest money had been adjusted at the time of execution of sale deed of 11/12 share, it is obvious that no earnest money was left for the share of minor-defendant and as such, it is held that there was not subsisting agreement to sell between the parties.

32. Apart from above, defendant-Sukhwinder Singh, during the pendency of the suit, claimed to have attained majority and by appearing in

the witness box, he repudiated the agreement in favour of the plaintiffs and accepted the agreement in favour of defendant No.2.

33. It is an undisputed legal proposition that a minor can repudiate the contract entered into by his guardian, on his attaining majority, as the agreement on behalf of minor is voidable. Ld. counsel for the appellants has contended that at the time when defendant-Sukhwinder Singh entered into the witness box so as to repudiate the contract on 18.03.1986, he had not attained majority, having not reached the age of 21 years. Ld. counsel in this regard refers to Section 3 of the Indian Majority Act, 1875 *(before its amendment in 1999),* which reads as under: -

> **"3. Age of majority of persons domiciled in India.**
>
> Subject as aforesaid, every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age shall, notwithstanding anything contained in the Indian Succession Act or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.
>
> Subject as aforesaid, every other person domiciled in India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before."

34. It is contended by Ld. counsel that defendant N: 1 was born on 03.12.1966, as per evidence on record, and so on the date of his appearance in Court, he had not attained the age of 21 years. This Court does not find merit in the aforesaid contention.

35. Section 4 of the Hindu Minority & Guardianship Act provides the definition of 'minor' as a person who has not completed the age of

eighteen years. Section 5 of this Act has the overriding effect of any other law in force immediately before the commencement of this Act, insofar as it is inconsistent with any of the provisions of the Act. Section 5 of the Act, reads as under: -

> **"5. Over-riding effect of Act.**—Save as otherwise expressly provided in this Act,—
>
> (a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act Shall cease to have effect with respect to any matter for which provision is made in this Act.
>
> (b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act."

36. In view of Section 5(b) of the Hindu Minority & Guardianship Act, it is held that the age of majority in this case shall be considered to be 18 years, as the contrary provision contained in Indian Majority Act, is inconsistent with Section 4 of Hindu Minority & Guardianship Act. As such, defendant-Sukhwinder Singh having repudiated the contract, plaintiffs-appellants cannot pray for enforcement of specific performance.

37. In the matter of ***Parkash Navnitbhai*** *Vs.* ***Unknown,*** *1986(2) HLR 291,* Gujarat High Court has taken a view that when guardian of a person and property is appointed by the Court, the minor will attain majority after 21 years and not 18 years and that provisions of Hindu Minority & Guardianship Act, 1956 do not override the provision of The Indian Majority Act, 1875. This Court is in respectful disagreement with the view taken by the Gujarat High Court.

38. Further, Ld. counsel for the appellants referred to a decision of Hon'ble Supreme Court rendered in ***Manik Chand and another Vs.***

Ramchandra, *1981 AIR (Supreme Court) 519* to contend that when contract is entered into by guardian on behalf of minor, the same is enforceable. In the case before Hon'ble Supreme Court, two minor plaintiffs entered into an agreement through their mother/guardian with the respondent to purchase a house for a sum of ₹11,000/-. Earnest money of ₹1000/- was paid. Balance amount was to be paid at the time of registration of the sale deed. As respondents did not carry out their part of agreement, the suit for specific performance was filed. Though the suit was decreed by the trial Court, but in appeal, the High Court held that though the agreement was entered on behalf of the minors and there was breach of contract on behalf of the respondent, but decree for specific performance could not be granted for want of mutuality. Setting aside the aforesaid decision of the High Court, Hon'ble Supreme Court held that a minor has no legal competence to enter into a contract or authorize someone on his behalf to enter into contract, but under Hindu law, the natural guardian is empowered to enter into a contract, on behalf of the minors and the contract would be binding and enforceable, if the contract is in the benefit of the minor.

39. There can be no dispute to the legal position as above, but it is not applicable to the facts of the present case, because in the present case, it has been found that the contract entered on behalf of the minor by the guardian was not in the interest and benefit of the minor, whereas, in the above case before Hon'ble Supreme Court, the contract was found to be in the interest of minors and so, it was held to be enforceable.

40. Ld. Counsel for appellants has also referred to a decision of the Full Bench of this Court rendered in ***Surta Singh Vs. Pritam Singh,*** *1983*

PLR 121, wherein minor had challenged the transfer of an immovable property though his natural guardian in contravention of Section 8(1) and 8(2) of the Hindu Minority and Guardianship Act. It was held by the Full Bench that quandam minor can bring the suit only within the prescribed period of three years after attaining majority under Article 60 of the Indian Limitation Act, 1963. The same view was taken by Hon'ble Supreme Court in ***Murugan and others*** *Vs.* ***Kesava Gounder (dead) through LRs and others,*** *2019 (2) RCR (Civil) 565.*

41. Again, there can be no dispute to the legal position as above, but it is not applicable to the facts of the present case, because it is not the transfer which is under challenge. Rather, it is the agreement to sell executed by a guardian on behalf of minor, which is sought to be enforced by the plaintiffs-vendees by way of specific performance and such a contract can be repudiated by the minor on attaining majority.

42. On account of the entire discussion as above, it is held that there is no merit in the appeal. Ld. First Appellate Court rightly came to the conclusion that decree for specific performance could not be granted in favour of the plaintiffs-appellants, as the same was not in the interest and benefit of the minor.

Accordingly, the present appeal is dismissed.

(DEEPAK GUPTA)
JUDGE

15.04.2024
Vivek

Whether speaking/reasoned? *Yes*
Whether reportable? *yes*