



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

RSA-1430-1994
Reserved on : 05.08.2024
Pronounced on : 24.09.2024

Gurnam Singh Appellant

versus

Shri Sahab Singh & Others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Adarsh Jain, Advocate
for the appellant.

Mr. B.S. Bedi, Advocate
Mr. Simar Bedi, Advocate and
Mr. Gurfateh Mann, Advocate
for respondents No.1 & 2.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Wazir Singh, Advocate
for respondents No.3 to 6.

PANKAJ JAIN, J.

1. Plaintiff is in appeal.
2. Plaintiff filed suit seeking decree of declaration to the effect that sale of 1/2 share of agricultural land measuring 148 kanal, 17 marlas fully described in para No.1 of the plaint made by his father defendant No.7 acting as his natural guardian in favour of defendants No.1 to 6 vide registered sale deed dated 23.12.1973 is illegal, void without consideration, without necessity and is thus not binding qua his rights.
3. He pleaded that the land in question was sold for ridiculous consideration showing inflated amount in sale deed. Apart from the sale being



without legal necessity, the same was executed by defendant No.7 acting as his natural guardian without seeking permission from the competent Court. Sale at the instance of a minor without permission of the Court is voidable. Plaintiff who was born on 21.10.1963 and attained majority on 21.10.1981 was thus, entitled to get the sale annulled by instituting the present suit on 16.09.1983.

4. Defendant No.7-the father opted not to appear despite service. He was proceeded ex-parte. Suit was contested by defendants No.1 to 6, the vendees in the impugned sale. It was pleaded that in fact the land was owned by defendant No.7 only. Defendant No.7 alongwith his brother purchased land measuring 148 kanal, 78 marlas from rehabilitation department in equal share. The sale consideration was paid by defendant No.7 Bur Singh. Later on through a collusive decree passed in civil suit No.1258 of 1969, the land in question was transferred in favour of present plaintiff. He was only a benamidar with defendant No.7 being real owner. It was further pleaded by defendants that the land was sold for legal necessity. An agreement to purchase land measuring 127 Kanal, 2 marlas belonging to Rajbir Singh son of Khajan Singh for a valuable consideration of Rs.1,53,129/- was entered. Money received by defendant No.7 by executing impugned sale deed was utilized to purchase. Defendants further claimed that suit is time barred. At the time of filing of the suit, plaintiff was more than 21 years of age. Defendants further claimed of having invested huge amount to convert Benjar Kadim, land into a cultivable one and thus in the alternate prayed for recovery of market value alongwith cost and the investment made to improve the land.

5. On the basis of the pleadings, suit was put to trial framing following issues:-



- “1. Whether Bur Singh father of the present plaintiff was real owner of the suit land and Gurnam Singh was benamidar? OPD
2. Whether the plaintiff in any way benefited from the sale, if so, to what effect OPD
3. Whether the suit land had been sold in favour of the defendants without seeking permission of the court, if so, to what effect? OPP
4. Whether the suit of the plaintiff is within limitation? OPP
5. Whether the plaintiff has no locus standi to file and maintain the present suit? OPD
6. Whether the suit of the plaintiff is time barred? OPD.
7. Whether the present suit has been correctly valued for the purposes of court fee and jurisdiction? OPD
8. Whether the plaintiff is estopped from filing the present suit? OPD
9. Whether the defendant-vendees have effected any improvement over the suit land, if so, how much and to what amount and to what effect? OPD
10. Relief.”

6. Trial Court decided issue No.1, 5 and 9 against the defendants. Issue No.3, 4 and 6 were decided in favour of the plaintiff. Issue No.2 was decided in favour of the defendants. Resultantly, suit filed by the plaintiff was decreed by the Trial Court.

7. In appeal preferred by the defendants, Lower Appellate Court recorded that findings recorded by the Trial Court on issue No.1, 2, 3, 5, 7, 8 and 9 were not challenged and thus confirmed the same. Lower Appellate Court decided issue Nos.4 and 6 in favour of defendants, re-appreciating the evidence. Findings recorded by the Trial Court were reversed and the suit was held to be barred by time.



8. Before this Court, plaintiff alongwith the appeal, filed application under Order 41 Rule 27 seeking permission to lead evidence to prove his date of birth to be 16.11.1964. However, the civil miscellaneous No.11-C of 1995 was later on dismissed as withdrawn vide order dated 06.03.1995.

9. While assailing findings recorded by the Lower Appellate Court, counsel for the appellant has heavily relied upon the admission made by defendant Satpal Singh who appeared as DW-2. Mr. Jain has invited attention of this court to the part of testimony of DW-2 Satpal Singh wherein he claims that Satpal Singh admitted that at the time of execution of sale deed, age of plaintiff was 10 years. He thus submits that if admittedly on the date of execution of sale deed i.e. 23.12.1973, the plaintiff was 10 years old, he attained majority only in the year 1981 and thus, the present suit filed on 16.09.1983 and is well within the prescribed period of limitation of 03 years from the date of attaining majority. He submits that since the finding on issue of limitation has been returned misreading the evidence ignoring admission on the part of defendants, the present appeal deserves to be allowed.

10. Counsel representing respondent No.1 and 2 submits that it has been proved on record by the defendants by leading cogent evidence in form of Ex.DY, that the proceeds received from selling the land in question were utilized by the family towards purchase of land of better quality. The plaintiff being beneficiary out of the sale transaction, cannot challenge the same. He further submits that plaintiff being minor at the time the sale deed was executed, had no means to purchase the land in question from rehabilitation department. The land was acquired by his father, Bur Singh. Plaintiff was only benamidar and has no right to challenge the action of this father Bur Singh.



11. Senior counsel Mr. Kanwaljit Singh appearing for respondents No.3 to 6 submits that Trial Court erred in deciding issue No.3 in favour of the plaintiff and against the defendant. It has been contended that the sale has been held to be voidable at the instance of the plaintiff only for want of permission of the Court, merely relying upon Section 8 of Hindu Minority and Guardian Act, 1956, in divorce to the provision as contained under Section 12 of the Act of 1956. Senior counsel appearing for respondents submits that in the light of Section 12, guardian was not required to be appointed. Plaintiff only had undivided interest in the property and thus the sale falls within Section 12 and Section 8 will not be applicable.

12. I have heard counsel for the parties and have carefully gone through the records of the case.

13. In the considered opinion of this Court, in the light of the specific findings recorded by the Lower Appellate Court that the defendants did not challenge findings on issue Nos.1, 2, 3, 5, 7, 8 and 9 in their appeal, their plea with respect to there being legal necessity etc. cannot be looked into. Trial Court has returned findings on issue No.2 in favour of the defendants and has held that the sale is for the benefit of the minor plaintiff. It was however held, that the sale is voidable being without permission of the Court. The two issues arises for consideration of this Court are :-

- (i) Whether the suit is within limitation?
- (ii) Whether the plaintiff can seek decree of declaration to the effect that the sale deed executed by his father acting as his natural guardian is void qua his share for want of permission from the Court as contemplated under the provisions of the Act of 1956?



14. Coming on to the first issue, there is no dispute that at the time sale deed was executed, plaintiff was minor. To decide whether the suit instituted on 28.12.1973 is within limitation determining factor is when plaintiff attained majority. Section 3 of the Limitation Act casts an obligation on the Court to dismiss the suit if instituted after the prescribed period of limitation, irrespective of the fact whether limitation has been set up as a defence or not. Section 3 reads as under:-

“3. Bar of limitation.—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act,—

(a) a suit is instituted,—

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer



of that court.”

15. Supreme Court in the case of *State of Orissa and another vs. Mamata Mohanty* held that by virtue of Section 3 of the Act, it is obligatory on part of the Court to dismiss the suit or appeal if made after the prescribed period even though the limitation is not set up as a defence.

16. Article 60 contained in the schedule appended to the limitation Act, 1963 provides limitation for suits relating to decrees and instruments wherein prayer is to set aside the transfer of property made by the guardian of the ward. The same reads as under:-

60.	To set aside a transfer of property made by the guardian of a word-		
	(a) by the ward who has attained majority;	Three years.	When the ward attains majority.
	(b) by the ward's legal representative-		
	(i) When the ward dies within three years from the date of attaining majority.	Three years.	When the ward attains majority.
	(ii) When the ward dies before attaining majority.	Three years.	When the ward dies."

17. Article 60(a) governs the present suit. As per the contents of the plaint, specific case pleaded by plaintiff was that he was born on 21.10.1963 and attained majority on 21.10.1981. The suit having been instituted on 16.09.1983 was within the prescribed period of limitation. In order to prove the same, plaintiff relied upon date of birth certificate Ex.P-1. Mother of the plaintiff Mohinder Kaur, who appeared as PW-2 has supported his claim. Later on, an application was moved by the plaintiff himself claiming that entries in Ex.P-1 do not relate to him. Thus, the documentary evidence brought on record by the plaintiff has been rendered irrelevant by his own act. Trial Court however relied upon the admission made by defendant Satpal Singh DW-2 to the effect that the plaintiff on 27.12.1973 was of 10 years of age. It thus held



that on the date of institution i.e. 16.09.1983, he can be at the most said to be 20 years of age. Accordingly, the suit to be within limitation.

18. Reversing the finding, Lower Appellate Court held that the plaintiff himself has brought on record ample evidence which shows that he himself is not specific about his date of birth and the reliance made by the Trial Court on the admission made by defendant is misplaced. DW-2 in his examination-in-chief stated that the plaintiff was 24/25 years of age whereas in his cross examination, he stated that at the time of the sale, the plaintiff was aged 10 years. The alleged admission being neither clear nor ambiguous cannot be relied upon. Lower Appellate Court further found that at the later stage of the suit, plaintiff moved an application to prove his date of birth by leading additional evidence. The same was dismissed by the Trial Court as the certificate sought to be adduced in additional evidence itself recorded that there was overwriting qua father's name in the original register and the name of the father recorded in urdu script did read as Bur Singh. Revision preferred by the plaintiff against the said order was also dismissed by this Court. Thus, Lower Appellate Court reversed the finding on issues No.4 and 6 and held the suit to be barred by limitation.

19. Statement of DW-2 which was relied upon as his admission by the Trial Court reads as under:-

“At the time of registration of sale deed, Gurnam Singh plaintiff was minor and his age was 10 years.”

20. Prior thereto in his examination-in-chief, he stated that the age of Gurnam Singh is 24-25 years. His statement was recorded on 04.12.1985.

Admission has been defined under Section 17 of the Indian Evidence Act, 1872.



The same reads as under:-

“17. Admission defined.

An admission is a statement, [oral or documentary or contained in electronic form] [Substituted by Act 21 of 2000, Section 92 and Sch.II, for "oral or documentary"], which suggests any reference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.”

21. Section 22 of the Act deals with oral admission as to the contents of the documents. The same reads as under:-

“22. When oral admission as to contents of documents are relevant.

- Oral admission as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.”

22. Section 58 of the Act further deals with admitted facts. The same reads as under:-

“58. Facts admitted need not be proved.—No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings :

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”



23. In the present case, the fact in issue is whether the suit has been filed within 03 years from the date, the plaintiff attained majority. Thus, the fact germane to deciding the issue is date of birth of the plaintiff. Plaintiff specifically pleaded to be born on 21.10.1963. In order to prove the same, he tendered into evidence his date of birth certificate Ex.P-1. The same admittedly does not relate to him. His date of birth is the fact which is especially within knowledge of plaintiff and thus burden to prove the same was on him.

24. Statement made by DW-2 that on the date of registration of sale deed, plaintiff was 10 years of age does not absolve plaintiff of the burden of proving his date of birth. It cannot be taken as admission of date of birth of plaintiff. Reliance can be placed upon on the observations made by Supreme Court in case of *Joshna Gouda v. Brundaban Gouda, (2012) 5 SCC 634*, wherein the Apex Court observed as under:-

“xx xx xx

19. It is not clear as to the material on the basis of which the Division Bench recorded that the admission of the appellant in Panchayat Upper Primary School was on 10-1-1996. We assume for the sake of argument that there is some basis on record for the finding that the appellant took admission in the Upper Primary School on 10-1-1996. On her own admission she was 10 years old on that date. Then there is an inconsistency in her evidence regarding her age with reference to her admission into the Upper Primary School and Basudev High School. In such a case, her statement that she was 10 year old on 10-1-1996, in our opinion, cannot be treated as an admission that her date of birth is 20-6-1986. An admission must be clear and unambiguous in order that such an admission should relieve the opponent of the burden of proof of the fact said to have



been admitted.”

25. In the present case, defendant cannot be attributed any knowledge of the date of birth of the plaintiff. Thus, no fault can be found with the findings recorded by the Lower Appellate Court to the effect that the plaintiff failed to prove his date of birth and thus suit was barred by time.

26. The question with respect to legality of denial of opportunity to the plaintiff to lead additional evidence need not be gone into in the light of the fact that plaintiff himself withdrew his application filed before this Court under Order 41 Rule 27 of the Code of Civil Procedure, 1908.

27. Admittedly, the property in question is share of a joint holding. The other 1/2 share is held by uncle of the plaintiff. It has not been denied by the plaintiff that the land in question was purchased by defendant No.7 from rehabilitation department and was thereafter transferred by consent decree in favour of the plaintiff while he was minor. The question is thus whether the guardian i.e. father was required to seek permission. The issue will be whether the act of father of the plaintiff falls within the ambit of Section 12 and thus an exception to the import of Section 8. Sections 6, 8 and 12 of the Hindu Minority and Guardianship Act, 1956 read as under:-

“6. Natural guardians of a Hindu minor.—

The natural guardian 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) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

8. Powers 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 realisation, 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 by 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 the case of necessity or for an evident advantage to the minor.



(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 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 a district court or a court empowered under section 4A of the Guardian and Wards Act, 1890 (8 of 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.

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 that nothing in this section shall be deemed to



affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.”

28. The issue has been elaborately dealt by Apex Court in ***Sri Narayan Bal and others vs. Sridhan Sutar and others (1996) 8 SCC 54***, observing as under:-

“4. Section 6 of the Act inter alia provides that 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 — 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. Section 8 thereof inter alia provides that 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. Furthermore the natural guardian shall not, without the previous permission of the court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor or 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. 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 on behalf of the minor. Section 12 provides that where a minor has an undivided interest in the 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 that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

5. With regard to the undivided interest of the Hindu minor in joint family property, the provisions afore-culled are beads of the same string and need to be viewed in a single glimpse, simultaneously in conjunction with each other. Each provision, and in particular Section 8, cannot be viewed in isolation. If read together the intent of the legislature 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 and 12 of the Act, the previous permission of the court under Section 8



for disposing of the 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.

29. In view of above, this Court finds that the present case being sale of undivided share of a joint hindu family property, Section 8(2) would not be applicable and the sale shall be governed by Section 12 of the Act of 1956. Thus, the plaintiff is not entitled to seek decree of declaration as prayed for. Entitlement to legal character is the *sine qua non* under Section 34 of the Specific Relief Act, 1963. There being no requirement for the natural guardian to seek permission of the Court under Section 8 qua joint interest in the joint hindu family property by operation of Section 12 of the Act of 1956, plaintiff is not entitled to seek decree of declaration as prayed for in the plaint.

30. In view of above, present appeal is ordered to be dismissed.

24.09.2024
Dinesh

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable :	Yes