

2024:PHHC:010163

1. These two cross appeals have been filed by the plaintiffs and the defendants to challenge the correctness of the judgments passed by the courts below, while decreeing the plaintiffs' suit.

2. After hearing the learned counsel representing the parties at length, in the considered opinion of this Court, the following question requires adjudication:-

“Where a widow alongwith her two children (minor) sold their joint undivided land, whether permission under Section 8(2) of the Hindu Minority and Guardianship Act, 1966 is required or Section 12 of the said Act would govern the transaction?”

3. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed. Sh.Joginder Singh was the owner of the property. He died while leaving behind his widow Smt. Mukand Kaur (defendant no.2) and two sons namely Sh.Davinder Singh and Sukhwinder Singh. Smt. Mukand Kaur alongwith her two children entered into an agreement to sell in favour of defendant no. 1 to 3 to sell her 66 kanals 4 marlas land. Subsequently, she alongwith her children executed a registered sale deed on 17.06.1982. On 27.07.1983, her two children filed a suit for possession of 44 kanals 3 marlas of land

being 2/3rd share out of 66 kanal 4 marlas sold through sale deed dated 17.06.1982 claiming that defendant no.1 to 3 are in unauthorized possession of their land. Smt. Mukand Kaur was impleaded as defendant no.4. It was asserted that the plaintiffs did not sell any part of their land and in any case, they were minors at the time of the registration of the sale deed. It was asserted that due to the minority of the plaintiffs at the time of the execution and registration of the sale deed, they were incompetent to execute any sale deed.

4. Defendant no.1 to 3, while contesting the suit, asserted that the plaintiffs and defendant no.4 formed a joint Hindu Family, in which defendant no.4 is the Manager in the absence of late Sh.Joginder Singh. All three heirs of late Sh.Joginder Singh had undivided interest in the property, which enabled the mother to dispose of the property as she was the natural guardian under the personal law. It was also asserted that Section 8 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as '1956 Act') is not applicable to the facts of the present case and as such the suit is not maintainable. The plaintiffs reaped the benefit of Rs.28,666.66 from the transaction that took place between them and defendant no.1 to 3 and while executing the said sale deed the plaintiffs represented themselves as major. Replication was filed by

the plaintiffs and the trial court, on examination of the pleadings, culled out the following issues for adjudication:-

“1) Whether the plaintiffs were minors at the time of execution of the alleged sale deed dated 17.6.82? OPP.

2) Whether the plaintiffs and defendant No.4 formed a joint Hindu family and Mukand Kaur was the karta after the death of her husband? OPD.

3) Whether Mukand Kaur can sell the share of the plaintiffs for their benefit without the sanction of the court and the plaintiffs are bound by such sale? OPD.

4) Whether the plaintiffs by their conduct were stopped from pleading minority? OPD.

5) Whether the plaintiffs are made to return Rs.28666.66 to the defendants No.1 to 3 in case the alleged sale was held to be void? OPP.

6) Whether the suit of the plaintiffs is not maintainable in the present form? OPD.

7) Relief.”

5. The plaintiffs, in the oral evidence, in order to prove their case examined PW1 Jagmail Kaur, Headmistress of the Government Primary School, Hariyawala. PW2 Sh.Davinder Singh, one of the plaintiffs appeared in evidence.

6. The defendants on the other hand, in the oral evidence, examined DW1 scribe Gulshan Kumar, Advocate, Bansi Lal, DW2 Deed Writer of the agreement to sell, DW3 Gurbaksh Singh, Nambardar, marginal witness of the sale deed and DW4 Jora Singh one of the defendants. In rebuttal evidence, DW3 Angrej Singh was examined.

7. The trial court decreed the suit filed by the plaintiffs on the ground that the plaintiffs were minor at the time of the registration of the sale deed and as such, the said execution is void ab initio qua their shares. The trial court also refused to order refund of Rs.28,666.66 i.e. the benefit reaped by the plaintiffs.

8. The defendants filed the first appeal, that was dismissed with a direction to the plaintiffs to refund the amount of Rs.28,666.66

9. The defendants have challenged the judgments of the court below whereas the plaintiffs have questioned the correctness of the direction of the First Appellate Court ordering refund Rs.28,666.66.

10. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the requisitioned record and the synopsis filed by the learned counsel representing the parties.

11. Learned counsel representing the appellant namely the defendants contends that the entries in the certificates Ex.P1 and P2 are contradictory to the statement made by PW1 Jarnail Kaur, the Headmistress. It is contended that the plaintiffs were admitted in school by Sh.Jugraj Singh and Smt. Mukand Kaur but none of them has been examined. While relying upon the following judgments,

contended that the date of birth of the plaintiffs have not been proved:-

“a) Satpal Singh vs. State of Haryana 2010 (3) Apex Court Judgments 159 (SC) (Para 27)

b) Alamelu & Another vs. State Rep.by Inspector of Police 2011 (1) Apex Court Judgments 225 (SC) Para 38, 39

c) Jagan Nath vs. Moti Ram and others AIR (38)1951 PB 377 Para 10

d) Birad Mal Singhvi vs. Anand Purohit AIR 1988 SC 1796 Para 14 to 17

e) Sushil Kumar vs. Rakesh Kumar AIR 2004 SC 231 Para 34 to 37”

12. The sale of the property by minors is governed by the provisions of Guardian and Wards Act, 1890 (hereinafter referred to as ‘1890 Act’) and the 1956 Act. Section 2 of the 1956 Act provides that Section 8 of 1890 Act shall be supplementary. Section 5 of the 1956 Act gives an overriding effect to the provisions of this Act. Section 8 of the 1956 Act deals with the powers of the natural guardian whereas Section 12 of the said Act requires that the guardian will not be required to be for minor’s undivided interest in the joint family property. Section 5, 8 and 12 of the 1956 Act are extracted as under:-

“5. Overriding 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 insofar as it is inconsistent with any of the provisions contained in this Act.*

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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 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 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 4-A thereof;*
- (b) the court shall observe the procedure and have the power 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 4-A 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

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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.”

13. It is evident from the reading of the judgment passed by the First Appellate Court that the deposition of PW3 Angrej Singh and documents produced by him Ex.P5 and P6 were excluded by the First Appellate Court on the ground that such evidence at the stage

of rebuttal evidence is not permissible. Thereafter, the court noticed that Sh.Jugraj Singh, the plaintiffs' uncle has not been examined though it is proved that the plaintiffs' uncle had got the plaintiffs admitted in school. However, the court held that from the deposition of Smt. Jarnail Kaur and School leaving certificates produced in evidence it is proved that the plaintiffs had not attained the age of majority i.e. 18 years on the date the sale deed was executed. The court has also held that Sh.Jora Singh while appearing in evidence had not stated that the plaintiffs were major on the date of the execution of the sale deed and the voter list produced by the defendants is not signed or authenticated by a competent person.

14. In fact, the question involved in the present case is no longer res integra. The Supreme Court in **Sri Narayan Bal and others vs. Sridhan Sutar and others (1996) 8 SCC 54** has answered the aforesaid question in the following manner:-

“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. ”

15. This judgment has been recently reiterated in **N.S.Baljeet vs. Debt Recovery Tribunal 2023 SCC Online SC 1266**. The High Courts have been following the aforesaid view. In 2014 (1) CCC 99, the High Court at Allahabad dealt with the aforesaid issue in detail. The Supreme Court in **Sri Narayan Bal's case (supra)** has held that in case of sale of undivided share of the joint Hindu family property, Section 8(2) would not be applicable. In other words, there is no requirement of seeking previous

permission of the court before a natural guardian alienates the property of a minor while performing its duty as a Karta.

16. DW1 Gulshan Kumar, the scribe as well as DW4 Zora Singh have stated that the plaintiffs as well as their mother claimed that the plaintiffs are major and not minor. Furthermore, DW2 Bansi Lal, the Deedwriter, states that Sh.Jugraj Singh, Smt. Mukand Kaur and Sh.Davinder Singh executed the agreement to sell Ex.D2 on 02.03.1982. Hence, the plaintiffs have been projecting themselves as major. It has also been contended that Sh.Davinder Singh while appearing as PW2 has stated that his father Sh.Joginder Singh and Sh.Jugraj Singh were real brothers and their ancestral village is Hariyawala. They shifted to Rajasthan after leasing out the land in dispute to defendant no.1 to 3. While invoking the doctrine of election under Section 35 of the Transfer of Property Act, 1882, it has been contended that after selling the suit land, the plaintiffs purchased the land in Rajasthan from the consideration received by them in the sale deed and therefore, they now cannot be permitted to take a U-turn.

17. This Court has considered the submissions made by the learned counsel representing the parties. After the death of ShJoginder Singh, Smt. Mukand Kaur and her two children jointly inherited the suit land. It was an undivided share of the joint land. In the absence of the father, Smt. Mukand Kaur became the

Manager i.e. Karta of the Joint Hindu Family and this is how families typically function in Indian society. Smt. Mukand Kaur, being the only major was the Karta of the family. Thus, she had the competence and authorization to alienate the property for a legal necessity. The trial court was erroneous in observing that a female cannot be manager i.e. Karta of the Joint Hindu Family. In 2014 (1) CCC 99 the Allahabad High Court has held that in legal parlance there are four kinds of Guardians, a natural guardian, a guardian appointed by Will of the minor's father or mother, a guardian appointed or declared by the Court (de jure Guardian) and a person empowered to act as such by or under any enactment relating to any court of Wards. In that case, the court held that even a grandmother can be Karta or Manager of the Joint Hindu Family and its property if there is no adult male member in the family. Considering the aforementioned fact, it is evident that the mother being the eldest in the family, particularly in the absence of any adult male member automatically becomes the karta of the family.

18. In this case, the agreement to sell has been signed by Sh.Jugraj Singh, brother of Sh.Joginder Singh, Smt. Mukand Kaur and Sh.Davinder Singh whereas the sale deed has been executed by Smt. Mukand Kaur, Sh.Davinder Singh and Sh.Sukhmander Singh. It is the positive case of the defendants that the plaintiffs as well as their mother and uncle portrayed the plaintiffs as major. The

defendants had no reason to doubt the same, particularly when in the record maintained by the Election Commission, the names of the plaintiffs were recorded as voters. Smt. Mukand Kaur or Sh.Jugraj Singh were the appropriate persons who had the responsibility to disclose to the defendants that the plaintiffs were minors.

19. Even otherwise, the plaintiffs have withheld the best evidence. Neither the deposition of their mother Smt. Mukand Kaur, who is also DW4, was recorded nor Sh.Jugraj Singh, who got them admitted in the school stepped into the witness box. Hence, an adverse inference is required to be drawn against them. In any case, even if it is proved that the plaintiffs were minors, still Smt. Mukand Kaur, being a Karta and natural guardian could alienate the property for the act of indispensable duty or legal necessity. It is not the case of the plaintiff that such alienation was made without a legal necessity. In fact, the plaintiffs when came into the witness box they have admitted that after the disputed transaction, they had shifted to Rajasthan alongwith their mother and started cultivating the land.

20. Furthermore, it is evident from the reading of the deposition of Sh.Davinder Singh as PW2, that he admitted the execution of the document though he claimed that the same was a lease deed. It is also evident that on the date, the statement of Sh.Davinder Singh was recorded, his uncle Sh.Jugraj Singh was also

present in the Court. Thus, it is evident that the execution of the aforesaid sale deed was admitted, although Sh.Davinder Singh claimed that it was a lease deed, which is factually incorrect. In these circumstances, the plaintiff was not entitled to any relief. The defendant has examined the scribe of the sale deed namely Sh.Gulshan Kumar, Advocate as DW1 whereas DW2 Bansi Lal, Deed Writer has been examined to prove the execution of the agreement to sell before execution of the sale deed. It has been stated that the disputed document is signed by not only Sh.Jugraj Singh but also Smt. Mukand Kaur and Sh.Davinder Singh. Furthermore, the defendants have also examined Sh.Gurbaksh Singh, the Headman of the Village to prove the execution of the sale deed. In the cross-examination, he stated that he does not know about the exact age of the plaintiffs. Furthermore, Sh.Jora Singh, one of the defendants, has appeared as DW4. He has stated that the plaintiffs and their mother told them that the plaintiffs are major. Hence, they had in all good faith no reason to doubt about their age.

21. It shall be noted here that Smt. Mukand Kaur was defendant no.4 in the suit. She filed a written statement admitting the plaintiff's claim, however, she did not step into the witness box to face cross-examination. The statement of the Head Teacher to prove the school leaving certificates only proves that as per the school record, the plaintiffs were minor. However, it has come on

record that the entries in the school record were made according to details given by Sh.Jugraj Singh and he has not stepped into the witness box. In such circumstances, it shall not be appropriate to conclude that the plaintiffs are conclusively proved to be minors, particularly when Sh.Davinder Singh was more than 7 ½ years old as per the school record, when the sale deed was executed. Moreover, it is not the case of the plaintiffs that the sale deed was executed without any legal necessity.

22. Furthermore, DW1 Gulshan Kumar, Advocate, scribe of the sale deed has categorically stated that Smt. Mukand Kaur told him that the plaintiffs are major. Similarly, DW4 Jora Singh stated that he was informed by Smt. Mukand Kaur that the plaintiffs are major.

23. Keeping in view the aforesaid facts, the question as posed in the beginning of the judgment is answered in favour of the defendants. Consequently, the judgment and decree passed by both the courts below are set aside and the plaintiffs' suit is ordered to be dismissed. Resultantly, RSA no.208-1991 shall stand allowed whereas RSA-414-1991 shall stand dismissed.

24. All the pending miscellaneous applications, if any, are also disposed of.

11.01.2024
rekha

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No