

SUPREME COURT OF INDIA

Saroj

Vs.

Sunder Singh

C.A.No.10582 of 2013

(S.J.Mukhopadhaya and V. Gopala Gowda, JJ.)

25.11.2013

JUDGMENT

S.J.Mukhopadhaya, J.

1. Leave granted. This appeal has been preferred by the appellant against the judgment and order dated 14th December, 2011 passed by the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in S.B. Civil First Appeal No. 313 of 2009. The Appellate Court by the impugned judgment held that there is no illegality or perversity in the findings recorded by the trial court and affirmed the order of the trial court which dismissed the suit preferred by the appellant-original plaintiff seeking cancellation of sale deeds executed by the second respondent in favour of the first respondent.

2.The brief facts giving rise to the present appeal are as follows:

The appellant along with her two sisters (original plaintiffs) happened to be the daughters of respondent No.2(original defendant No.2). According to the appellant, she and her two sisters were minors when their father Khilluram expired. Thereafter, their mother i.e. second respondent, of course the guardian, sold out the suit property which belonged to their father by executing a sale deed on 9th December, 1988. According to the appellant, since the suit property belonged to their father the daughters had shares in the property, the mother could not have sold the suit property to the first respondent. The appellant, therefore, with two other sisters (Performa respondent Nos.4 and 5 herein) preferred Civil Suit No.6 of 2007 for declaration of the sale deed dated 9th December, 1988 as null and void in respect of the suit land. The appellant pleaded that the second respondent as the

mother of the appellant and two other sisters has no right or authority to sell the suit land, as their shares are part of it. The sale of minors' property cannot be done without obtaining the prior permission of the Court.

3. The second respondent in her written statement stated that the appellant and two others were her minor daughters. She is the wife of Khilluram and the equal shares of the disputed land are registered in the name of the appellant and two daughters. She had sold the entire disputed land including the shares of the daughters vide sale deed dated 1st December, 1988 which was registered on 9th December, 1988. The consideration amount received out of the said sale was spent to fulfill the requirements of the daughters- i.e. appellant and proforma respondent Nos.4 and 5 herein.

4. In a separate written statement the first respondent accepted that the disputed land situated in village Ujjaili, Tehsil-Kot Kasim is the ancestral property of Khilluram. After the death of Khilluram the said suit land was devolved on appellant, two other sisters and the second respondent jointly in equal shares. The appellant and the two other daughters were minor and their mother i.e. second respondent herein was the natural guardian. The agricultural work was done jointly by the appellant, two other daughters and the second respondent. It is stated that the suit land was sold for proper maintenance of the minor daughters.

5. On behalf of the plaintiffs-appellant herein and two other sisters, Saroj (PW-1), Chandra Kanat (PW-2) and Pop Singh (PW-3) were examined. They placed on record the documents duly exhibited as Exh.1 to 19. The respondents examined Sunder Singh (DW-1), Ramphal (DW-2) and Ramotar (DW-3) and placed on record documents duly exhibited as A-1 to A-10.

6. Learned Additional District Judge framed 8 issues. The issue Nos.1 to 3, 5 and 6 were decided in favour of the plaintiff-appellant herein:

Issue No.7 reads as follows:

"7. Whether the registered sale-deeds of the land Survey No.5 and 6 made by the Defendant No.2 to different parties has been done with the motive to cause harm and usurp this land of plaintiffs No.1 to 3, ownership and rights which is wrong and contrary to the established provisions of law, and the plaintiffs No.1 to 3 are entitled to challenge these two sale-deeds against their interests and rights."

The said issue was decided against the plaintiffs and in favour of the defendants. The 8th issue relating to plaintiffs' entitlement to get relief against the defendant Nos.1 and 2 was thereby decided against the plaintiffs.

7. By the impugned judgment dated 14th December, 2011 the First Appellate Court also dismissed the appeal filed against the above order passed by the Trial court on the ground that there is no illegality or perversity in the findings recorded by the trial court.

8. Learned counsel for the appellant submitted that in view of the sub-section (2) of Section 8 of the Hindu Minority and Guardianship Act, 1956 it was not open for the second respondent to mortgage or charge, or transfer by sale, gift of the minor's property without previous permission of the court.

9. Per contra, according to the respondents, for taking care of the minor daughters and for their livelihood the respondent was competent to sell the property. It was submitted that the appellant's marriage was performed by the second respondent; the mother bought a house at Daruhera in the year 1995. There was no partition amongst the appellant other minor daughters and mother with respect to the subject agricultural land which was looked after by the mother jointly. Therefore, it was for all purposes the joint property and not the property of minors. Significantly, Ramphal who is the real brother of Khilluram in his evidence stated that ever since the death of Khilluram the minors were being taken care of by the second respondent-mother for the maintenance, education, etc. and the second respondent performed their marriage. It is further contended that the second respondent sold the subject land for their necessity, maintenance, etc. Likewise, the second respondent in her counter claim admitted that the money received from the sale of the subject land was spent on the minors' genuine requirements and she prayed for dismissal of the suit.

10. The trial court while deciding the 7th issue noticed evidence of other witnesses. It further noticed that the property was devolved on the wife, Smt. Rishal and Saroj, Manoj and Sanoj in equal share of 1/4th each. According to the entries in the revenue record they were in possession of 1/4th share of the land. The total amount of both the sale deeds executed comes to Rs.66,000/-. In the sale deeds it is mentioned that she is the birth mother of Saroj, Manoj and Sanoj, and is their natural guardian. For their maintenance, sustenance, education, etc., the suit land being unproductive and being in parts, was sold by two registered sale-deeds marked as Exh. A-1 and A-2. It was stated that the plaintiffs' share was in joint account. The mother i.e. second respondent is the head of the family and she sold this land to the defendant for the sustenance, maintenance, education and marriage of her daughters. In view of such evidence, the trial court decided the issue against the plaintiffs and in favour of the defendants which was affirmed by the First Appellate Court.

11. Section 8 of the Hindu Minority and Guardianship Act, 1956 deals with the powers of natural guardian of a Hindu minor and the said section mandates that the natural guardian has power 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, etc. The provision reads as follows:

“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.

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xxx xxx xxx xxx"

As per clause (a) of sub-section (2) of Section 8 no immovable property of the minor can be mortgaged or charged, or transferred by sale, gift, exchange or otherwise without the previous permission of the Court. Under sub-section (3) of Section 8 disposal of such an immovable property by a natural guardian, in contravention of subsection (1) or sub-section.

(2) Of Section 8, is voidable at the instance of the minor or any person claiming under him.

12. In the present case, though it is stated that the property has been sold for the proper benefit of the minors, their protection, education and marriage, there is nothing on record to suggest that previous permission of the Court was obtained by the natural guardian before transfer by sale in question.

13. Where the father dies leaving behind only minor daughters and their mother as natural

guardian, the share of the daughters became definite; the question of family partition retaining the character of joint Hindu Family property does not exist. In the present case, after the death of the father, the property has been shared amongst each member of the family and recorded in the mutation register having 1/4th share each. In such circumstances, the provision of sub-section (3) of Section 8 shall attract as the mother sold the property without previous permission of the Court. Hence, both the sale deeds executed by the second respondent in favour of the first respondent shall become voidable at the instance of the minor i.e. the appellant and the Performa-respondent nos.4&5.

14. In view of the finding recorded above, we set aside the judgments and orders passed by the trial court, First Appellate Court and Second Appellate Court. Accordingly, the suit stands decreed in favour of the appellant and Performa respondent Nos.4 and 5. The appeal is allowed with no costs.