

Supreme Court Of India

Ruma Pal, Arun Kumar ., JJ.

Nangali Amma Bhavani Amma v. Gopalkrish-nan Nair,

Civil Appeals Nos2286-87 of 2000

7.10.2004

Hindu Minority and Guardianship Act, 1956, Section 8(3) a disposition made and which may also entail the transfer of the share of a minor is not void in the eyes of law. As Section 8(3) in unambiguous terms stipulates it is merely voidable. It is voidable at the instance of the minor provided an appropriate action is brought at the instance of the minor provided an appropriate action is brought seeking repudiation of the transfer made by the natural guardian within the period of limitation as prescribed in Article 60 of the Limitation Act.

Held,

“7. But the learned counsel for the appellant is right in contending that the High Court had mis-construed the provisions of Section 8 of the Act. Section 8(1) empowers the natural guardian of a Hindu minor to do all acts which are necessary or reasonable and proper for the benefit of a minor or for the realisation, protection or benefit of the minor’s estate subject to two exceptions of which we may only note the exception carved out in sub-section (2) of Section 8. Section 8(2) provides that the natural guardian shall not without the previous permission of the court, inter alia, transfer by way of a sale any part of the immovable property of a minor. The effect of violation of this provision has been provided for in the section itself under sub-section (3). This sub-section reads:

“8. (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.”

8. In view of the express language used, it is clear that the transaction entered into by the natural guardian in contravention of sub-section (2) was not void but merely voidable at the instance of the minor. To hold that the transaction in violation of Section 8(2) is void would not only be contrary to the plain words of the statute but would also deprive the minor of the right to affirm or ratify the transaction upon attaining majority. This Court in Vishwambhar v. Laxminarayan [(2001) 6 SCC 163] has also held that such transactions are not void but merely voidable It was also held that a suit must be filed by a minor in order to avoid the transaction within the period prescribed under Article 60 of the Limitation Act. The High Court did not consider the issue of limitation at all in view of its finding on the effect of a violation of Section 8(2) of the Act. As the conclusion of the High Court on this aspect of the matter is unsustainable, the impugned decision must be set aside.”

1. The issue which arises for determination in these appeals is whether a sale entered into

by the natural guardian of a minor without obtaining the prior permission of the court under Section 8(2) of the Hindu Minority and Guardianship Act, 1956 (for short “the Act”) was void or voidable. Depending upon the answer to this issue, a further question needs resolution, namely, if it is voidable at the instance of the minor, what is the period of limitation within which the minor must file a suit impugning the sale?

2. The property in question was originally owned by one Karthiayani (referred to as ‘K’ hereunder). K was allotted the property under a deed of partition of joint family properties, which included the property in dispute. In 1958, K mortgaged the property to one Nangali Amma (referred to as ‘N’). In 1959, K died leaving behind her, her husband, Raghavan Nair, and her son and daughter, namely, Gopalakrishnan and Chandramati, respectively. Her children were minors at the time of K’s death. One year after K’s death Raghavan as natural guardian of the two children, sold the equity of redemption in respect to the suit property, to N’s daughter, Bhavani. These facts are not in dispute. In 1979, the children of K, namely, Gopalakrishnan and Chandramati (hereinafter referred to as “the plaintiff-respondents”) filed a suit claiming to redeem the property which had been mortgaged by their mother, K to N. N raised the defence that the equity of redemption having already been sold to N’s daughter, namely, Bhavani (the appellant before us), the suit was not maintainable. The appellant was then added as Defendant 2 to the suit. The trial court framed several issues of which three relevant issues for the purposes of these appeals may be noted. The first was whether the sale dated 3-10-1960 was valid or whether it was liable to be set aside; the second, whether the suit was barred by limitation; and the third, whether the plaintiffs were entitled to redeem the suit property. The trial court held that the sale was invalid on the ground that the prior permission of the court had not been obtained by Raghavan under Section 8(2) of the Act, 1956. It also held that the period of limitation for redemption of a mortgage was 30 years as prescribed under Article 61(a) of the Limitation Act, 1963. Since the suit had been filed within 30 years of the plaintiff-respondents attaining majority, the suit was not barred by limitation. The plaintiffs were, therefore, held entitled to redeem the mortgaged property and a preliminary decree was passed to that effect.

3. The first appellate court, however, came to the conclusion that the sale of the equity of re-demption by Raghavan as natural guardian of the plaintiff-respondents was voidable under Section 8(3) of the Act. The period of limitation for setting aside the sale was three years as prescribed under Section 60 of the Limitation Act, 1963. It was found, as a fact, that the first plaintiff-respondent had approached the court much beyond the period of three years and therefore, the first plaintiff-respondent’s claim was time-barred but as regards the second plaintiff-respondent the first appellate court found that the suit was filed well within the period of limitation. Therefore, the claim of the second plaintiff-respondent was limited to her share in the property. The preliminary decree was accordingly modified.

4. The appellant and the plaintiff-respondents filed second appeals before the High Court. The matter was disposed of by the Division Bench by setting aside the decision of the first appellate court on the ground that the sale having been made by Raghavan admittedly without obtaining the prior permission of the court under Section 8(2) of the Act, was void. “The sale being void, the same could be ignored and the plaintiff-respondents did not have

to seek to set it aside.” It was also held that the right to redeem the property continued and that “admittedly the suit for redemption is in time” and therefore the plaintiffs were entitled to the reliefs claimed. Their appeal was consequently allowed. The appellants’ appeal plea before the High Court that in the event the sale was held to be invalid, the benefit which the plaintiff-respondent had obtained from the consideration received in relation to the sale should be returned to the appellant was, however, negated by the Court on the ground that no issue had been raised in this regard in any of the foras below.

5. No one has appeared on behalf of the re-spondents at any stage of the proceedings before this Court despite service. The appellant has contended that the High Court’s decision could not be sustained on the ground that no substantial issue of law had been framed under Section 100 of the Code of Civil Procedure, 1908. It is the further contention of the appellant that the High Court had misconstrued the provisions of Section 8(2) of the Act. Reliance has been placed on a recent decision of this Court in *Vishwambhar v. Laxminarayan* 2001 6 SCC 163 to contend that the impugned decision was incorrect in law. Finally, it is contended that the plaintiff-respondent was bound to sue for setting aside the sale before they could found a claim for redemption. The period for that was prescribed under Section 60 of the Limitation Act. The High Court, according to the appellant, had also ignored the applicability of Section 7 of the Limitation Act, 1963 to the facts of the case.

6. Although the High Court had not framed a substantial question of law in the strict sense, nevertheless we find from para 3 of the im-pugned judgment that the High Court had indicated the question of law which arose out of the decision of the first appellate court and which required determination under Section 100 of the Code of Civil Procedure. This is in substantial compliance with the requirement of section 100 of the code and we see no reason to set aside the decision of the High Court on this point.

7. But the learned counsel for the appellant is right in contending that the High Court had mis-construed the provisions of Section 8 of the Act. Section 8(1) empowers the natural guardian of a Hindu minor to do all acts which are necessary or reasonable and proper for the benefit of a minor or for the realisation, protection or benefit of the minor’s estate subject to two exceptions of which we may only note the exception carved out in sub-section (2) of Section 8. Section 8(2) provides that the natural guardian shall not without the previous permission of the court, inter alia, transfer by way of a sale any part of the immovable property of a minor. The effect of violation of this provision has been provided for in the section itself under sub-section (3). This sub-section reads:

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8. In view of the express language used, it is clear that the transaction entered into by the natural guardian in contravention of sub-section (2) was not void but merely voidable at the in-stance of the minor. To hold that the transaction in violation of Section 8(2) is void would not only be contrary to the plain words of the statute but would also deprive the minor of the right to af-firm or ratify the transaction upon attaining ma-jority. This Court in

Vishwambhar v. Laxminara-yan has also held that such transactions are not void but merely voidable. It was also held that a suit must be filed by a minor in order to avoid the transaction within the period prescribed under Article 60 of the Limitation Act. The High Court did not consider the issue of limitation at all in view of its finding on the effect of a violation of Section 8(2) of the Act. As the conclusion of the High Court on this aspect of the matter is unsustainable, the impugned decision must be set aside.

9. The appeals are, accordingly, allowed and the matter is remanded back to the High Court for determining the issue of limitation and such other issues of law as may fairly be said to arise from the decision of the first appellate court.

10. There shall be no order as to costs.

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Equivalent: (2004) 8 SCC 785