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1996 PLRonline 0003

SUPREME COURT OF INDIA

Before: JUSTICE MADAN MOHAN PUNCHHI, JUSTICE K.S. PARIPOORNAN

Sri Narayan Bal v. Sri Sridhar Sutar

Civil Appeal No. 9570 of 1995

29.01.1996

Hindu Minority And Guardianship Act, 1956 Section 8 - Undivided interest of the Hindu minor in joint family property - Whether the provisions of Section 8 of the Hindu Minority And Guardianship Act, 1956 were applicable to the Joint Hindu Family property sold or disposed of by the Karta?, No - 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 minors undivided interest in the joint family property, as provided under Section 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 - 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.

Held,

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.

In the instant case the finding recorded by the Courts below is that Jagabandhu, the eldest male member in the family acted as a Karta in executing the sale and had joined with him the two widows for themselves and as guardians of the minor members of joint Hindu family, as supporting executants. That act by itself is not indicative of the minors having a divided interest in the joint Hindu family property commencing before or at the time of the sale. In this view of the matter. Section 8 of the Act can be of no avail to the appellants claim to nullify the sale.

Judgment

M.M. Punchhi, J.

1. Leave was granted in this appeal to consider the question posed : whether the provisions of Section 8 of the Hindu Minority And Guardianship Act, 1956 (hereafter referred to as the Act) were applicable to the Joint Hindu Family property sold or disposed of by the Karta.

The facts :

2. Dhanu Bal and Param Bal were two brothers constituting a Joint Hindu Family. Dhanu Bal had a wife, Nidhi, an adult son, Jag Bandhu and a few minor sons. Param Bal had a son, Raghu Bal. Raghu Bal had a wife Satyabhama and a few minor sons. Dhanu Bal, Param Bal and Raghu Bal died. Jag Bandhu as Karta of the Joint Hindu Family, joining with him the widows Nidhi for herself and as guardian of her minor sons and Satyabhama for herself and as guardian of her minor sons, executed a sale deed pertaining to certain joint family lands in favour of the first defendant-respondent on 25-3-1971, who made a further sale in favour of the second defendant-respondent. The plaintiffs-appellants who were all members of the Joint Hindu Family filed a suit to have declared the aforesaid sale as illegal and void on the plea that the transaction was vitiated by fraud, mis-representation and taking undue advantage of the illiteracy of Nidhi and Satyabhama, widows. The suit was resisted by the defendants - respondents on the plea that Jagabandhu was literate even though the widows were not, and had executed the sale deed as Karta of the family to which the other widow executants had supportively joined him in the execution of the sale deed for themselves and as guardians of the minor members of the Joint Hindu Family. The trial Court on assessment of the evidence, decreed the suit, but the lower appellate Court rejected the case of the plaintiff-appellants with regard to fraud, undue influence, mis-representation etc. holding that the sale in question was executed by the executants validly and for legal necessity. The second appeal by the plaintiffs-appellants was dismissed in limine, for the High Court was of the view that no substantial question of law arose, requiring determination. Hence this appeal.

3. For the first time in the special leave petition the competence of the Karta of Hindu Joint Family, effecting sale of the Joint Hindu Family property has been questioned in this Court on the anvil of Section 8 of the Act. Therefore the question as framed at the outset has cropped up for consideration.

4. Section 6 of the Act inter alia provides that the natural guardians of a Hindu minor, in respect of the minors person as well as in respect of the minors 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 the 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 benefits of the minor or for the realization, protection or benefit of the minors 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 members 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 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 minors undivided interest in the Joint family property, as provided under Section 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.

6. In the instant case the finding recorded by the Courts below is that Jagabandhu, the eldest male member in the family acted as a Karta in executing the sale and had joined with him the two widows for themselves and as guardians of the minor members of joint Hindu family, as supporting executants. That act by itself is not indicative of the minors having a divided interest in the joint Hindu family property commencing before or at the time of the sale. In this view of the matter. Section 8 of the Act can be of no avail to the appellants claim to nullify the sale.

7. For the reasons above-stated, this appeal fails and is hereby dismissed. In the circumstances of the case, there shall be no order as to costs.

8. Appeal dismissed.

Equivalent Citation : (1996) 8 SCC 54, [1996] 1 SCR 999, AIR 1996 SC 2371