

SRI NARAYAN BAL AND OTHERS
v.
SRI SRIDHAR SUTAR AND OTHERS

JANUARY 29, 1996

[MADAN MOHAN PUNCHHI AND K.S. PARIPOORNAN, JJ.]

Hindu Minority and Guardianship Act, 1956 :

Ss. 6, 8, 12—Joint Hindu family property—Sale of by Karta—Claim to nullify sale for lack of prior permission of court to dispose of undivided interest of minors in said joint family property—Held, not maintainable—S. 8 not applicable to sale by karta of joint Hindu family property involving undivided interest of minor in such property.

The eldest male member of a Joint Hindu family acting as the Karta of the family, joining with him two widows of the family for themselves and as guardians of their minor sons, executed a sale deed pertaining to certain joint family lands in favour of defendant-respondent no. 1, who further sold the lands to defendant-respondent no.2. The plaintiff appellants, who were all members of the Joint Hindu family, filed a suit for a declaration that the said sale was illegal and void on the ground that the transaction was vitiated by fraud, mis-representation etc. The trial court decreed the suit, but the lower appellate court rejected the plea of the plaintiffs and held that the sale was executed by executants validly and for legal necessity. The second appeal filed by the plaintiff-appellants was dismissed by the High Court.

In the appeal filed by the plaintiffs before this Court, for the first time it was contended that the Karta of the Joint Hindu family was not competent to alienate the lands as he did not obtain prior permission of the Court as envisaged by s.8 of the Hindu Minority and Guardianship Act, 1956.

Dismissing the appeal, this Court

HELD : 1.1. In view of the express terms of Ss. 6 and 12 of the Hindu Minority and Guardianship Act, 1956, s. 8 would not be applicable where a Joint Hindu Family property is sold/disposed of by the Karta involving

A an undivided interest of a minor in the said property. There need be no natural guardian for the minor's undivided interest in the joint Hindu family property and, therefore, previous permission of the court under s.8 for disposing of the undivided interest of the minor is not required. 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. [1003-E, C-D]

1.2. With regard to the undivided interest of the Hindu minor in joint family property, the provisions of ss. 6 to 12 of the Act are beads of the same string and need be viewed in a single glimpse, simultaneously in conjunction with each other. 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. 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. [1002-G-H; 1003-A-B]

1.3. In the instant case the finding recorded by the courts below is that 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 Hindus 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. [1003-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9570 of 1995.

From the Judgment and Order dated 28.3.90 of the Orissa High Court in S.A. No. 378 of 1989.

P.N. Misra for the Appellants.

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Somnath Mukherjee for the Respondent No. 1.

The Judgment of the Court was delivered by

PUNCHHI, J. 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.

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The facts :

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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.

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A For the first time in the special leave petition the competence of the Karta of the Hindu joint family, effecting sale of the undivided interests of the minors in 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.

B 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
C 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
D 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
E 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
F 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.

G 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
H 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 the 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.

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 appellant's claim to nullify the sale.

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.