

Sri Narayan Bal And Others vs Sri Sridhar Sutar And Others on 29 January, 1996

Equivalent citations: JT 1996 (1), 711 1996 SCALE (1)570, AIR 1996 SUPREME COURT 2371, 1996 (8) SCC 54, 1996 AIR SCW 899, 1997 () ALL CJ 1043, 1996 (2) BLJR 1012, 1996 BLJR 2 1012, (1996) 1 SCR 999 (SC), 1996 (1) UJ (SC) 315, (1996) 1 CTC 390 (SC), (1996) MARRILJ 313, (1996) 1 JT 711 (SC), (1996) 1 BLJ 665, (1996) 1 RAJ LW 166, (1996) 2 CIVILCOURTC 489, (1996) 1 HINDULR 174, (1996) MATLR 119, (1996) 1 LJR 260, (1996) 3 RECCIVR 112, (1996) 1 CURCC 161

Author: M.M. Punchhi

Bench: M.M. Punchhi, K.S. Paripoornan

PETITIONER:

SRI NARAYAN BAL AND OTHERS

Vs.

RESPONDENT:

SRI SRIDHAR SUTAR AND OTHERS

DATE OF JUDGMENT: 29/01/1996

BENCH:

PUNCHHI, M.M.

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PUNCHHI, M.M.

PARIPOORNAN, K.S.(J)

CITATION:

JT 1996 (1) 711 1996 SCALE (1)570

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T 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 (hereinafter referred to as the Act) were applicable to the Joint Hindu Family property sold or disposed of by the Karta. The facts :

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-respondents on 23-3- 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 `vitiating 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.

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.

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.

With regard to the undivided interest of the Hindu minor in joint family property, the provisions afore-cited 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 minor's undivided interest in the joint family property, as provided under sections 6 to 12 of the Act, the previous permission of the Court under Section 8 of 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.