

DIVYA DIP SINGH AND ORS.

v.

RAM BACHAN MISHRA AND ORS.

OCTOBER 24, 1996

[M.M. PUNCHHI AND K. VENKATASWAMI, JJ.]

Hindu Minority and Guardianship Act, 1956—Section 8(2) & (3)—Sale of Immovable property of minors—By natural guardian without prior Sanction of Court—Whether minors bound by the sale—Held, the sale cannot be ignored in the facts and circumstances of the case.

Civil Procedure Code, 1908—Order XXXII Rule 3—Court guardian appointed during pendency of Suit—Natural guardian vis-a-vis appointed guardian—Right of—Held, the appointment does not take away the right of the natural guardian for ever, once the appointment duly discharged, the rights of natural guardian revive.

Respondent No. 5, father of the appellants filed a title suit and the appellants (then minors) were added as co-plaintiffs. Court guardian was appointed for them, during the pendency of the suit. Suit ended up in compromise and the guardian was discharged. Thereafter respondent No. 5 managed the affairs of minors as natural guardian and also made an application in the above title suit for his appointment as the guardian of the minors. Prior to filing of the application, respondent No. 5 had already sold the suit land to respondent No. 1. Mutation was duly carried out and Final Record of Rights was published in favour of respondent No. 1. Appellant No. 1 vide an application in the suit, sought permission of the Court to deal with treasury deposits and saving certificates, since he had attained majority on 29.7.66. The application was allowed. Appellants wrote a letter to the District Collector (with regard to the sale of suit land by their father to respondent No. 1) to collect the balance loan arrears advanced against the suit land from respondent No. 1 who had undertaken to discharge the same.

In 1972, the name of respondent No. 1 was shown as owner in the statement published under Section 9A r/w Section 10 and Draft Scheme u/s 12 of Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956. The appellants did not file any objection to the statements and

A the Scheme, within prescribed period and the entry of respondent No. 1 in Records of Rights became final. Long after the finalisation of respondent No. 1's name, appellants filed objections that the sale by their father, without prior permission of the Court was illegal, hence not binding on them.

B The Consolidation Officer, upheld the objection and in appeal, the Appellate Deputy Director (Consolidation) also upheld the decision of Consolidation Officer.

C In appeal, the Revisional Authority, held that the sale was not binding on the minors, and that the appellants having approached the Court within 12 years from the date of knowledge of the sale, their claim was not barred by time.

D A writ petition was filed by respondent No. 1, and the High Court held that sale by respondent No. 5 on behalf of minors cannot be challenged as void and the appellants having not challenged the sale within limitation period after attaining majority, their claim was barred by time.

E In appeal to this Court, appellants contended that the sale by respondent No. 5 must be deemed to be sale by stranger, as he could not claim to be natural guardian after the appointment of Court guardian and therefore, the sale must be treated as void and that the claim of the appellants was not barred by time.

Dismissing the appeal, this Court

F HELD : 1. In the circumstances of the case and in view of the admitted position that the minors have not challenged the sale within 3 years from their attaining majority and having themselves accepted the sale by their father by writing a letter to the Collector requesting him to collect the loan arrears advanced against the Suit land, from the purchaser/first respondent and appellants having not filed any objections to the statements published under Section 9A and the Scheme published under Section 12 of Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956, within the prescribed period, have no right to ignore the sale as void. [711-A-C]

H 2. The appointment of guardian in the Title Suit was one under Order XXXII Rule 3 of Code of Civil Procedure, which will not take away

the right of the natural guardian for ever. Once the guardian appointed during the pendency of the Suit, was properly discharged, the rights of the natural guardian revive. [710-F]

Jiban Krishna Dutta & Another v. Shailendra Nath Shee and Another, AIR (1946) Calcutta 272, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3308 of 1983.

From the Judgment and Order dated 21.1.83 of the Patna High Court in C.W.J.C. No. 915 of 1982.

B.B. Singh for the Appellants.

Dr. Sankar Ghosh and M.P. Jha for the Respondents.

The Judgment of the Court was delivered by :

VENKATASWAMI, J. This appeal by Special Leave is preferred against the judgment and order of the Patna High Court in C.W.J.C. 915/1982 dated January 21, 1983.

Before the High Court, the first respondent herein was the petitioner and the appellants were the contesting respondents. The 5th respondent herein, who has since died pending this appeal, was the father of the appellants (hereinafter referred to as '5th respondent' for the sake of convenience).

The first respondent has successfully challenged before the High Court by filing the above mentioned C.W.J.C. No. 915/1982 under Articles 226 and 227 of the Constitution of India, an order of the Consolidation Officer, Dumraon dated 18.10.1978 confirmed by the Appellate and Revisional Authorities concerning an extent of 40 bighas of land sold to him by the 5th respondent as guardian of the minor sons under a registered sale deed dated May 6, 1959 for a consideration of Rs. 20,000. Hence the present appeal.

Briefly stated the facts leading to the filing of this appeal are the following :-

The 5th respondent filed a title suit No. 75/1951 in the Court of

- A Subordinate Judge, Arrah. Pending suit the appellants herein who were the minors were allowed to be added as co-plaintiffs represented by next friend/guardian *ad litem* Shri Kanhaiya Singh. That suit was in respect of Dumraon Raj of which the 5th respondent, his brothers and their predecessors were the Maharajas. That suit ended in a compromise and in that compromise the appellants were exclusively allowed 58 acres of land besides a sum of Rs. 90,000 in cash. After the suit ended in compromise, the next friend/guardian *ad litem* of the minors was discharged by an order dated February 22, 1957. Thereafter, the 5th respondent as natural guardian of the minors managed the affairs - personal as well as the property of the minors. By way of abundant caution, he also made an application in
- B the very same Title Suit to appoint him as guardian on 3.5.1960. Before that it appeared that the 5th respondent, as pointed out earlier, sold the suit lands to the first respondent herein on 6.5.1959. After the purchase of the suit lands, the first respondent has constructed boundary walls and buildings and mutation was also duly carried out and the final Record of
- C Rights was published on March 30, 1970 in favour of the first respondent with respect to suit lands. It is also on record that the first appellant herein moved the civil court in the title suit to declare that he has attained majority on 29.7.66 and sought the permission of the Court to deal with the Treasury deposits and saving certificates. That prayer was allowed by the civil court. It is also on record that the appellants accepting the alienation of the suit
- D lands by their father in favour of the first respondent requested the Collector of Bhojpur at Arrah to recover the loan advanced against the suit lands from the first respondent who has undertaken to discharge the same.
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- F Some time in the year 1972, a notification under Section 3 of Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956 (hereinafter called "the Act") was published in the Statements published under Section 9A read with Section 10 of the Act, the first respondent's name was shown as the owner. Notwithstanding the fact that sub-section (2) of Section 10 provides for preferring objections by interested persons within 45 days, appellants did not take any step to dispute the correctness of the entries in the Records of Rights. It must be noted that Section 10A bars any person after the expiry of the period of 45 days from raising any dispute in that regard. Thereafter a Draft Scheme was also published under Section 12 of the Act reiterating the statement published under Section 10. Here again 30 days time was given under the Act for filing objections and
- G no objection was preferred by the appellants within the said time. As there
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was no objections to the statement as well as to the Draft Scheme as required under the Act it has become final. However, long after all these things, the appellants objecting to the entries in the Chaker Register containing the name of the first respondent challenged the same contending that the sale of the suit lands by the father in favour of the first respondent without obtaining the prior permission of the Court was illegal and not binding on them.

The Consolidation Officer by order dated October 18, 1978, overruling the objections raised by the first respondent herein held that the sale of the suit lands by the father of the appellants was not justified and he having not obtained the permission of the Court, the sale was illegal. On appeal the Deputy Director (Consolidation) also took the same view. On further revision, the Director of Consolidation, Bihar, Patna, took the view that in the face of appointment of a court guardian, the rights of natural guardian cease permanently and the same are not revived on the discharge of court guardian to enable him to deal with the properties of his minor sons. On that view, the Revisional Authority held the sale by the father of the appellants was not binding on the minors and they having come to the Consolidation Court within 12 years from the date of knowledge of the sale, their claim was not barred by time. Aggrieved by that order the first respondent preferred C.W.J.C. 915/1982 under Article 226 and 227 of the Constitution of India.

A Division Bench of Patna High Court after elaborately discussing the matter found that the principles laid down by various High Courts and the Supreme Court in cases arising under Guardians and Wards Act, 1980 and Hindu Minority and Guardianship Act, 1956 may not be apposite to the guardians/next friend appointed under Order XXXII of the Code of Civil Procedure. The Court also found on facts that the appointment of guardian *ad litem*/next friend in the Title Suit was limited only for the suit and after the discharge of that guardian/next friend by an order of Court, the father's right who had no adverse interest, automatically revives as natural guardian. The High Court also noticed the fact that the appellants have acquiesced by their conduct in writing a letter to the Collector, Bhujpur at Arrah to collect the balance loan arrears, advanced against the suit lands, from the first respondent who has undertaken to discharge the same and, therefore, they cannot be allowed to turn round and challenge the alienation long after the expiry of the period of limitation. The High

A Court also took note of the fact that the appellants did not file any objections within the stipulated time to statements published under Section 9A read with Section 10 and also to the Scheme published under Section 12 of the Act. Taking all these factors into consideration, the High Court held that the sale by the 5th respondent on behalf of the minors, if at all could be challenged as voidable one and the same cannot by any stretch of imagination of the facts of this case, be termed as void. The appellants having not challenged the sale within the period of limitation after attaining majority, cannot treat the sale as void. Accordingly, the High Court quashed the orders of Consolidation Authorities by allowing the Writ Application.

C Mr. B.B. Singh, learned counsel, appearing for the appellants vehemently contended that the High Court erred in quashing the orders of the Consolidation Authorities on the ground that the sale was voidable and the appellants have failed to challenge the sale within the period of limitation after attaining majority. According to the learned counsel, the sale of suit land by the 5th respondent must be deemed to be a sale by a stranger as he cannot claim to be the natural guardian of the minors after the appointment of court guardian during the pendency of the suit and, therefore, the sale must be treated as void and the suit having been filed within 12 years from the date of knowledge of the sale, the Consolidation Authorities were right in holding the sale as void and not binding on the minors. In support of this, he cited *Jiban Krishna Dutta and Another v. Sailendra Nath Shee and Another* reported in AIR (1946) Calcutta 272.

F We do not think that Mr. B.B. Singh was right in his submission. He failed to take note of the important factor, namely, the appointment of guardian in the Title Suit was one under Order XXXII Rule 3 of Code of Civil Procedure, which will not take away the right of the natural guardian for ever. Once the guardian appointed during the pendency of the suit was properly discharged, the rights of the natural guardian revive. The case cited by the learned counsel for the appellant was under the Guardians and Wards Act, 1890, which will have no application to the facts of the present case. As a matter of fact, Section 8(3) of the Hindu Minority and Guardianship Act, 1956 expressly provides that any disposal of immovable property by a natural guardian in contravention of sub-section (1) or sub-section (2) of Section 8 is voidable at the instance of minor or any person claiming under him. Sub-section (2) of Section 8 *inter alia* bars the

natural guardian from encumbering or selling the immovable property without the previous sanction of the Court. Under the circumstances and in view of the admitted position that the minors have not challenged the sale within three years from their attaining majority, have no right to ignore the sale as void. Further as noticed earlier, the appellants themselves have accepted the said sale by their father by writing a letter to the Collector of Bhojpur at Arrah and requesting to collect the loan arrears advanced against the suit lands, from the purchaser/first respondent. Still further, it is again common ground that the appellants have not filed any objections to the Statements published under Section 9A and the Scheme published under Section 12 of the Act within the prescribed period. All these factors, as already noted, were taken due note of by the High Court, while passing the judgment under appeal.

In the result we do not find any merit in this appeal and consequently the appeal is dismissed. However, there will be no order as to cost.

K.K.T.

Appeal dismissed. D