

Laxman Hota Vs. Rama Chandra Hota and ors.

Laxman Hota Vs. Rama Chandra Hota and ors.

SooperKanoon Citation : sooperkanoon.com/527770

Court : Orissa

Decided On : Apr-05-1982

Reported in : AIR1982Ori194; 53(1982)CLT488

Judge : B.N. Misra, J.

Acts : [Hindu Minority and Guardianship Act, 1956](#) - Sections 8(1) and 8(3); Hindu Law

Appeal No. : Second Appeal No. 91 of 1977

Appellant : Laxman Hota

Respondent : Rama Chandra Hota and ors.

Advocate for Def. : P.K. Misra, Adv.

Advocate for Pet/Ap. : R.K. Mohapatra and ;A.N. Misra, Adv.

Disposition : Appeal dismissed

Judgement :

B.N. Misra, J.

1. This appeal has been filed by the plaintiff against the affirming decision of the learned Additional District Judge, Puri. Plaintiff's suit is for specific performance of contract and costs. The following genealogy which is admitted would show the

relationship of the parties.

Somanath Hota - Golapi--D.3

|||||

Ramohandra Laxman Bharat Satrughna Bijay Ajay

D.1 (Plff.) D.2 D.4 D.5 D.6

The suit is in respect of A.O. 2 3/16 deci-mals out of A.O. 07 decimals of homestead land appertaining to plot No. 238, Khata No. 94 of Mouza Satyabadi alias Penthapada, The following facts are not in dispute. First, the suit land being 1/3rd of the suit plot had fallen to the share of the plaintiff in a partition between him, his brother (defendant No. 1) and his father, the late Somanath, before the other brothers were born. Second, on 15-4-1963, while defendant No. 2 was a minor, the plaintiff sold the suit land to defendant No. 2 represented by his father by a registered deed of sale for a consideration of Rs. 300. The plaintiff's further case is that on the same day on which he sold the suit land to defendant No. 2, that is on 15-4-1963, the late Somanath as the father-guardian and on behalf of defendant No. 2 entered into an agreement (Ext. 1) with the plaintiff that in case defendant No. 2 would decide to sell the suit land in future he must sell it to the plaintiff for a consideration of Rs. 500. The plaintiff asserts that this agreement was made in the presence of his elder brother, defendant No. 1. Some time thereafter disputes arose between defendant No. 1 and the plaintiff and the former influenced the late Somanath and defendant No. 2 and fraudulently got a sale deed executed by defendant No. 2 in his favour on 10-2-1967 for a purported consideration of Rs. 400 while in fact no consideration was paid. Defendant No. 1 threatened to dispossess the plaintiff from the suit land and hence the suit.

2. Defendants 1 and 2 and the guardian ad litem of minor defendant No. 6 contested the suit while the other defendants were set ex parte. In his written statement defendant No. 1 has denied that he had purchased the suit land with the previous knowledge of the agreement (Ext. 1) purported to have been executed by

the late Somanath on behalf of defendant No. 2. He has also denied that there was any agreement to the effect that defendant No. 2 was bound to sell the property to the plaintiff for Rs. 500 and he has pleaded that even if such an agreement was in existence, he was not legally bound by it since he purchased the suit-land without any knowledge of any such agreement and for consideration. He has also claimed to be in possession of the suit-land on the strength of the sale deed executed in his favour by defendant No. 2. In his written statement defendant No. 2 has substantially supported the case of defendant No. 1. He has pleaded that the suit land was purchased by his father-guardian on his behalf on 15-4-1963 for consideration of Rs. 300 and he had taken over possession of the suit land since after the purchase. On 10-2-1967, after he had attained majority, he sold the suit land to defendant No. 1 for consideration and delivered possession of the suit land to defendant No. 1. He has further pleaded that he had no knowledge of any agreement executed by his father on his behalf during his minority and even if there was such agreement it was not legally binding upon him. The guardian ad litem has also denied. The allegations contained in the plaint. Both the Courts below have held that the agreement (Ext. 1) was not valid and hence not enforceable and that defendant No. 1 was a bona fide purchaser for value without notice of the agreement, Ext. 1. The plaintiff's suit was accordingly dismissed by the learned trial Court and the said decision has been confirmed in appeal.

3. The hearing of this appeal is confined to the following two questions:--

(i) Whether the agreement, Ext. 1, is valid and enforceable in law; and

(ii) Whether the finding recorded by both the lower Courts that defendant No. 1 was a bona fide purchaser for value without notice of Ext. 1 is vitiated in law?

4. As regards the first question, it would be useful to begin with a reference to the following important decisions which deal with the powers of the guardian of a Hindu minor. In AIR 1956 Andh Pra 33 (FB) (Vadakattu Surya-prakasam v. Ake Gangaraju) the question which arose for consideration was whether a contract entered into by a guardian of a Hindu minor for sale or for purchase of immovable property was specifically enforceable against the minor. The opinion of the Full Bench was delivered by the learned Chief Justice. As pointed out in AIR 1969

Bom 140 (Popat Namdeo Sodanver v. Jagu Pandu Govekar) the principles and points made out in the Full Bench decision of the Andhra Pradesh High Court may be stated as follows:--

(1) A minor has no legal competency to enter into a contract or authorise another to do so on his behalf. A guardian, therefore, steps in to supplement the minor's defective capacity;

(2) Capacity is the creation of law, whereas authority is derived from (nature of) the act of parties;

(3) The limit and extent of the guardian's capacity (authority) are conditioned by Hindu law. They can only function within the doctrine of legal necessity or benefit. The validity of the transaction is judged with reference to the scope of his power to enter into a contract on behalf of the minor;

(4) Even the personal liability arising out of the guardian's contract is a liability of the minor's estate only;

(5) Since the guardian under the Hindu law has the legal competency to enter into a contract on behalf of the minor for necessity or for the benefit of the estate, the contract is valid from the time of its inception, and since either party can enforce the contract, the test of mutuality is satisfied;

(6) There cannot be any essential distinction between a contract of sale and contract of purchase. The difference is only one of degree. There is no difference in principle between the case of purchase by a guardian and that of a case of a sale by a guardian, because both depend for their validity on the competency of the guardian acting within the scope of his power under Hindu law.

(7) An agreement to convey or purchase is only a preliminary step in completing a transaction of sale or purchase as the case may be. Without negotiations and without any agreement, oral or in writing, rarely is a sale deed executed and registered. To hold that guardian can execute a sale deed in respect of a specific property but he cannot legally enter into an agreement to convey or purchase the same is incongruous and illogical;

(8) Contracts to sell or purchase property are transactions closely connected with dealings in immoveable property by a guardian giving rise to obligations annexed to that property. They cannot be equated with contracts of loans imposing personal obligations on the minor.

(9) The courts following the decision in *Mir Sarwarjan's case*, (1912) ILR 39 Cal 232: (1912-9 All LJ 33) (PC) (*Mir Sarwarjan v. Fakhruddin Mahomed Chowdhuri*) had held that a contract of sale or purchase entered into by a guardian on behalf of a minor could not be enforced against the minor on the ground of mutuality. That view is no longer sound in view of the later Privy Council, decision in 75 Ind App 115 : (AIR 1948 PC 95) (*Sri Kakulam Subrah-manyam v. Kurra Subba Rao*) which, in clear and unambiguous terms, rules otherwise.'

The powers of a Hindu guardian to bind a minor in a contract for purchase of immovable property recently came up for consideration before the Supreme Court in AIR 1981 SC 519 (*Manik Chand v. Ramchandra*). The Supreme Court referred to the aforesaid Full Bench decision of the Andhra Pradesh High Court and observed (para 4):

'..... In *Suryaprakasam v. Gangaraju*, AIR 1956 Andh Pra 33 at p. 40 (FB), the Andhra Pradesh High Court expressed its view that it had no hesitation to hold that the considered judgment of the Judicial Committee in AIR 1948 PC 95 : (ILR (1949) Mad 141) must be taken as overruling all the previous decisions based on 32 Cal 232 (PC) (The reference 32 Cal 232 (PC) appears to be an error for (1912) ILR 39 Cal 232 : (9 All LJ 33) (PC)). It also held that there could not be any essential distinction between the contract of sale and contract of purchase. The High Court cited with approval the view taken by Vishwanatha Sastri, J. of the Madras High Court in AIR 1951 Mad 431 : (1950) 2 Mad LJ 597. It is unnecessary to go into this question any further as after the passing of Hindu Minority Act, 1956, the guardian of a Hindu minor has power to do all acts which are necessary or reasonable and proper for the benefit of the minor or for realisation, protection or benefit of the minor's estate. This provision makes it clear that the guardian is entitled to act so as to bind the minor if it is necessary or reasonable and proper for the benefit of the minor. The power thus conferred by the section is in no way

more restricted than what was recognised under the Hindu Law. It is not disputed in this case that the contract entered into by the guardian is for the benefit of the minor.

XX XX XX

XX XX XX

..... The submission was that the contract by the guardian which binds the minor to make a payment, would be in the nature of a personal covenant and as such is excluded by Section 8. In support of his plea, the learned counsel relied on Section 55(5)(b) of the Transfer of Property Act and submitted that so far as the payment of the purchase price is concerned, there is personal covenant. We are unable to accept this contention for it cannot be said that the guardian by the contract was binding the minor by his personal covenant. As it is within the competence of the guardian, the contract is entered into effectively on behalf of the minor and the liability to pay the money is the liability of the minor under the Transfer of Property Act. We are unable to accept the plea that in a contract for purchase of property, the guardian would be binding the minor by his personal covenant. In the result we find that the contract entered into by the guardian on behalf of the minors is enforceable.....'

5. Now I proceed to examine the agreement, Ext. 1. This document was executed on 15-4-1963 in favour of the plaintiff by the late Somanath on behalf of his son, defendant No. 2, who was then minor. It is stated therein that as in case of sale to somebody else great loss was likely to be caused to the plaintiff, if at all in future defendant No. 2 would decide to sell the property, he must sell it to the plaintiff for a consideration of Rs. 500 and that if the property would be sold by defendant No. 2 to somebody else without the permission of the plaintiff, such sale would be invalid and inoperative. I find that this document (Ext. 1) is neither a contract of sale nor a contract of purchase. It is a peculiar document and seeks to create a kind of pre-emptive right in favour of the plaintiff. There is no stipulation in the document that the plaintiff for his part was obliged to buy the property as and when defendant No. 2 would choose to offer the property for sale to him. The consideration is for ever fixed at Rs. 500 irrespective of the contemporaneous

market value of the property. These stipulations undoubtedly place the minor (defendant No. 2) in a position of serious disadvantage and are against his interest. Further, the recitals in Ext. 1 executed by the father-guardian purporting to create rights in favour of the plaintiff were not at all necessary or reasonable and proper the benefit of the minor (defendant No. 2) or for realisation, protection or benefit of the minor's estate. Learned counsel for the appellant does not seriously dispute that the document fExt. 1) is far in excess of the powers of the natural guardian and in gross violation of the provisions contained in Section 8(1) of the [Hindu Minority and Guardianship Act, 1956](#) (hereinafter referred to as the Act).

6. On behalf of the appellant it is submitted that although Ext. 1 violates the provisions contained in Sub-section (1) of Section 8 of the Act, it is not void, but voidable under Sub-section (3) of Section 8 of the Act and that as defendant No. 2 has not expressly exercised his option to avoid the agreement (Ext. 1), it must continue to be valid. In support of this contention reliance is placed on a decision of the Mysore High Court reported in AIR 1971 Mys 194 (Linga Reddy v. Ramachan-drappa). In the aforesaid case the question for consideration was whether a contract to purchase entered into by a natural guardian in contravention of Section 8(1) was void and unenforceable. That decision cannot have any application to the facts of this case. As already pointed out, the agreement (Ext. 1) is not a contract to purchase entered into by the natural guardian on behalf of the minor. It being unnecessary I do not express any opinion on the observation in the Mysore case that a contract to purchase immovable property by a natural guardian of a Hindu minor in contravention of Sub-section (1) of Section 8 cannot be considered as a void transaction, but that it is only a voidable transaction which can be avoided at the instance of the minor or any person claiming under him. For the purpose of this case it is necessary to refer to Sub-section (3) of Section 8 of the Act which provides:

'Any disposal of immoveable preoprty 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.' A careful reading of the aforesaid pro-vision would leave no room for doubt that only when a natural guardian disposes of

immoveable property in contravention of Sub-section (1) or Sub-section (2) that such disposal becomes voidable at the instance of the minor or any person claiming under him. A transaction by a natural guardian in contravention of Sub-section (1) or Sub-section (2) which does not amount to a disposal of immovable property will not attract the application of Sub-section (3). In the present case the natural guardian of minor defendant No. 2 has not disposed of any immovable property through Ext. 1. Hence I am of the opinion that Ext. 1 is not voidable but entirely void being in contravention of the statutory provisions contained in Sub-section (1) of Section 8 of the Act. Accordingly, I hold that the agreement (Ext. 1) is neither legally valid nor enforceable.

7. As regards the second question, the concurrent finding of the Courts below is that defendant No. 1 is a purchaser for value without notice of the agreement (Ext. 1). The Courts below have considered the oral and documentary evidence adduced by both sides and have arrived at the conclusion that defendant No. 1 was not aware of the existence of Ext. 1 at the time when he purchased the suit land from defendant No. 2 on 10-2-1967. I see no reason to interfere with this concurrent finding of fact. Hence I hold that the finding that defendant No. 1 is a bona fide purchaser for value without notice of Ext. 1 is not vitiated in law.

8. In the result, this appeal fails and it is dismissed. In the circumstances of this case, parties will bear their own costs throughout.