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Kartar Singh Vs. Bogasingh and ors.

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Court : Rajasthan

Decided On : Apr-12-1963

Reported in : AIR1963Raj211

Judge : D.M. Bhandari, J.

Acts : Limitation Act, 1908 - Schedule - Article 44

Appeal No. : Civil Second Appeal No. 167 of 1958

Appellant : Kartar Singh

Respondent : Bogasingh and ors.

Advocate for Def. : H.N. Kalla, Adv.

Advocate for Pet/Ap. : C.M. Lodha, Adv.

Disposition : Appeal dismissed

Judgement :

D.M. Bhandari, J.

1. This is a civil second appeal in a suit for setting aside a sale deed.

2. One Uttam Singh had 50 Bighas of land in Chak 1-h Tehsil Ganganagar. He died leaving behind him four sons and his widow Mst. Nihali. His tour sons are

Ajayab Singh, Tara Singh, Dara Singh and Kartar Singh. On 19-9-1941, Ajayab Singh, Tara Singh, Dara Singh and Mst. Nihalj acting as guardian of Kartar Singh sold the aforesaid land for Rs. 5,000/- to Boga Singh and Gopal Singh under the sale deed Ex. 1. On 20th February, 1953, the suit out of which this appeal has arisen was filed by Kartar Singh and Dara Singh for setting aside the aforesaid sale deed. Kartar Singh pleaded that he was minor at the time of the execution of the sale deed. Dara Singh pleaded that he was also a minor and his mother had no necessity to sell the land on his behalf.

The suit was contested fay Boga Singh and Gopal Singh who pleaded that Dara Singh was not a minor at the time of the execution of the sale deed and Mst. Nihali was the natural guardian of. Kartar Singh and had the right to sell the land as the sale was to pay the debts of Uttam Singh. The suit has been dismissed by the Trial Court with the findings that Dara Singh was major at the time of the execution of the sale deed and Mst. Nihali, the natural guardian of Kartar Singh, sold the property for the benefit of the minor. It was also held that the suit was barred by limitation under Article 44 of the Limitation Act. On appeal by Kartar Singh, his appeal was dismissed on the ground that the suit was barred by limitation under Article 44 of the Limitation Act. Hence this second appeal on his behalf.

3. It is contended by the learned counsel for the appellant that the sale deed executed by Mst. Nihali on behalfof Kartar Singh was void as it was without legal necessity and as such Article 44 of the Limitation Act is not applicable. This contention, in my opinion, has no force.

Article 44 of the Limitation Act prescribes a period of three years from the date the ward attains majority for a suit filed by a ward to set aside the transfer of property toy his guardian. It is not denied in this case that Kartar Singh had attained majority sometime in the year 1948. It is, however, urged that the transfer by a guardian without legal necessity was void. The parties are Sikh by caste and are governed by Hindu Law. At the time when the property was sold, Uttam Singh was dead and Mst. Nihali being the mother was the natural guardian of Kartar Singh. A natural guardian under the Hindu Law has the power to sell or mortgage any part of the estate of the minor for legal necessity or for the benefit of the minor. Article

44 of the Limita-tion Act is attracted when the suit Is filed by a ward to set aside a transfer of the property by his guardian. The applicability of this Article cannot be avoided on the ground that the guardian had acted in excess of his authority. Thenatural guardian of Hindu minor, even if he is acting with-out legal necessity or transferring the property not for thebenefit of the estate of the minor is still acting as guardianand transfer by him is a transfer by guardian so as toattract Article 44.

4. learned counsel for the appellant has relied on Tattya Mohyaji v. Rabha Dadaji, AIR 1953 Born 273 and Ethilazulu Ammal v. Pethakkal, AIR 1950 Mad 390. Boththese cases are of alienations made by de facto guardians. In the Bombay High Court in Pakirappa limanna v. Lumanna, Mahada, ILR 44 Bom 742 : (AIR 1920 Bom 1) (FB), it was held that a Hindu minor on his attaining majority cannot recoverpossession of the property transferred by his natural guardian (mother in that case) during his minority without suing to set aside such transfer within three years from the data of attaining majority as provided in Article 44 of the Limitation Act. This decision was approved in AIR 1953 Bom 273, cited by the appellant and it was held in it that Article 44 is not applicable to a case in which de facto guardian has transferred the property. In AIR 1950 Mad 390 also it was held that Article 44 is not applicable to a transfer by a de facto guardian of a minor. The distinction between the transfer by a natural guardian and a de facto guardian is also noticed in Rangaswami Goundar v. Marappa Gounder, AIR 1953 Mad 230. and it has been held that Article 44 of the Limitation Act is applicable when the transfer is by a natural guardian. There are other authorities on this subject but I need not burden the judgment by citing them. The whole case law is surveyed in Beeyyathumma v. Moidin Haji, AIR 1959 Kerala 125 and Pran Nath v. Bal Kishan, AIR 1959 Punj 313. In both these authorities, the view taken is that Article 44 will apply when the transfer is by a natural guardian even when such guardian might have acted in excess of his authority.

5. Learned counsel has argued that in principle this distinction cannot be maintained. In my opinion, there is one sound reason for maintaining this distinction. Article 44 prescribes a shorter period of limitation for recovering the property. It should be construed strictly and should not be applied when the transfer of the property is made by any person who is not a legal or natural

guardian. The de facto guardian is neither a natural guardian nor a legal guardian. For certain purposes, he is taken to be acting as a guardian. But while giving strict construction to Article 44, the word 'guardian' cannot be extended so as to include a de facto guardian.

6. In this view of the matter, the appeal has got no force and is dismissed with costs.

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