

Subramaniam Vs. Krishnaswami Gounder and ors.

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Court : Chennai

Decided On : Feb-24-1972

Reported in : AIR1972Mad377

Judge : Palaniswamy, J.

Acts : [Hindu Minority and Guardianship Act, 1956](#) - Sections 2, 4, 8, 8(2), 11, 12 and 13; [Guardians and Wards Act, 1890](#) - Sections 27, 29 and 31; Hindu Law

Appeal No. : Second Appeal No. 349 of 1970

Appellant : Subramaniam

Respondent : Krishnaswami Gounder and ors.

Judgement :

1. The minor plaintiff in O.S. No. 110 of 1963 on the file of the Subordinate Judge, Erode, is the appellant. He is the only son of the first defendant. The first defendant, for himself and as guardian of the minor plaintiff, executed two sale deeds, one in favour of the second defendant and the other in favour of the third defendant under Exs. B.2 and B.16, both on 8-6-1960 in respect of the suit properties. This suit was laid for cancellation of these sale deeds on the allegations that the first defendant was leading a wayward life and was given to immoral habits, and that the sale deeds were not binding upon the plaintiff. The trial Court held that the plaintiff had failed to establish that the sale deeds were executed for illegal and immoral purposes. But the trial Judge took the view that

inasmuch as the first defendant had not obtained the leave of the court as contemplated under Section 8 of the [Hindu Minority and Guardianship Act, 1956](#), (hereinafter referred to as the Act), the sale was not binding on the plaintiff. In that view, the trial Judge granted a declaration that the sale deeds were not binding on the plaintiff in so far as his half share is concerned and passed a preliminary decree for partition accordingly.

In the appeal filed by defendants 2 and 3. the appellate Judge confirmed the finding of the trial Court that the plaintiff had failed to prove that the sales were executed for illegal and immoral purposes of the first defendant, but differed from the trial court with regard to the application of Section 8 of the Act. The appellate Judge found that in as much as the properties were joint family properties of the plaintiff and the first defendant, leave of the Court under Section 8 was not required and that, therefore, the sales were not vitiated on that account. In that view, the appellate Judge reversed the decision of the trial court and dismissed the suit. Hence this appeal.

2. The only question that arises for consideration is whether the natural guardian of a Hindu minor should obtain the previous permission of the Court under Section 8(2) of the Act before transferring by sale, gift or exchange or otherwise, the share of the minor in the joint family property. The Act deals with three kinds of guardians: (1) natural guardian, (2) testamentary guardian and (3) guardians appointed or declared by Court. The object of the Act was to amend and codify certain parts of the Law relating to minority and guardianship. It is only in respect of the points and matters specifically dealt with in it that the law relating to minority and guardianship is codified. Section 2 of the Act explicitly states that the provisions of the Act are only supplemental to and are to be read as addition to and not in derogation of those contained in the [Guardians and Wards Act, 1890](#), which is the principal Act on the subject. In order to understand the point in controversy, it is necessary to extract the relevant portions of certain sections, Section 4 deals with definitions. It reads:

'4. In this, Act,--

(a) 'minor' means a person who has not completed the age of eighteen years;

(b) 'guardian' means a person having the care of the person of a minor or of his property or of both his person and property and includes-

(i) a natural guardian,

(ii) a guardian appointed by the will of the minor's father or mother.

(iii) a guardian appointed or declared by a Court, and

(iv) a person empowered to act as such by or under any enactment relating to any court of wards;

(c) 'natural' guardian means any of the guardians mentioned in S. 6'

Section 6 enumerates the natural guardians of a Hindu minor, and it reads:

'6. 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-

(a) 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;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl--the mother, and after her, the father.

(c) in the case of a married girl--the husband: provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.--In this section, the expressions 'father' and 'mother' do not include a step-father and a step-mother'. Section 7 deals with natural guardianship of an

adopted son. S. 8 deals with the powers of natural guardians. Omitting sub-section (6) of that section, which is not relevant, the other sub-sections read:

'8 (1) 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 realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,--

(a) mortgage or charge, or transfer by sale, gift exchange or otherwise, any part of the immovable property of the minor, or

(b) 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.

(3) Any disposal of immovable property by a natural guardian in contravention of sub-section (1) or sub-sec. (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The [Guardians and Wards Act, 1890](#) (8 of 1890). shall apply to and in respect of an application for obtaining the permission of the Court under sub-section (2) in all respects as if it were an application for obtaining the permission of the Court under Section 29 of that Act, and in particular-

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of Section 4-A thereof;

(b) the Court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of Section 31 of that Act; and

(c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that Court'.

Section 9 deals with testamentary guardians and their powers. Section 11 states that after the commencement of the Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the do facto guardian of the minor. Section 12 imposes a bar against appointing a person as guardian in respect of the undivided interest of the minor in the joint family property. Section 13 declares that in the appointment or declaration of any person as guardian by Court, in welfare of the minor shall be the paramount consideration.

3. It would be seen from the language of Section 6 and 8 that, whereas Section 6 expressly excludes the undivided interest of the minor in the joint family property with respect to the natural guardian's power, no such exclusion is found in Section 8. On the other hand, Section 8 speaks of minor's 'estate' and 'immovable property of the minor'. As these expressions are wide enough, Mr. Srinivasagopalan, counsel for the plaintiff, contended that as against the express exclusion of the minor's undivided interest in the joint family found in Section 6 the Legislature should be deemed to have intended that whatever be the property of the minor, whether it be separate property or his interest in the joint family property, it should be brought under the scope of Section 8. In other words, the argument was that even though the guardian may be natural guardian, he cannot deal with the minor's undivided interest in that joint family property by transfer except with the previous permission required under sub-section (2) of S. 8. The question is whether this interpretation is correct.

4. As already pointed out, the act is only a codifying enactment and in express terms it is provided in Section 2 that the provisions of the Act are only supplemental to and are to be read as addition to and not in derogation of those contained in the Guardians and Wards Act. It is intended only to amend and codify certain parts of the Law relating to minority and guardianship. Section 27 of the Guardians and Wards Act applies to all classes of guardians. It lays down general

rules affecting the duties and powers of guardians. Section 29 of that Act lays down certain limitations on the powers of a guardian appointed or declared by the Court in respect of his dealing with and management of the immovable property of the minor ward. He Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise any such property; nor can he without the permission of the court, lease any part of that property for a term exceeding five years or for a term extending more than one year beyond the date of attainment of majority by the ward.

The powers of a natural guardian or a testamentary guardian of a Hindu minor were not affected by these limitations. The rights of any such guardian to deal with and manage the minor's property continue unaffected unless and until the court in the exercise of its wide powers remove him or appoint or declare him to be a guardian of the minor in which latter case his powers to deal with and manage the minor's property become limited as provided in Section 29 of the Act. The language of Section 8 of the present Act in relation to the limitation of powers of management of the immovable property of the minor is in pari materia with the provisions contained in Section 29 of the Guardians and Wards Act.

5. With this background, the scope of Section 8 of the present Act should be examined. It is true that, whereas Section 6 expressly excludes the undivided interest of the minor in the joint family property, no such exclusion is found in Section 8. It cannot be said that on account of such absence of exclusion, the intention of the legislature was that even the undivided interest of the minor in the joint family should come within the scope of Section 8. The essence of a coparcenary under the Mitakshara law is unity of ownership. The ownership of the coparcenary property is in the whole body of coparceners. According to the true notion of an undivided family governed by the Mitakshara law, no individual member of that family, whilst it remains undivided, can predicate, of the joint and undivided property, that he, that particular member, has a definite share, one-third or one-fourth. His interest is a fluctuating interest, capable of being enlarged by deaths in the family, and liable to be diminished by births in the family. It is only a partition that he becomes entitled to a definite share.

When Section 8 deals with the minor's estate or the immovable property of the minor, it could not have been the intention of the Legislature that those expressions were intended to apply to the undivided interest of the minor in the joint family property, for it is not possible to postulate or predicate what share the minor has and what item of property is the minor's property. On the other hand, the expressions 'minor's estate' and 'immovable property of the minor' occurring in Section 8 can apply only to definite properties of the minor and not to a fluctuating interest of the minor in the undivided Hindu family. The natural guardian can lease the joint family property including the share of the minor for such term as he considers necessary in the interest of the family. Such period may exceed five years or may exceed a term extending more than one year beyond the date on which the minor may attain majority.

The restriction in Section 8(2)(b) against granting a lease 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, cannot possibly apply to a case of lease of joint family property in which the minor has only an undivided interest. Thus, there is intrinsic evidence in Section 8 itself to justify the conclusion that the minor's undivided interest in the joint family property is not contemplated in Section 8.

6. The manager or karta of a joint family can alienate joint family property so as to bind the interest of the minor coparceners in such property provided the alienation is either for legal necessity or for the benefit of the estate. If the manager and karta is the father, he has certain additional powers of alienation under Hindu Law and in exercise of those powers he can alienate joint family property so as to bind the interest of his minor sons in such property. If we are to hold that the natural guardian should obtain the previous permission of the Court under Section 8(2) before he alienates the joint family property so as to bind the interest of the minor sons in such property, he can no longer claim to have the power to make an alienation of joint family property for payment of debts binding on family including the share of the minor, if those debts had not been incurred for illegal or immoral purpose. But the manager or karta, who is not the father, but who is the elder brother or an uncle, would be entitled to alienate joint family property so as to bind the interest of the minor coparceners without obtaining the previous permission of

the Court. It cannot be said that the Legislature intended to curtail the powers of the natural guardian a manager-karta who is not the father. It is not likely that the intention of the Legislature was to take away the natural guardian's powers in enacting Section 8.

7. From the mere absence of express words excluding the minor's undivided interest in the joint family property in Section 8, we cannot necessarily hold that the intention of the Legislature was to include such interest also in making provisions with regard to the powers of the natural guardian. It is well-settled that in construing the terms of any provisions found in a statute, the court should consider all the parts of the statute which throw light on the intention of the Legislature. The particular provision ought not to be construed without regard to the rest of the statute. Every clause of a statute should be construed with reference to the context and other clause in the statute so as, as far as possible, to make a consistent enactment of the whole statute. It is not proper to construe a part of the statute in isolation. The intention of the law-maker should be found not in one part of the statute or another but in the entire enactment. That intention can best be gathered by viewing a particular part of the statute not detached from its context in the statute but in connection with its whole context.

If we apply this principle of interpretation it would be seen that the intention of the Legislature in dealing with the powers of the natural guardian in Section 8 could not have been to fetter his powers in the matter of dealing with the joint family property including the undivided share of the minor in such property. As already pointed, out, the Act was intended only to codify, certain parts of the law and a reading of the various provisions of the Act shows clearly that it was not the intention of the Legislature to curtail the powers of the natural guardian in enacting Section 8.

8. A similar view was taken by the Patna High Court in *Nathuni Mishra v. Mahesh Misra*, : AIR1963 Pat146 and by the Madhya Pradesh High Court in *Sugga Bai v. Hiralal*, : AIR 1969 MP32 . A single Judge of the Gujarat High Court has dealt with this question in a somewhat elaborate manner and taken same view in *In re: Krishnakant*, : AIR1961 Guj68 .

9. In my view, the conclusion of the lower appellate Court that the sales of the suit properties by the first defendant in favour of defendants 2 and 3 without obtaining the previous permission of the Court under Section 8 are not vitiated, is correct. The appeal fails and is dismissed. No order as to costs. No leave. The plaintiff to pay the court-fee payable on the appeal memorandum.

10. Appeal dismissed.

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