
Shivamurti Vs Vijaysing Vinayakrao Dudhe

A.F.O.D. No. 624 of 1970

Court: Bombay High Court

Date of Decision: Jan. 27, 1971

Acts Referred:

Guardians and Wards Act, 1890 " Section 29#Hindu Minority and Guardianship Act, 1956 " Section 8(2)

Citation: AIR 1972 Bom 152 : (1971) 73 BOMLR 709

Hon'ble Judges: Vimadalal, J

Bench: Single Bench

Advocate: Raghavendra A. Jahagirdar, for the Appellant; V.N. Gadgil, for the Respondent

Judgement

1. The respondent is a minor represented by his mother as his guardian ad litem. Some time in the year 1957, there was a partition as between the

members of the joint family of which he was a member till then, in which the land in dispute in the present proceedings came to the share of the

respondent. It appears that thereafter it was the mother of the respondent who acted as the natural guardian in respect of his property. On the 7th

of February 1962, an agreement for Sale of the land now in dispute was executed in favour of the appellant by the respondent's father as the

constituted attorney of the respondent's mother acting as the natural guardian of the respondent for the price of Rs. 6000/-. A fresh agreement for

Sale of the said land for a higher price was thereafter executed on 17th July 1962 by the respondent's father, as such constituted attorney, under

which it was stipulated that a Sale Deed was to be executed on or before 11th December 1962. Payments aggregating in all to Rs. 4250/- were

made by the appellant from time to time towards the price payable in respect of said land. The respondent's father as constituted attorney having

failed to execute a Sale Deed, the appellant filed a suit for specific performance on 10th December 1965, being Reg. Civil Suit No. 8 of 1966, in

the Court at Wai against the respondent as represented by his father as the guardian - ad - litem. The said court did not grant specific performance,

but passed only a decree for refund of the said sum of Rs. 4250/- in favour of the appellant. That decree was, however, set aside on appeal on 9th

March 1968 by the Assistant Judge at Satara who remanded the suit to the trial court for rehearing, directing that that the mother of the respondent

should be appointed his guardian - ad - litem for the said suit, and not his father. On the 25th of March 1969, the appellant filed an application u/s

8 of the Hindu Minority and Guardianship Act, 1956, in the Court of the District Judge at Satara against the respondent, as represented by his

mother, for permission for the execution of a registered Sale Deed in favour of the appellant on payment of the remaining amount of the price viz.

Rs. 1750/- by the parents of the respondent as constituted attorneys, or by the Court on his behalf. That application was opposed by the

respondent both on the ground that, under the provisions of the Hindu Minority and Guardianship Act, the appellant had no right to make such an

application, as well as on merits. A preliminary issue in regard to the maintainability of the application was framed and tried by the Assistant Judge

at Satara who, by his judgment dated 30th June 1970, held that under the provisions of Section 8 of the Hindu Minority and Guardianship Act,

1956, it was for the natural guardian alone to make such an application. He, therefore, dismissed the application, and it is from that Order of

dismissal that the present appeal has been preferred by the intending purchaser (original applicant).

2. The material portion of Section 8 of the Hindu Minority and Guardianship Act, 1956, is in the following terms :-

8. (1) Powers of natural guardian - The natural guardian of a Hindu minor has power, subject to the provisions of this section to do all the 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.

(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;

.....

(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, shall apply to and in respect of an application of the court under sub - section (2) in all respects as if it

were an application for obtaining the permission of the court u/s 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 S. 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.

(6)

... ..

Sub - section (2) of S. 8 quoted above, under which the present application was made in almost identical with Section 29 of the Guardians and

Wards Act, 1890, with this difference that the latter section applies only to guardians appointed or declared by the Court. The learned advocates

on both sides have assured me that there is not a single reported decision of any Indian Court on the point as to whether any person other than the

guardian can maintain an application for permission for the transfer of immovable property u/s 8(2) of the Hindu Minority and Guardianship Act,

1956, or u/s 29 of the Guardians and Wards Act, 1890. The only decision on the point which was cited before me was that in the case of

Tukaram Zipru Wani Vs. Baban Dhondur Deshmukh, which, however, was a decision u/s 4 (2) of the Bombay Pargana and Kulkarni Watans

(Abolition) Act, 1950, which, in my opinion, is very differently worded, and the said decision therefore affords no assistance in the present case.

Reference was made in the course of the arguments to Rule (12) of para 271 at page 95 of Vol. I read with Form G in Appendix C at page 431 of

Vol. II of the Civil Manual 1960. The form of the Certificate to be issued by the Court when granting an application for permission u/s 29 of the

Guardians and Wards Act, or u/s 8 of the Hindu Minority and Guardianship Act, clearly shows that an application by the guardian alone is

contemplated. The Civil Manual issued by the High Court, however, only contains Rules for the guidance of subordinate courts and officers and

cannot be used as an aid to the construction of a statutory provision. The question that arises in this Appeal will, therefore, have to be decided on a

plain reading of Section 8 of the Hindu Minority and Guardianship Act, 1956.

3. Turning to that section, it is important to note at the outset that sub - section (1) thereof lays down the powers of a natural guardian in general

terms, to which sub - section (2) proceeds to engraft certain limitations. This scheme intrinsic in the section would itself indicate that the permission

contemplated by sub - section (2) must be applied for by the natural guardian himself. The way in which sub - section (2) is worded also points to

that conclusion. It enacts that the natural guardian shall not, without the previous permission of the Court, effect a transfer, or a lease of immovable

property of long duration. This makes it clear that, in such cases, it is the natural guardian himself who must apply for that permission. Sub - section

(4) however lays down that the Court cannot grant that permission except in case of necessity or for evident advantage to the minor. This goes

further that the normal requirement of Hindu law under which it is sufficient for a purchaser or mortgagee from the manager of a joint Hindu family

to prove that he made a proper and bona fide enquiry as to the existence of legal necessity. Since sub - section (4) requires that it must be proved

that there was in fact necessity for or advantage to the minor concerned, no person other than the natural guardian could be expected to prove the

same as an applicant under that section. The use of the words ""permission to the natural guardian"" in sub - section (4) and in Clause (c) of sub -

section (5), in regard to the Order to be made by the Court on an application under that section, in my opinion, also shows that the legislature

intended that the application contemplated by that section has to be made by the natural guardian. Moreover, those words leave no room for

doubt that the permission under that section could be granted to the natural guardian and to none else. In the present case, it could not, therefore,

be granted to the respondent's father.

4. It was sought to be contended by Mr. Jahagirdar that such a construction of Section 8 of the Hindu Minority and Guardianship Act, 1956,

would place an innocent purchaser at the mercy of an unscrupulous natural guardian. Such considerations cannot, however, affect the construction

of a statutory provision when the intention of the legislature is manifest from the language used in and the tenor of the enactment. It is a platitude

that hard cases make bad law. In such cases, the remedy, if any, lies with the legislature and not with the court which must interpret an enactment

as it stands.

5. I hold that the appellant was not entitled to maintain the application which he made to the District Court u/s 8 of the Hindu Minority and

Guardianship Act, 1956, and the same was rightly dismissed by that court. This appeal therefore fails and must be dismissed with costs.

6. Appeal dismissed.