

Court No. - 50

Case :- FIRST APPEAL FROM ORDER No. - 272 of 2024

Appellant :- Smt Preeti Arora

Respondent :- Subhash Chandra Arora And Another

Counsel for Appellant :- Arvind Srivastava

Counsel for Respondent :- Komal Mehrotra

Hon'ble Ashutosh Srivastava,J.

Heard Shri Arvind Srivastava (Advocate Roll No. A/A 1244/12) learned counsel for the plaintiff/appellant and Sri Komal Mehrotra, learned counsel representing the defendant/ respondents.

The FAFO raises a purely legal issue. The respondent has already put in appearance and the Court is of the opinion that no useful purpose shall be served by keeping the FAFO pending.

With the consent of the parties, the FAFO is being decided finally at the admission stage itself.

The instant FAFO under Section 8 (C) of the Hindu Minority and Guardianship Act 1956 has been filed assailing the order dated 04.10.2023 passed by the Additional District Judge, Saharanpur, in Misc. Case No. 276 of 2022 registered under Section 8 of the Hindu Minority and Guardianship Act 1956 whereby and whereunder the Application on behalf of the plaintiff/ appellant (Paper No. 4-B) supported by affidavit seeking permission to sell the property in the interest of minors has been rejected on flimsy grounds.

It is the case of the Plaintiff/ Appellant that she is a widow. Her husband expired on 17.03.2021 leaving behind her and 3 daughters besides his mother. The husband of the Plaintiff/ Appellant had 1/2 share in a double storied house bearing No. A-26, Paramount Tulip, having area 143.90 square meters. The other 1/2 share was of her father-in-law. After the death of her husband his heirs i.e. the Appellant, her mother-in-law and three daughters inherited 1/5th share each in the house property. The father-in-law (opposite party no. 1 herein) out of his own free will executed a Gift Deed on 05.08.2021 gifting his entire 1/2 share in the house property to the Appellant. The mother-in-law also executed a registered Gift Deed of her 10% share in favour of the Appellant. The

Appellant thus has 70% of the share in the house property. The remaining 30% is that of the 3 minor daughters. The Appellant for the benefit and better prospects of her minor girls wants to sell the house and settle at Zeerakpur, Mohali, Punjab, where she is working. It has become difficult to maintain the property at Saharnpur. The maternal grand parents, uncle are all residing at Zeerakpur, Punjab. The Appellant shall not misappropriate the funds collected from the sale of the house property and shall make adequate investments for the minor girls to secure their future. The opposite parties i.e. the father and mother in law have also extended their consent for the sale of the House property. All members of the family i.e. the Appellant, father and mother in laws, minor children are residing at Punjab and the minor girls are pursuing their studies at Punjab. The house remains locked. Some land mafias have their eyes over the property. In the aforesaid circumstances seeks permission under Section 8 of the Hindu Minority and Guardians Act 1956.

The learned Additional District Judge, Saharanpur, under the order dated 04.10.2023 impugned has rejected the Application of the Appellant seeking permission under Section 8 of the Hindu Minority and Guardianship Act 1956 being of the view that the Appellant wants to sell of the property and reside at Punjab. The children of the Appellant are minor out of them one is 12 year old and the other two are twins of 8 year each. The Appellant has not disclosed from whom she would purchase the property in Punjab and for what amount after selling the House Property here at Saharanpur. The property is residential property and is situated in a posh (VIP) area, it can be let out and the rental income can be utilized for the benefit of the minor children and meet out their educational needs.

Learned counsel for the Plaintiff/ Appellant submits that the Plaintiff/ Appellant ought not to have been non suited on the grounds stated in the impugned order. The Application for permission under Section 8 could not be rejected on the ground that the details of the property the Appellant would purchase in Punjab and for how much after selling the property in question have not been disclosed, or that the property could be let out on rent. The Appellant had bonafidely disclosed all the circumstances for selling out the property in her application seeking permission, yet the Trial Court proceeded to reject the application on mere conjectures and surmises. It is also contended that the opposite parties had also consented for the transfer. Accordingly it is prayed that the impugned order being illegal, unjustified is liable to be set aside and the Application (Paper No. 4B) is liable to be allowed.

Shri Komal Mehrotra, learned counsel appearing for the respondent nos. 1 and 2 submits that the respondents had already accorded their consent in favour of the Appellant and in fact have already gifted their share in

the house property in favour of the Appellant. They have no objection if the Appeal is allowed and the impugned order is set aside.

I, have heard the learned counsel for the parties and have perused the record.

Having gone through the impugned order and taking into consideration the admitted facts as set out in the impugned order, the Court is of the opinion that the Application (4-B) moved by the Appellant under Section 8 of the Hindu Minority and Guardianship Act 1956 was not liable to be rejected.

According to the Court, there is one other aspect of the matter and which is whether at all a permission was required for disposing of the undivided share of the minors. Though this point was not argued by the learned counsel for the Appellant but the Court deems it appropriate to state the correct legal position in this regard.

Section 6 of the Hindu Minority and Guardianship Act 1956 deals with Natural Guardian of a Hindu minor and *inter alia* provides that the natural guardian of a Hindu minor in respect of the minors' person as well as in respect of the minors' property (excluding his or her undivided interest in the joint family property), are 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. Section 8 thereof *inter alia* provides that 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 realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant. Furthermore the natural guardian shall not, without the previous permission of the court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of he minor or 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. Any disposal of immovable property 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 on behalf of the minor. Section 12 provides that where a minor has an undivided interest in the joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest : Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

With regard to the undivided interest of the Hindu minor in joint family property, the provisions afore-culled are beads of the same string and need be viewed in a single glimpse, simultaneously in conjunction with each other. Each provisions, and in particular Section 8, cannot be viewed in isolation. If read together the intent of the legislative in this beneficial legislation becomes manifest. Ordinarily the law does not envisage a natural guardian of the undivided interest of a Hindu minor in joint family property. The natural guardian of the property of a Hindu minor, other than the undivided interest in joint family property, is alone contemplated under Section 8, whereunder his powers and duties are defined. Section 12 carves out an exception to the rule that should there be no adult member of the joint family in management of the joint family property, in which the minor has an undivided interest, a guardian may be appointed; but ordinarily no guardian shall be appointed for such undivided interest of the minor. The adult member of the family in the management of the Joint Hindu Family property may be a male or a female, not necessarily the Karta. The power of the High Court otherwise to appoint a guardian, in situations justifying, has been preserved. This is the legislative scheme on the subject. Under Section 8 a natural guardian of the property of the Hindu minor, before he disposes of any immovable property of the minor, must seek permission of the court. But since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under sections 6 and 12 of the Act, the previous permission of the Court under Section 8 of disposing of the undivided interest of the minor in the joint family property is not required.

Thus in the opinion of the Court, section 8 of the Act in view of the express terms of Section 6 and 12 of the Act would not be applicable where joint Hindu Family property is sought to be transferred/ disposed off.

In view of the above discussion, the impugned order dated 04.10.2023 passed by the Additional District Judge, Saharanpur, in Misc. Case No. 276 of 2022 is set aside. The Appeal stands **allowed**.

No order as to costs.

Order Date :- 5.3.2024

Deepak/