

PETITIONER:
PANNI LAL

Vs.

RESPONDENT:
RAJINDER SINGH AND ANR.

DATE OF JUDGMENT 05/05/1993

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
PUNCHHI, M.M.

CITATION:
1993 SCR (3) 589 1993 SCC (4) 38
JT 1993 (3) 340 1993 SCALE (2) 806

ACT:

The Hindu Minority and Guardianship Act, 1956: Section 8--Intent of--Whether protects the property of a minor from the depredations of the parents even.
Words and Phrases--Voidable and Void--Sale of the property of the minor by his mother without permission of the court and attested by the father whether voidable or void.
Sale of the property of the minor by his mother and attested by his father--Interpretation of--Whether amounts to a sale by the natural guardian of the minor for legal necessity. and benefit of the minor.

HEADNOTE:

The mother of the respondent minors, acting as their guardian, sold their land, while they were still minors, to the appellant under a registered sale deed dated July 30, 1964. The respondents, upon attaining majority, sued the appellant for possession of the said land on the ground that the sale thereof, having been made without the permission of the court, was void.

The appellant in his written statement and at the time of hearing of the suit contended that the sale deed had been attested by the father of the respondents and the sale should, therefore, be deemed to have been a sale by the legal guardian of the respondents. It was also pleaded that the sale had been for legal necessity and the benefit of the respondents. It was also alleged that the suit was barred by limitation because the sale was voidable and not void and the suit had not been brought within three years of each of the respondents attaining majority.

The trial court framed appropriate issues and came to the conclusion that it had not been proved that the sale was for legal necessity or for the benefit of the respondents, that the sale by the respondent's mother without the permission of the court was void, and the sale was void and not voidable and the suit was, therefore, in time and was decreed.

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The appeal filed by the appellant before the Additional Distt. Judge and the High Court failed.

The appellant, therefore, preferred this appeal by special leave.

Dismissing the appeal, this court,
HELD : 1. The provisions of section 8 of the Hindu Minority and Guardianship Act, 1956 are devised to fully protect the property (.if a minor, even from the depredations of his parents. Section 8 empowers only the legal guardian to alienate a minor's immovable property provided it is for the necessity or benefit of the minor or his estate and it further requires that such alienation shall be effected after the permission of the Court has been obtained."

2. It was difficult, therefore, to hold that the sale, by reason of the fact that the mother of the minor respondents signed the sale deed and the father attested it, was voidable, not void. (592-G)

3. The attestation of the sale deed by the father showed that he was very much existent and in the picture. If he was, then the sale by the mother, notwithstanding the fact that the father attested it, cannot be held to be sale by the father and natural guardian satisfying the requirements of section 8. (592-E)

Jijabai Vithalrao Gajre v. Pathankhan & Ors. AIR 1971 SC 315, distinguished. (662-A)

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2198 of 1986. From the Judgment and order dated 17.12.1985 of the Punjab and Haryana High Court in R.S.A No. 1155 of 1977.

S.M. Ashri for the Appellant.

Ms. Kawaljit Kochar for J.D. Jain for the Respondents.

The Judgment of the Court was delivered by BHARUCHA, J. This appeal by special leave challenges the judgment and

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order of the Punjab & Harvana High Court dismissing the appeal filed before it by the appellant.

The suit relates to 9 Kanals 13 Marlas of land at village Qayampur. The said land was owned by Rajinder Singh and Baldev Singh, the respondents, and was sold while they were still minors by their mother Gurkirpal, acting as their guardian, to the appellant under a registered sale deed dated 30th July, 1964. Upon attaining majority the respondents sued the appellant for possession of the said land on the ground that the sale thereof having been made without the permission of the court was void. The appellant in his written statement and at the time of hearing of the suit relied heavily upon the fact that the sale deed had been attested by the father of the respondents and that the sale should, therefore, be deemed to have been a sale by the legal guardian of the respondents. It was also contended that the sale had been for legal necessity and the benefit of the respondents. The suit, it was also alleged, was barred by limitation because, the sale being voidable and not void, it had not been brought within three years of each of the respondents attaining majority. The trial court framed appropriate issues and came to the conclusion that it had not been proved that the sale was for legal necessity or for the benefit of the respondents; that the sale by the respondent's mother without the permission of the court was void; and that the sale was void and not voidable and the suit was, therefore, in time. The appeals filed by the appellant before the Additional District Judge. Ambala and the High Court failed.

Learned counsel for the appellant placed great reliance upon the fact that the sale deed had been attested by the father

of the respondents and submitted that the sale deed should, therefore, be taken to have been entered into by the natural guardian of the respondents for legal necessity and their benefit.

Section 8 of the Hindu Minority and Guardianship Act sets out the powers of the natural guardian of a Hindu minor. The natural guardian of a Hindu Minor has power, subject to the provisions of section 8, to do all acts which are necessary or reasonable and proper for the benefit of the minor or his estate. The natural guardian, however, may not without the previous permission of the court sell any part of the immovable property of the minor. Any disposal of immovable property which is not necessary or reasonable and proper for the benefit of the minor or is without the previous permission of the court is voidable at the instance of the minor.

In the instant case, there, is, as found by the trial court and affirmed in appeal, no evidence beyond the bare word of the appellant that the sale deed had been made for the benefit of the minor respondents and his evidence had been eroded in cross-

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examination so that there was no "reliable evidence on record to show that the alienation in dispute had been made for the legal necessity or for the benefit of the plaintiffs. That the sale was effected without the permission of the court is not dispute. The sale is, therefore, in any event, voidable.

The question is whether, in the circumstances of the case, it may be said that the sale was effected by the father and natural guardian of the respondents because he had attested the sale deed executed by the mother of the respondents. In this behalf our attention was invited to this Court's judgment in *Jijabai Vithalrao Gajre vs. Pathankhan and ors.*, AIR 1971 S.C. 315. This was a case in which it was held that the position in Hindu law was that when the father was alive he was the natural guardian and it was only after him that the mother became the natural guardian. Where the father was alive but had fallen out with the mother of the minor child and was living separately for several years without taking any interest in the affairs of the minor, who was in the keeping and care of the mother, it was held that, in the peculiar circumstances, the father should be treated as if nonexistent and, therefore, the mother could be considered as the natural guardian of the minor's person as well as property, having power to bind the minor by dealing with her immovable property.

In the present case, there is no evidence to show that the father of the respondents was not taking any interest in their affairs or that they were in keeping and care of the mother to the exclusion of the father. In fact, his attestation of the sale deed shows that he was very much existent and in the picture. If he was, then the sale by the mother, notwithstanding the fact that the father attested it, cannot be held to be a sale by the father and natural guardian satisfying the requirements of section 8.

The Provisions of section 8 are devised to fully protect the property of a minor, even from the depredations of his parents. Section 8 empowers only the legal guardian to alienate a minor's immovable property provided it is for the necessity or benefit of the minor or his estate and it further requires that such alienation shall be effected after the permission of the court has been obtained. It is difficult, therefore, to hold that the sale was voidable, not void, by reason of the fact that the mother of the minor

respondents signed the sale deed and the father attested it.
In the result, the appeal is dismissed with no order as to costs.

G.S. Appeal dismissed.

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JUDIS