

CASE NO.:
Appeal (civil) 554 of 1998

PETITIONER:
VISHWAMBHAR & ORS.

Vs.

RESPONDENT:
LAXMINARAYAN (DEAD) THROUGH

DATE OF JUDGMENT: 20/07/2001

BENCH:
D.P. Mohapatra & Doraiswamy Raju

JUDGMENT:

D.P. MOHAPATRA, J.

One Dattatraya Agnihotri died in April 1961 leaving behind his widow Laxmibai, sons Vishwambhar and Digamber, and daughters, Indumati, Usha, Mangla and Shobha. The suit land was ancestral property in the hands of Dattatraya Agnihotri. At the time of death of their father Vishwambhar and Digamber were minors. Laxmibai was managing the properties left by Dattatraya Agnihotri as guardian of the minors. On 14.11.1967 Laxmibai executed a sale deed in favour of Laxminarayan transferring 4 acres 13 guntas of the suit land for the sum of Rs.6,000/- and delivered possession to the purchaser. Again on 24.10.1974 she executed another sale deed in favour of Vijay Kumar son of Laxminarayan in respect of 4 acres 13 guntas, a part of the suit land for the sum of Rs.9000/- and delivered possession to the purchaser. The sale deeds were executed without any legal necessity and without obtaining permission of the Court as provided under Section 8 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as the Act).

Digamber attained majority on 5th August 1975 and Vishwambhar became major on 20th July, 1978. Thereafter they filed the suit RCS No.5/81 in the Court of Civil Judge (Junior Division) Jalna, in the State of Maharashtra impleading the purchasers Laxminarayan and Vijay Kumar as defendants 1 and 2 respectively, their mother Laxmibai as defendant no.3 and their sisters, Indumati, Usha, Mangla and Shobha as defendant nos. 4 to 7 respectively. The plaintiffs pleaded that the two sale deeds executed by defendant no.3 on 14.11.1967 and 24.10.1974 in favour of defendant nos.1 and 2 are not binding and operative on the legal rights of plaintiff no.1, and prayed that the said sale deeds be set aside to the extent of his share and the suit for possession of the land under survey no.515-Area 8 acres 26 guntas situated at Jalna bearing the local name Girdharchamala to the extent of 4/7th share be decreed with costs against defendant nos. 1 and 2 and the plaintiffs be put in actual possession of their share by dispossessing the said defendants from the land, etc.

The gist of the case pleaded by the plaintiffs was that their mother as guardian executed the above sale deeds without any legal necessity and without sanction of the Court. The transfers made by her were void ab initio and not binding on the plaintiffs and they are

entitled to ignore the same altogether. In para 4 of the plaint it was averred the transaction, therefore, is liable to be treated as of no legal validity, right from its inception and the defendant no.1 never got any title to it under the law. Averment to the same effect was made in respect of the sale deed dated 24.10.1974 in favour of defendant no.2 in paragraph 5 of the plaint. The plaintiffs pleaded that the purchasers are trespassers on the suit land; that the plaintiffs have a right to recover possession of the suit land from the purchasers within 12 years which they have done. Reliance was placed on Article 65 of the Limitation Act. In para 7 of the plaint it was asserted that the suit has been filed within the period of limitation with reference to the suit transaction for the relief of recovery of possession by way of partition of the suit land. It is relevant to state here that the relief of declaration that the sale deeds executed by the defendant no.3 in favour of defendant nos. 1 and 2 are invalid and inoperative and that the said sale deeds be set aside, were added in the plaint subsequently by amendment.

The contesting defendants 1 & 2 filed written statements pleading, inter alia, that the Hindu Minority and Guardianship Act is not applicable in the case since the alienation has been made by the mother as natural guardian of the minors. She was also the manager of the joint family property. In such a case, according to the defendants, lack of sanction under section 8 of the Act is not fatal to the alienations. The defendants further averred that the alienations were made for legal necessity, for maintenance of the plaintiffs, for meeting the marriage expenses of defendant nos. 4 to 7, for satisfying antecedent debts etc. They also took the plea of limitation since the suit was filed beyond 3 years after the minors attained majority. They prayed for dismissal of the suit with costs. Defendants 3 to 7 supported the case of the plaintiffs.

The trial court by judgment dated 6.12.1985 decreed the suit of the plaintiff no.1 against the defendants and dismissed the claim of plaintiff no.2. The Court declared that the sale deeds are not binding on plaintiff no. 1 to the extent of his share in the suit land and that plaintiff no.1 is entitled to recover 2 acres 11 guntas as his share from the suit land. Defendants 1 and 2 were ordered to deliver possession of the said property to the plaintiff no.1.

Being aggrieved by the judgment and decree dated 6.12.1985 the defendants 1 and 2 preferred RCA No.80/1986 in the Court of Additional District Judge, Jalna. The appellate court by the judgment dated 21.6.1995 allowed the appeal and set aside the judgment and decree passed by the trial court and dismissed the suit.

Thereafter the plaintiffs filed the second appeal no. 350/96 in the High Court of Bombay challenging the judgment and decree of the lower appellate court, which was dismissed summarily holding that no substantial question of law was involved in the second appeal and that there was no merit in the second appeal. The said judgment is under challenge in this appeal filed by the plaintiffs and defendant nos. 3 to 7 by special leave.

The learned counsel appearing for the appellants contended that the High Court erred in dismissing the second appeal filed by the plaintiffs. He also contended that the first appellate court was in error in dismissing the suit for recovery of possession. According to the learned counsel the Court should have held that in view of the undisputed factual position that the sale deeds were executed without obtaining prior sanction of the District Court and in view of the concurrent findings of the trial court and the first appellate court that the alienations were not supported by legal necessity the first appellate court should have held that the alienations were void and it was not necessary for the plaintiffs to file a suit to set aside the sale deeds or to

declare them invalid. The learned counsel submitted that the lower appellate court failed to appreciate that Article 60 of the Limitation Act has no application in the case.

On a fair reading of the plaint, it is clear that the main fulcrum on which the case of the plaintiffs was balanced was that the alienations made by their mother-guardian Laxmibai were void and therefore, liable to be ignored since they were not supported by legal necessity and without permission of the competent court. On that basis the claim was made that the alienations did not affect the interest of the plaintiffs in the suit property. The prayers in the plaint were inter alia to set aside the sale deeds dated 14.11.1967 and 24.10.1974, recover possession of the properties sold from the respective purchasers, partition of the properties carving out separate possession of the share from the suit properties of the plaintiffs and deliver the same to them. As noted earlier, the trial court as well as the first appellate court accepted the case of the plaintiffs that the alienations in dispute were not supported by legal necessity. They also held that no prior permission of the court was taken for the said alienations. The question is in such circumstances are the alienations void or voidable? In Section 8(2) of the Hindu Minority and Guardianship Act, 1956, it is laid down, inter alia, that the natural guardian shall not, without previous permission of the Court, transfer by sale any part of the immovable property of the minor. In sub-section (3) of the said section it is specifically provided that any disposal of immovable property by a natural guardian, in contravention of sub-section (2) is voidable at the instance of the minor or any person claiming under him. There is, therefore, little scope for doubt that the alienations made by Laxmibai which are under challenge in the suit were voidable at the instance of the plaintiffs and the plaintiffs were required to get the alienations set aside if they wanted to avoid the transfers and regain the properties from the purchasers. As noted earlier in the plaint as it stood before the amendment the prayer for setting aside the sale deeds was not there, such a prayer appears to have been introduced by amendment during hearing of the suit and the trial court considered the amended prayer and decided the suit on that basis. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold then a suit without such a prayer was of no avail to the plaintiffs. In all probability realising this difficulty the plaintiffs filed the application for amendment of the plaint seeking to introduce the prayer for setting aside the sale deeds. Unfortunately, the realisation came too late. Concededly, plaintiff no.2 Digamber attained majority on 5th August, 1975 and Vishwambhar, plaintiff no.1 attained majority on 20th July, 1978. Though the suit was filed on 30th November, 1980 the prayer seeking setting aside of the sale deeds was made in December, 1985. Article 60 of the Limitation Act, prescribes a period of three years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. Therefore, the trial Court rightly dismissed the suit filed by Digamber. The judgment of the trial court dismissing the suit was not challenged by him. Even assuming that as the suit filed by one of the plaintiffs was within time the entire suit could not be dismissed on the ground of limitation, in the absence of challenge against the dismissal of the suit filed by Digambar the first appellate court could not have interfered with that part of the decision of the trial court. Regarding the suit filed by Vishwambhar it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December, 1985) by introducing such a prayer by amendment of the

plaint the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances the amendment of the plaint could not come to the rescue of the plaintiff.

From the averments of the plaint it cannot be said that all the necessary averments for setting aside the sale deeds executed by Laxmibai were contained in the plaint and adding specific prayer for setting aside the sale deeds was a mere formality. As noted earlier, the basis of the suit as it stood before the amendment of the plaint was that the sale transactions made by Laxmibai as guardian of the minors were ab initio void and, therefore, liable to be ignored. By introducing the prayer for setting aside the sale deeds the basis of the suit was changed to one seeking setting aside the alienations of the property by the guardian. In such circumstance the suit for setting aside the transfers could be taken to have been filed on the date the amendment of the plaint was allowed and not earlier than that.

The first appellate court has based its judgment on well accepted principles of law and has given cogent reasons for not accepting the judgment of the trial court decreeing the suit filed by Vishwambhar. The High Court rightly confirmed the judgment of the first appellate court and dismissed the second appeal.

Thus, this appeal being devoid of merit, is dismissed. But in the circumstances of the case there will be no order for costs.

..J.

(D.P. Mohapatra)

..J.

(Doraiswamy Raju)

New Delhi;

Dated: July 20, 2001

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