
(2007) 10 KAR CK 0041

In the Karnataka High Court

Case No : Regular Second Appeal No. 1083 of 2002

Mallikarjuna

APPELLANT

Vs

Mareppa Madar, Basavarajappa Patil and Dr. Kavita

RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Hindu Minority and Guardianship Act, 1956 — Section 8

Citation : (2007) ILR (Kar) 5357 : (2008) 2 KarLJ 227

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : L.S. Chikikkanagowdar Assocs, for the Appellant; Mareppa, for R1, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—The plaintiff before the trial Court is the appellant herein and the suit filed by him for declaration and possession come to be allowed by the trial Court in O.S.No. 57/99 and the defendants preferred an appeal against the said judgment and decree of the trial Court before the lower Appellate Court in R.A.No. 18/2002 and the learned Judge of the lower Appellate Court reversed the judgment and decree of the trial Court by allowing the appeal preferred by the defendants 2 and 3 and suit of the plaintiff was dismissed. Against the said decision of the lower Appellate Court, the plaintiff has preferred this second appeal.

2. The facts in brief are to the effect that the appellant/plaintiff filed the suit in question praying for a declaration that the sale deed executed by the first defendant in favour of the second defendant is null and void and also for possession of the suit schedule property which is land bearing Survey No. 600 measuring 12 aces and 23 guntas of land, situated at Yadgir, Taluk and District Gulbarga. The plaintiff based his suit on the foundation that the suit schedule property was purchased by his father who is also the natural guardian-first defendant in the year 1981 under registered sale deed dated 7.8.1981.

Therefore, the appellant being the real owner of the suit schedule property, the first defendant being his natural father, could not have sold the same to the second defendant under the sale deed date 9.2.1982 without obtaining necessary permission from the Civil Court as required under Section-8 of the Hindu Minority and Guardianship Act, 1956 ["1956 Act" in short]. Secondly, it was also contended that as the suit land was in possession of the second defendant, the plaintiff has prayed for the relief of delivery of possession also. The said suit of the plaintiff was contested only by the second defendant by taking up the stand that the suit property was purchased by second defendant from the first defendant under registered sale-deed and since then, second defendant has been in possession and as such, the plaintiff is not entitled to the relief sought for by him. Another contention taken is to the effect that the suit of the plaintiff is barred by limitation because, age of the plaintiff has been shown in the registered sale deed dated 9.2.1983 as eight years and as such, the suit having been filed after the limitation period, therefore is liable to be dismissed.

3. The third defendant also adopted the very stand taken by the second defendant and sought for dismissal of the suit. It was also stated by him that the third defendant is the bonafide purchaser and the suit property was sold for necessity.

4. Based on the pleadings of the parties, the trial Court framed as many as nine issues and one additional issue and answered issues 1, 2, and additional issue No. 1 in the affirmative and issues 3 and 7 were answered in the negative and it was held that the suit of the plaintiff was well within the limitation period. Consequent to the said finding, the trial Court decreed the suit of the plaintiff by holding that the sale deed executed by the first defendant in favour of the second defendant is null and void and the plaintiff was to be put in possession of the suit property within sixty days by the defendants. This judgment and decree of the trial Court led to the appeal being preferred by the second and third defendants only and the learned Judge of the lower Appellate Court allowed the said appeal and dismissed the suit of the plaintiff and the reasons that led to the said decision were the suit schedule property was the ancestral property of the first defendant and as such, there was no requirement to obtain permission from the Civil Court u/s 8 of the Hindu Minority and Guardianship Act, 1956. The second reason was that suit property was sold for legal necessity and for the benefit of the minor and last reason given in that as the age of the plaintiff was mentioned as eight years in the sale deed executed by the first respondent in favour of the second defendant on 9.2.1982, recurring and taking the age from that period, the lower Appellate Court concluded that as on the date of filing of the present suit, same was barred by the limitation. The lower Appellate Court recorded a finding that plaintiff had attained the age of majority on 1.6.1996 and therefore, from the sold date suit was filed after the limitation period. Consequent to the said findings, the appeal was allowed by setting aside the judgment and decree of the trial Court and dismissing the suit of the plaintiff, and hence this second appeal has been preferred by the plaintiff.

5. I have heard the learned Counsel Shri L.S. Chikkanna Goudar for the appellant.

6. This Court had framed the following substantial questions for consideration at the time of admitting this appeal.

1) Whether the Appellate Court was justified in law in overlooking the legal requirement of Section 8 of the Hindu Minority and guardianship Act?

2) Whether the judgment of the Appellate Court is justified to law in holding that legal necessity is proved, in the absence of any pleading and proof by the alliance?

3) Whether the purchase by the third respondent herein during the pendency of the suit is hit by "lis pendens"?

7. The learned Counsel for the appellant submitted that the lower Appellate Court erred on all the three counts namely, the trial Court first of all erred in coming to the conclusion that no permission was needed to sell the property of the minor and Section 8 of the 1956 Act is not applicable. This finding is erroneous because, it is not in dispute that the suit property was purchased in the name of the appellant by the first defendant father as far back in the year 1981. Therefore, the appellant became the absolute owner of the suit property and as such, the first defendant being the natural guardian, without the previous permission of the Court could not have sold the suit property in favour of the second defendant. Secondly, it was Submitted that the suit property has become the absolute property of the appellant following the same having been purchased in his name by his father. There was no evidence placed by the defendants to show that the suit property was the ancestral property. In fact, the first defendant who is the father of the appellant did not contest the suit and was placed ex-parte. Therefore, the finding on this aspect is totally perverse and there is no evidence to show that the suit property remained as an ancestral property of the first defendant. Consequently, the further finding of the lower Appellate court that the suit property was sold for legal necessity also falls to the ground. Apart from this, the very requirement of Section 8 of the 1956 Act with regard to previous permission being sought from the Court and no such permission having been sought in the instant case, the alienation made by the first defendant is for legal necessity of not, does not assume much importance. Thirdly, it was submitted that the appellant has produced two documents Exs.P1 and P2 in proof of his date of birth and the lower Appellate court also having accepted that the said documents being public documents, could not have refused to accept the same and placing reliance on the age mentioned in the sale deed was totally unwarranted, and appreciation of evidence by the lower Appellate court therefore, is contrary to the provisions of Section 35 of the Evidences Act and the law laid down by the Apex Court in this regard. It is submitted that the date of birth of the appellant is 1.6.1978 and therefore, adding minority period of 18 years and further period of three years, the suit ought to have been filed on 1.6.1999 and as the present suit was filed on 9.4.99,

as such the suit was well within time. The lower Appellate Court therefore committed serious error in not appreciating the above evidence in proper perspective. As such, the judgment and decree of the lower Appellate Court deserves to be set-aside by restoring that of the trial Court. In support of the above submission, the learned Council place reliance on the decisions reported in State of Punjab Vs. Mohinder Singh, : Abdullah Vs. State of Rajasthan and Others, : Iruppakkatt Veetil Viswanathan's wife Santha Vs. Deceased Kandan's L.Rs. Wife Cherukutty and Others, and also Birad Mal Singhvi Vs. Anand Purohit,

8. On the other hand, learned Counsel Shri Basavaraj Kareddy for the 2nd respondent while supporting the judgment of the lower Appellate Court submitted that though the property was purchased in the name of the minor son, yet the amount was drawn from the business carried on by the father, and as such the property in question to ancestral property and hence alienation of it was for the benefit of the minor.

9. In the light of the above submissions made and the rulings cited, and taking into account the substantial questions of law framed by this Court, the first point that requires to be answered is "whether the lower Appellate Court erred in overlooking the legal requirement of Section 8 of the Hindu Minority and Guardianship Act, 1956?"

10. There is no dispute with regard to first defendant-father of the appellant having purchased the suit property in the name of the appellant under registered sale deed dated 7.8.1981. Therefore, no more proof is required as to who is the owner of the suit property. It is the appellant who is the absolute owner of the suit schedule property. It is also not in dispute that the suit property was sold by the first defendant during the minority of the appellant and the sale was affected in favour of the second defendant under registered sale deed dated 9.2.1983. Therefore, when there is no dispute as to the fact that the suit property was sold when the appellant was still a minor, therefore the need for the requirement of Section 8 of the 1956 Act being fulfilled will arise. The relevant provision of Section 8 reads as under:

Section 8: Powers of natural guardian:

1) ...

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 year 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-section (2) is voidable at the instance of the minor by any

person claiming under him.

4) ...

5) ...

6) ...

11. Therefore, it becomes clear from the above provision 8(2) of the Act of 1956 that the natural guardian shall not sell the immovable property of the minor without the previous permission of the Court. In the instant case, no such permission was obtained by the first defendant. As such, sale by the first defendant in violation of the mandatory provisions of Section-8 of the 1956 Act, will have to be held void.

12. Once the property has been held to be the property of the appellant/plaintiff, the question of the suit property remaining as the ancestral property of the first defendant does not arise. Apart from this, there is no evidence placed before the trial Court to show that the suit property partook the nature of ancestral property of the first defendant. In fact, the first defendant has not even contested the matter to throw light on this aspect. Once the property ceases to be the ancestral property, the question of suit property being sold for legal necessity or for benefit of the minor also loses its significance. Apart from this, there is no evidence to indicate that the suit property was sold for the benefit of this minor. Coming to the third aspect of the matter, the lower appellate Court held the view that suit of the appellant was barred by limitation and in arriving at this conclusion, it took note of the age mentioned in the sale deed executed in favour of the second defendant by the first defendant. No doubt, it is mentioned in the sale deed Ex.D2 that the age of the appellant is 8 years. But the appellant has produced two documents Ex.P1 and P2 in proof of his date of birth. Ex.P1 is the certified copy of the SSLC marks card and which shows the date of birth of the appellant as 1.6.1978. Ex.P2 is the transfer certificate issued by the institution confirming the date of birth as 1.6.1978. The lower Appellate Court has admitted that Ex.P1 is a public document, yet it refuses to act on the said document but goes on to take the age as per the contents of the sale deed Ex.D2. Such a procedure adopted by the lower Appellate Court cannot be approved both on facts and in law.

13. The Apex Court in the case of State of Punjab Vs. Mohinder Singh, , has held that in respect of date of birth, school records have more probative value. In another decision namely, Birad Mal Singhvi Vs. Anand Purohit, in the case of Birad Mal Singhvi v. Anand Purohit, it has been held by the Apex Court that an entry relating to date of birth made in the school register is relevant and admissible u/s 25 of the Evidence Act. It has further been held in the said case that if the entry in the school register regarding date of birth is made on the basis of the information given by the parents, the entry would have evidentiary value. In the instant case, it has been brought out in the evidence let in by the plaintiff's side that information regarding date of birth was given by none other

than his own father to the school authorities.

14. In the light of the aforesaid law laid down by the Apex Court, in the case on hand, Ex.P1 being the public document, refusal to accept the same in proof of date of birth of the appellant cannot be upheld and as such, the lower Appellate Court erred in applying the law properly in regard to the appreciation of evidence concerning the date of birth of the appellant. More over, mere mention of "8 years" in the sale deed Ex.P2 cannot be taken as proof of age of the appellant when the school records clearly mentions the date of birth of the appellant as 1.6.1978. The conclusion reached by the appellate Court in regard to date of birth of the appellant is erroneous and contrary to the evidence on record as well as contrary to the well established principles of law laid down by the Apex Court. Once the date of birth of the appellant is taken to have been proved as 1.6.1978, suit filed on 9.4.1999 is within the limitation period, because, the suit at the most ought to have been filed before 1.6.99, in other words, the appellant has filed the present suit almost two months before the completion of the limitation period. Hence, the finding of the lower Appellate Court cannot be sustained in law and is contrary to the provisions of the Limitation Act.

15. In view of the foregoing reasons, the lower Appellate Court's judgment cannot be upheld as it suffers from several infirmities requiring interference by this Court in second appeal. This case falls within the exceptions mentioned by the Apex Court in the case of Mst. Sugani v. Rameshwar Das and Anr. JT 2006(11) SC 268, wherein, it has been held that the High Court can interfere with the finding of the lower Appellate Court, if the conclusions drawn by the lower Appellate Court were erroneous being contrary to the mandatory provisions of law applicable, or its settled position on the basis of the pronouncement made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence. Therefore, interference is called for in this second appeal. The substantial questions of law raised therefore, stands answered according, and in so far as the purchase made by the third respondent is concerned, as the very first defendant himself could not have sold the suit property in favour of the second defendant by ignoring mandatory provisions of Section 8 of the Hindu minority and Guardian Ship Act, 1956, the subsequent sale therefore, cannot be held to be valid in law and consequently, the sale effected to favour of third defendant during the pendency of the suit is also hit by Section 52 of the Transfer of Property Act.

In the result, I pass the following order:

ORDER

- 1) The appeal is allowed.
- 2) The judgment and decree passed by the lower Appellant Court is set-aside and that of the trial Court is restored. No costs.
- 3) The defendants 2 and 3 are directed to hand over the suit property to the

appellant within a period of two months from the date of receipt of a copy of this judgment.