

(1999) 11 BOM CK 0009
In the Bombay High Court
Case No : First Appeal No. 78 of 1999

Smt. Sandhya Rajan Antapurkar and Others	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 25-11-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Guardians and Wards Act, 1890 — Section 29
Hindu Minority and Guardianship Act, 1956 — Section 12, 6, 8

Citation : (2000) 2 ALLMR 331 : (2000) 2 BomCR 832 : (2000) 2 CivCC 60 :
(2001) 1 DMC 135 : (2000) 2 MhLj 58 : (2000) 2 MhLj 158

Hon'ble Judges : A.S. Bagga, J

Bench : Single Bench

Advocate : L.V. Sangeet, for the Appellant; Smita Deshpande, Asstt. Govt.
Pleader, for the Respondent

Judgement

A.S. Bagga, J.—This appeal is filed against the judgment and order passed on 4-1-1999 in Misc. Civil Application No. 130 of 1998 by the Joint Civil Judge, S.D., Jalgaon.

2. Misc. Civil Application came to be filed by the appellants seeking permission for sale of property (house property) in which the appellants have 1/ 5th share.

3. The property originally belonged to one Madhukar Pandurang Antapurkar who died on 3-3-1995 leaving behind him two sons Rajan and Anil and three daughters namely; Vijaya, Rajni and Sunita. Rajan died on 5-5-1995 leaving behind him widow Sandhya and daughters Shweta and Kavita-the appellants herein. Deceased Rajan had got 1/5th share in the property that has devolved upon present appellants. The property, which is intended to be sold, admittedly is a joint family property in which appellants have 1/ 5th share. The permission for sale is sought u/s 8 of the Hindu Minority and Guardianship Act, 1956 and, section 29 of the Guardians and Wards Act, 1890.

4. The learned Judge dismissed the application observing that the power of

natural guardian to deal with the Immovable property of minor u/s 8 of the Hindu Minority and Guardianship Act is in relation to minor's definite property. Since minor's fluctuating interest is in joint family property, section 8 of the Act does not apply. It is against the aforesaid rejection, the present appeal has been preferred by the appellants.

5. The only point to be decided in this appeal is whether the permission u/s 8 of Hindu Minority and Guardianship Act, 1956 or u/s 29 of the Guardians and Wards Act, 1890 in the present case is necessary.

6. The property is admittedly joint family property in which Smt. Sandhya and her minor daughters Shweta and Kavita have share. Smt. Sandhya is mother and natural guardian of Shweta and Kavita minor daughters. The property admittedly has not been divided by metes and bounds and minor daughters Shweta and Kavita have undivided and unspecified share in the same.

7. u/s 6 of the Hindu Minority and Guardianship Act, 1956, the father and after him the mother is natural guardian of Hindu minor in respect of minor person as well as in respect of the minor's property. The undivided interest of the minor in joint family property has been specifically excluded by this section.

8. Section 8 of the Hindu Minority and Guardianship Act, 1956 prevents natural guardian of Hindu minor to transfer by sale, gift, exchange or otherwise any part of immovable property of the minor without previous permission of the Court. This restriction on the natural guardian in relation to the property of the minor applies only to the separate or absolute property of the minor. It does not include the minor's undivided share in the joint family property, as, u/s 6, there cannot be a natural guardian in respect of such property which is specifically excluded.

9. The appellant No. 1 Smt. Sandhya is not natural guardian with regard to undivided and fluctuating interest of minors-appellant No. 2, and 3. Section 12 of the Act declares that no guardian can be appointed with regard to the undivided interest of the minor in joint family property. The courts have consistently held that under the Guardians and Wards Act also no legal guardian can be appointed in respect of undivided interest of the minor in joint family property unless minor is the sole surviving coparceners.

10. Appellant No. 1 Smt. Sandhya having undivided share alongwith the appellants Nos. 2 and 3 and the share being undivided and fluctuating, the provisions of section 8 do not apply in this case.

11. Under the Hindu Law, the manager or karta of the family of the minor can alienate minor's undivided interest in the joint family property without the permission of the Court, provided alienation is for legal necessity or for the benefit of the minor and this right is left untouched by the Hindu Minority and Guardianship Act, 1956. This is made clear by providing in section 12 of the Act that when the joint family property is under the management of an adult member of the family, no guardian shall be appointed for the undivided interest

of the minor in the joint family property.

12. In view of what has been stated above, no fault can be found with the order of learned Judge below rejecting application of the appellants. The appeal, in the result will have to be dismissed with no order as to costs.

13. Appeal dismissed.