

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 66 of 2003**

- Hemsagar, Aged about 40 years, S/o. Govind Ram Sahu, R/o Village – Gudeli Tahsil – Sarangarh, Dist: Raigarh (C.G.)

---- Appellant

Versus

1. Janak Ram, S/o Devcharan Sahu Aged about 17 years Represented by legal guardian Father Dev Charan Sahu, aged about 37 years, R/o Village – Sariya Tahsil – Sarangarh, Dist- Raigarh (C.G.)
2. State of Chhattisgarh Through the Collector, Raigarh (CG)
3. Murlidhar Pradhan, S/o Dukhu Pradhan, aged about 44 years, Caste – Kolta, Occupation – Farmer
4. Anand Kumar S/o Lakhapai, Nishad, aged about 33 years, Caste – Kenwat, Occupation – Farmer, both are R/o Village – Nadigaon, Tahsil – Sarangarh, District Raigarh (C.G.)

---- Respondents

For Appellant	:	Shri S.C. Verma, Advocate with Shri Hemant Kumar Agrawal, Advocate
For Respondent/State	:	Shri Sameer Behar, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****22/11/2018**

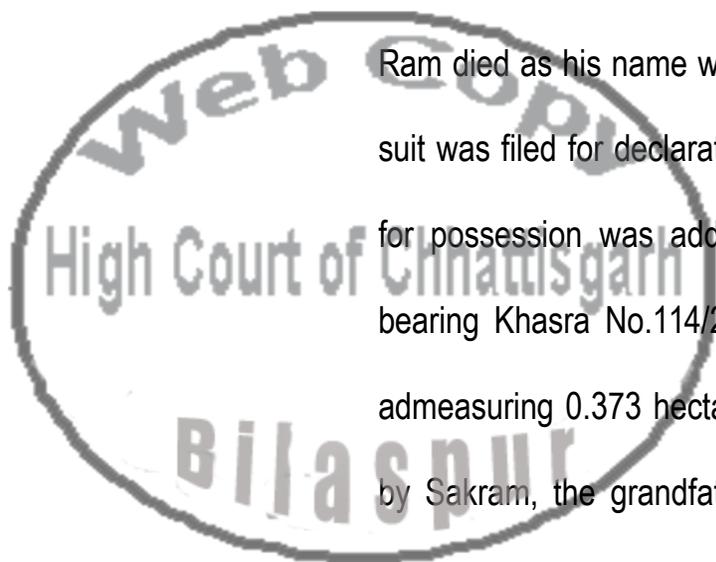
1. Heard.
2. The present appeal is against the judgment and decree dated 03.01.2003 passed in Civil Suit No.68A /99 by the Second Additional District Judge, Raigarh, whereby the suit was decreed in favour of the plaintiff Janak Ram, the minor, by

holding that the sale deed dated 09.02.1998 executed by his grandfather in favour of Hemsagar the defendant No.1 was not binding on the plaintiff. Further it was decreed that the plaintiff was entitled for the possession over the suit land and is the owner of the suit land.

3. The plaintiff Janak Ram, who was 17 years old at the time of filing of the suit, filed the suit through his next friend/guardian father namely Devcharan Sahu against his grandfather Sakram and the purchaser of the land namely Hemsagar.

During the pendency of the suit the Sakram, who was the grandfather of Janak Ram died as his name was deleted from plaint. The plaintiff contended that the suit was filed for declaration, permanent injunction and subsequently the prayer for possession was added. It was stated that at village Nandigaon a land bearing Khasra No.114/2, admeasuring 0.452 hectares and Khasra No.114/3, admeasuring 0.373 hectares, which was described as suit land was purchased by Sakram, the grandfather of the plaintiff Janakram. It was stated that the grandfather subsequently on 09.02.1998 sold the subject land to Hemsagar and thereafter Hemsagar got his name mutated in the revenue records.

4. The perusal of the record would show that initially a suit was filed by the plaintiff before the Additional Judge Class-I, Sarangarh to the Court of Civil Judge, Class-I, Raigarh for declaration and permanent injunction wherein the valuation of the suit was objected, subsequently the suit was filed with a valuation of Rs.72000/-, which was scribed in the sale deed. It was stated that the suit land bearing Khasra No.114/2, admeasuring 0.452 hectares and Khasra No.114/3, admeasuring 0.373 hectares was purchased in the name of the plaintiff Janak



Ram while he was minor and in order to safeguard the interest of the minor, the name of the grandfather Sakram was also shown in the sale deed. It was stated that the plaintiff was in possession of the suit land. The date of birth of the minor was stated to be 30.05.1981 and on the date of filing of the suit he was still a minor of 17 years as such the suit was filed by the natural guardian and next friend of the minor. The pleading also contains the fact that the defendant No.1 Hemsagar was brother-in-law to Sakram, the grandfather of the plaintiff. It was stated that Sakram, the grandfather without the legal necessity and without adequate sale consideration, sold the land to Hemsagar and at the time of the execution of the sale Sakram due to his old age, lost his senses to understand the facts and taking advantage of that, the sale deed was got executed. It was stated that according to the Hindu Minority & Guardianship Act, 1956 (for short 'the Act, 1956') no permission was obtained from the Court before execution of the sale deed and during the pendency of the suit in the year 1991 Sakram died and subsequent thereto on the basis of the sale deed, in the revenue records, the name of the defendant was mutated. It was stated that the said sale deed is voidable and is not binding on the plaintiff. The plaintiff further pleaded that because of the mutation made, the defendant started interfering in the possession of the plaintiff, therefore, necessity of the filing of the suit arose. The plaint would reveal that during the pendency of the suit, a prayer was added that if the court finds that the plaintiff is not in possession, then in such case, the possession of the suit property may be given to the plaintiff.

5. The defendant No.2, the State, remained ex-parte. Deceased Sakram, while he

was alive also did not file any written-statement. The purchaser defendant No.1 Hemsagar filed his written-statement and denied that the plaintiff was in possession of the suit house. It was stated that the deceased Sakram from whom the land was purchased was the owner of the suit property and during his lifetime for his need, after receipt of the sale consideration, the sale deed was executed and thereafter the possession of the suit land was given to Hemsagar. It was further pleaded that after the purchase, the defendant is in possession of suit land and the provisions of the Act, 1956 would not be applicable in the case, as such the requirement to obtain the permission from the Court was not necessary. Further the defendant pleaded that the subject suit property was purchased by Sakram by his own earning and no sale consideration was paid at the time of the purchase by the father of Janakram and Janakram was a minor. Therefore, the prayer was made for dismissal of suit.

6. On the basis of the pleading of the parties, learned Court below framed six issues and held that the plaintiff was entitled for a decree to declare that the sale deed dated 09.02.1998 is not binding on him. The Court further held that the defendant failed to prove that the suit property was the self acquired property of Sakram. With respect to the possession, the Court held that the plaintiff was not in possession, and possession decree was passed.
7. Learned counsel for the appellant/defendant No.1 Hemsagar would submit that according to the statement of Devcharan Sahu, the father of Janakram it was admitted that the suit property was purchased in name of Janakram, meaning thereby Sakram had purchased the land in name of Janakram. It is further

submitted that the plaintiff witness No.4 namely Siril Ekka also admitted the fact that at the time of purchase of the land in name of Janakram, sale consideration was not paid by Devcharan Sahu and it was paid by Sakram, therefore, the ownership of the property belongs to Sakram. It is further contended that over the suit property the provisions of the Act, 1956 would not be applicable as the said property was not acquired through inheritance, consequently the application of Section 8 of the Act, 1956 by the Court below is wrong and the decree is liable to be set aside.

8. No representation is made on behalf of the respondent despite repeated calls and pass over.

9. I have heard learned counsel for the appellant and perused the record.

10. The perusal of the plaint would show that a suit was filed by Janakram, who was the minor at the time of filing of the suit and minor was represented through his father Devcharan Sahu, the natural guardian and next friend. Pleading contains the fact that the plaintiff Janakram was born on 30.05.1981, said date of birth is been proved by production of mark-sheet of middle school, which is marked as Ex. P-1 and is not rebutted.

11. As per Devcharan Sahu (PW-1), Janakram is his son. He has deposed that the land situates at village Nandigaon and is an agricultural land, wherein they were cultivating. The witness stated that the said land was purchased in name of Janakram. The sale deed in favour of Janakram is marked as Ex.P-8. According to the said sale deed the land was sold by one minor Suresh Chandra through his grandfather namely Jainarayan in favour of Janakram S/o Devcharan

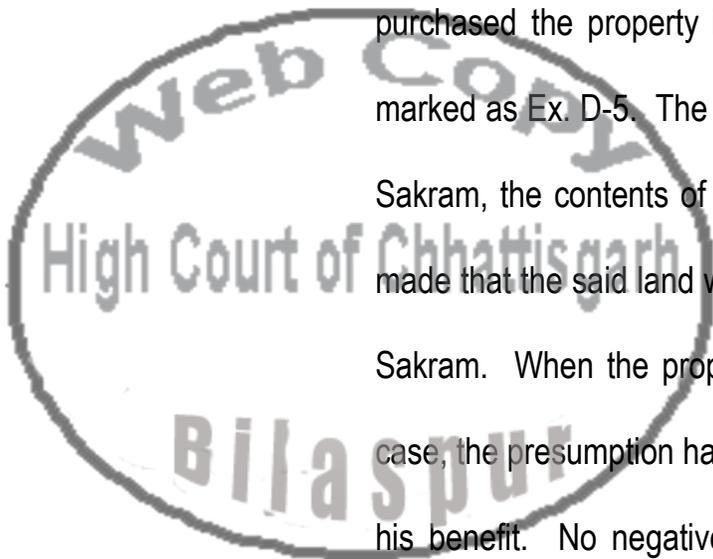
Sahu on 12th of April, 1988. In the said sale deed the purchaser is described as minor namely Janakram S/o Devcharan Sahu, aged about 6 years represented through his guardian grandfather Sakram S/o Kunjram. Subsequent document Ex. P-2, which is B1 Kistbandhi Khatauni of bhumiswamil rights shows that the land bearing Khasra No.114/2 and 114/3 was recorded in the name of minor Janakram. Likewise, the map of the Khasra is marked as Ex. P-3 and Khasra Panchshala is marked as Ex. P-4 and the certified copy of the order of the Tehsildar, wherein the name of Janakram was recorded is marked as Ex. P-5.

The resolution of the Gram Panchayat is marked as Ex. P-6. Reading of the documents cumulatively from Ex. P-1 to Ex. P-6 demonstrates that the subject land was purchased in name of Janakram, the then minor and after purchase of the land his name was recorded in the revenue records of rights. Such documents have a presumptive value of correctness and sale deed Ex. P-8 whereby the property is said to have been purchased do not reflect that it was a sham and bogus sale deed. The name of Janakram recorded in revenue records fortifies the fact that the property was purchased in name of minor Janakram through his grandfather Sakram.

12. The subject sale deed which was under challenge dated 09.02.1998 was executed by minor Janakram through his grandfather Sakram in favour of Hemsagar. The sale deed of suit property is marked as Ex. P-9. Ex. D-1 is document produced by the defendant. Ex. P-9 is the certified copy of the sale deed and the document Ex. D-1 is the original sale deed, are one and the same. Devcharan Sahu (PW-1), father of Janakram, stated that in the suit property they are in possession and even after the sale deed executed they hold their

possession on the land. He stated that the sale deed while was executed by Sakram he was weak & old and infirm for such reason his mental capacity to understand things were not good and his mind was not properly working and he was unable to evaluate good and bad things. It is stated that taking advantage of same at the instance of Hemsagar, the sale deed was executed. He further stated that the sale deed was executed without the consent of Janakram or him.

13. The defendant Hemsagar (DW-1) has exhibited a document Ex. D-4, which shows that Sakram has sold certain property on 14.03.1988, thereafter, he has purchased the property in the name of Janakram in the Rin Pustika which is marked as Ex. D-5. The purchase which was made in the name of Janakram by Sakram, the contents of the sale deed do not say so or any whisper has been made that the said land was purchased in lieu of the property sold by Ex. D-4 by Sakram. When the property is purchased in name of the minor, then in such case, the presumption has to lean in favour of the minor that it was purchased for his benefit. No negative presumption can be made in absence of any clear evidence to negate such transaction. The property which was sold by Sakram by Ex. D-4 was for consideration of Rs.40500/- and the purchase made in name of Janakram by Sakram was for a sale consideration of Rs.16,400/-, therefore, remotely it cannot be assumed that Janakram wanted to have a land at different site, therefore, had purchased after sale of the certain property in other village. It may also happen that out of love and affection, the property was purchased in name of Janakram by his grandfather. In case, when the beneficiary is a minor then the law will hold the sway to presume that the purchase so made were for the minor.



14. Devcharan Sahu (PW-1) at para 10 of his statement has stated that Sakram had purchased the property in name of Janakram. Reading it with the statement of Siril Ekka (PW-4), wherein he has stated that the property was purchased by Devcharan Sahu, the presumption of the fact that the property actually was held and owned by Sakram is also not established. The statement given by the witness cannot be read in a fashion to draw a negative presumption when the beneficiary is a minor. Statement of Devcharan Sahu (PW-1) that apart from the subject land certain other lands were purchased in name of Janakram by Sakram which were sold to Lingraj, Dukalu and Kangalu cannot be of much help to the defendant as those facts are not before the Court to consider. It is only a bald statement. The defendant if he was sanguine of the fact should have confronted the statement with the certified copy of the sale deed, in absence of thereof no presumption can be arrived at.

15. Section 4B of the Act, 1956 defines the guardian, which reads as under :-

“4. Definitions.—In this Act,—

- (a) xxx xxx xxx
- (b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes -
 - (i) a natural guardian,
 - (ii) a guardian appointed by the will of the minor’s father or mother,
 - (iii) a guardian appointed or declared by a court, and
 - (iv) a person empowered to act as such by or under any enactment relating to any court of wards;
- (c) “natural guardian” means any of the guardians mentioned in section 6.”

16. As per Section of 6 of the Act, 1956 the natural guardian of a Hindu minor, in case of a boy would be the father, and after him, the mother. In this case, the

father who is the natural guardian namely Devcharan Sahu (PW-1) has stated that he had not consented for the sale.

17. Section of 8 of the Act, 1956 defines the powers of natural guardian. The relevant part of Section 8 is reproduced hereunder:-

- “8. Powers of natural guardian.—**(1) 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 realisation, protection or benefit of the minor’s estate; but the guardian can in no case bind the minor by a personal covenant.
- (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 years 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 or by any person claiming under him.
- (4) xxx xxx xxx
- (5) xxx xxx xxx
- (6) In this section “court” means the city civil court or a district court or a court empowered under section 4A of the Guardian and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.”

18. In this case it appears that no permission was obtained from any competent Court, therefore, in absence of any permission, the transaction certainly would be hit by Section 8 of the Act, 1956 and sale would always be voidable at the instance of minor or guardian or next friend acting on his behalf. Under these circumstances, the finding arrived at by the Court below that the property held in

name of minor was sold by his grandfather without obtaining the permission from the Court under Section 8 of the Act, 1956, would be a correct proposition in the facts of this case. In a result, after entire scrutiny & evaluation of the evidence, I am of the opinion that no fault can be attributed to the decree passed by the Court below.

19. The appeal has no merits. It is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

