
(2014) 10 MAD CK 0048

In the Madras High Court

Case No : Civil Miscellaneous Appeal Nos. 2155 and 2363 of 2013

J. Suganth

APPELLANT

Vs

Minor Mahema
Minor Mahema Vs E.K. Lingamoorthy

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Guardians and Wards Act, 1890 — Section 10, 10(1), 10(3), 11, 29
Hindu Minority and Guardianship Act, 1956 — Section 6, 6(a), 8, 8(2), 8(4)

Citation : (2015) 1 CTC 594 : (2014) 5 LW 42 : (2014) 7 MLJ 707

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Judgement

R. Subbiah, J.—Both the above appeals arise out the judgment and decree dated 20.02.2013 in G.W.O.P. No.10 of 2010 passed by the learned Principal District Judge, Erode. Since both the appeals arise out the same judgment and decree, they are dispose of by way of this common judgment.

2. The minor appellants represented by their mother in C.M.A. No.2155 of 2013 are the petitioners, the respondents in said appeal are the prospective buyers of the minors" property and the appellants in C.M.A. No.2363 of 2013 are the Objectors/third party, who apposed to grant permission to sell the minors" property, in the said GWOP before the Court below. Since the said GWOP.No.10 of 2010 was dismissed, challenging the order of dismissal made in the said GWOP, the petitioners have filed the present appeal in C.M.A. No.2155 of 2013. Questioning the observation made by the Court below in the said GWOP, to the effect that the unregistered Will dated 17.03.2008 marked on the side of the Objectors is surrounded by suspicion, the Objectors have filed the appeal in C.M.A. No.2363 of 2013.

3. For the sake of convenience, the appellants in C.M.A. No.2155 of 2013 are referred as petitioners and the appellants in C.M.A. No.2363 of 2013 are referred as objectors and the prospective buyers, who are the respondents in C.M.A. No.2155 of 2013 and arrayed as the respondents 3 & 4 in C.M.A. No.2363 of

2013, are referred as respondents.

4. The brief facts of the case of the petitioners, in nutshell, are as follows:- The minor petitioners are twins and their parents are one L.Gopalakrishnan and G.Kalaivani. Their paternal grand-father was one Lakshmanan, who was previously running hotel business at Erode town. The minor petitioners' paternal grand-father Lakshmanan made very good earnings and acquired several properties in the form of mostly commercial buildings fetching very good monthly rents, besides two house sites and small extent of dry land described in the schedule to the petition. The father of the minor petitioners met with a fatal road accident and died on 24.05.2004 at an early age, leaving behind the minor petitioners, his widow. Thereafter, the grand-father Lakshmanan was taking care of the minors and their mother G.Kalaivani. Initially, the grand-father Lakshmanan executed a Will bequeathing several items of properties viz., buildings, two house sites and the dry land (petition scheduled property) in favour of the minor petitioners. Subsequently, the said Lakshmanan executed a registered settlement deed, through which he had conveyed all the other items of the properties in favour of the minor petitioners, through their mother Kalaivani, delivering immediate possession of all those properties to them. The landed property viz., the petition scheduled property was the only item left behind in the above said Will in favour of the minor petitioners. Subsequently, the testator Lakshmanan also died on 27.08.2009 and thereafter, the properties devolved upon the minors and the same now belong exclusively to the minor petitioners. The minor petitioners have leased out several items of the buildings settled in their favour and they are deriving decent income. The minor petitioners are being looked after and educated by their guardian/mother Kalaivani in the proper manner. But, they are not having any residential building of their own and they are actually residing in a rented building with their guardian/mother Kalaivani. They are also having two house sites, situated adjacently, obtained by them through the settlement deed and it was the intention of their grand-father late Lakshmanan to put up a residential house for them in the said site by selling away the petition scheduled property. The dry land measuring to an extent of 56 cents described in the schedule to the petition is not having any proper approach road and it could be reached only by a foot path, through which men or cattle can pass. The carts and other vehicles could not be taken to the said land even for the purpose of manuring and cultivating the same. Though there is well, since the carts and other vehicles could not be taken to the said land, the petition scheduled property remains uncultivated for the past several years and therefore, the said land is yielding absolutely no income at all. On the other hand, if it is sold now, it will fetch decent price at the rate of Rs.250 to Rs.300 per sq.ft and such sale price to be obtained by the minors could be very profitably utilized by them for putting up a residential house in the house sites now possessed by them, situated in Sanjay Nagar, Erode Town. Hence, in the best interest of the minors, it will be very profitable to sell away the petition scheduled property at very profitable rate, and to construct a residential house

for them with available funds. The respondents are negotiating to purchase the said property, as they are in possession of adjacent house site property which has got an approach to the main road. Hence, the petition in G.W.O.P. No.10 of 2010 has been filed before the Court below by the minor petitioners, represented by their mother as natural guardian, seeking permission of the Court to alienate the subject property of the minors by way of sale.

5. The said GWOP was filed by the petitioners on 20.04.2010. In the said GWOP, on 16.08.2010 the Court below has ordered for paper publication in any one of the issues of Malaimalar daily, calling for objections if any. On seeing the publication in Malaimalar daily published on 27.08.2010, the third parties/objectors, who are the sons of the sister of the minor petitioners' father, have filed a objection petition in I.A. No.1469 of 1010 on 16.09.2010 in the said GWOP, stating that the mother of the minor petitioners is not a fit person to act as next friend/guardian of the minor petitioners. In fact, a claim petition in M.C.O.P. No.399 of 2005 was filed only by the maternal grand-father Sundrasamy on behalf of the minor petitioners claiming compensation for the death of their father who had died in a road accident. The proposed guardian Kalaivani was the 1st respondent in the above said MCOP. That being so, the mother Kalaivani cannot be appointed as guardian for the minors now. The guardianship cannot be changed case to case, according to the whims and fancies of the petitioners. It is further case of the objectors that the petition scheduled property is their property and hence, the minor petitioners have no right, title or possession over the same. Further, the land, in which the proposed construction to be made by the petitioners, is the subject matter of a suit in O.S. No.279 of 2009 pending on the file of the learned Principal District Judge at Erode. As there are 21 residential houses in Erode town owned by the minor petitioners, there is no necessity for the petitioners to build a new house at Sanjay Nagar, Erode. Thus, the objectors objected for selling the petition scheduled property.

6. The mother of the minor petitioners viz., Kalaivani has filed a reply to the objections filed by the objectors, stating that she is the natural lawful guardian of the minor petitioners, as she is their mother. Further, the objection of the objectors that since in MCOP.399/2005 the maternal grand-father was appointed as guardian of the minors, he must continue as next friend/guardian for the minors in the present petition also is unsustainable. Since she had filed a separate claim petition for the death of her husband, in the claim petition filed by the minors their maternal grand-father was appointed as their guardian. Since the minors' maternal grand-father was shown as guardian in the MCOP, it does not mean that the mother of the minors, who is the natural guardian, cannot act as next friend/guardian for the minors in the present petition. In fact, in the suit in O.S. No.279 of 2009 filed by the objectors, the mother Kalaivani was impleaded as 1st defendant and the minors were impleaded as defendants 2 & 3 and the minors were represented by the guardian/mother Kalaivani. Therefore, the contention of the objectors that the mother Kalaivani is not a fit person to act

as guardian of the minors in the present petition is baseless and frivolous. The allegations of the objectors that there are 21 residential houses in Erode Town and there is no necessity for the petitioners to build a new house at Sanjay Nagar at Erode is incorrect and unsustainable, since the houses now belonging to the petitioners are not convenient for their occupation. The said houses have been leased out to tenants and the petitioners are living in a rented house. Further, Sanjay Nagar is the proper and fit residential area for the minor petitioners, where they propose to put up a new construction for their residence.

7. In order to substantiate their case, on the side of the minor petitioners, the mother of the minor petitioners examined herself as P.W.1, besides examining three other witnesses as P.W.2 to P.W.4 and registered Will, dated 21.03.2007, was marked as Ex.P.1. On the side of the objectors, the second Objector Raghunandhan examined himself as R.W.1, besides examining two other witnesses as R.W.2 & R.W.3 and eight documents were marked as Ex.R.1 to Ex.P.8, including the unregistered Will dated 17.03.2008 as Ex.R.6.

8. The Trial Court, after analysing the entire evidence both oral and documentary, has made a detailed discussion with regard to the Wills produced on either side and made an observation that the unregistered Will dated 17.03.2008 (Ex.R.6) produced by the objectors cannot be given much importance and further held that the registered Will dated 21.03.2007 (Ex.P.1) produced on the side of the petitioners is true and genuine Will executed by late Lakshmanan and thus, negated the case projected by the objectors based on the unregistered Will dated 17.03.2008. However, the Trial Court has dismissed the said GWOP on a finding that there is no need or necessity for the petitioners for putting up construction and the documents produced on the side of the petitioners would show that there are residential houses available to the petitioners and the petition mentioned property is situated in prime locality, within the corporation limit of Erode and the value of the land is also likely to be increased every year. Thus, the Trial Court has declined to grant permission to the petitioners to sell the property and dismissed the petition. Aggrieved over the dismissal of the petition, the petitioners have filed by the present appeal in C.M.A. No.2155 of 2013. The Objectors have filed the appeal in C.M.A. No.2363 of 2013 challenging the observation made by the Trial Court with regard to the unregistered Will dated 17.03.2008.

9. The learned counsel for the objectors submitted that a person, who wants to invoke Section 8(2) of the Hindu Minority and Guardianship Act, 1956, to sell the immovable property of a minor, shall be appointed as guardian of the minor or property or both by a competent Court. Further, without being appointed as guardian of a minor, a person cannot invoke Section 8(2) of the Hindu Minority and Guardianship Act, 1956. In this regard, the learned counsel for the Objectors, by inviting the attention of this Court to Section 8(4) of the said Act, submitted that no Court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) to Section 8, except in case of necessity

or for an evident advantage of the minor. Therefore, only when there is necessity to sell the minor's property, the Court can grant permission to sell the property of the minor. Even if there is any necessity to sell the property, first, the person who intends to invoke Section 8(2) of the said Act has to be appointed by a competent Court as a guardian of the minor.

10. The learned counsel for the objectors, by inviting the attention of this Court to Section 8(5) of the Act, has further submitted that the application for obtaining the permission of the Court under Sub-section (2), shall be treated, in all respects, as if, it were an application for obtaining the permission of the Court under Section 29 of the Guardian and Wards Act, 1890. Thus, the learned counsel for the objectors submitted that a person, who wants to invoke section 8(2) of the Hindu Minority and Guardianship Act, 1956 has to fall back to Section 29 of the Guardians and Wards Act 1890, to follow the procedures to sell the property of the minor. As per Section 29 of the Guardians and Wards Act, 1890, except the Collector and the guardian appointed by a Will or other instrument, if a person appointed/declared by a competent Court to be the guardian of the property of a ward, wants to sell the property of the minor, he has to obtain the permission of the Court to sell the property. Thus, the learned counsel for the petitioners submitted that except the Collector and a person appointed as a guardian by a Will or other instrument, if any other person wants to sell the minor's property, before obtaining the permission of the Court, first necessarily he/she has to be appointed as a guardian of the minor's property. Since section 8(5) of the Hindu Minority and Guardianship Act says that the application filed under Section 8(2) by the natural guardian seeking the permission of the Court to sell the minor's property shall be treated in all respects as if it were an application for obtaining the permission of the Court under Section 29 of that Act, the natural guardian who seeks the permission of the Court to sell the minor's property first necessarily has to be appointed as a guardian of the minor's property as per Section 7 of the Guardians and Wards Act, 1890. But, in the instant case, no prayer was made by the minors' mother to appoint her as a guardian of the minors' property.

11. In this regard, the learned counsel for the objectors further submitted that a person, who is seeking to be appointed as a guardian of a minor or his property or both, has to furnish particulars in a form of application, as mentioned in Clauses (a) to (l) in Section 10(1) of the Guardians and Wards Act, 1890. Whereas, in the instant case, the mother of the minors has not given the proper particulars as required under Section 10(1) of the Guardians and Wards Act, 1890 and since she has not got appointed as guardian of the minors' property by the competent Court, she has no locus standi to represent the minors as guardian/next friend. Therefore, the petition filed by the petitioners is not maintainable and the same is liable to be dismissed.

12. Further, the learned counsel for the objectors has also relied upon the judgment reported in *Rabindra Nath Mukherjee Vs. Abinash Chandra*

Chatterjee, , in support of his contention that if an application for appointment of guardian for the person or property of a minor is not in conformity with Section 10(3) of the Guardians and Wards Act, 1890, then the same cannot be proceeded with under Section 11 of the Guardians and Wards Act, 1890. The learned counsel for the objectors submitted that since the mother of the minor petitioners has not made any prayer to appoint her as a guardian of minors' property by furnishing the particulars as required under Section 10(3) of the Guardians and Wards Act, 1890, the Court below ought to have dismissed the said petition, without entering into the discussion about the case put forth on either side, only on the ground that the petition itself is not maintainable. Whereas, the Court below, by making a detailed discussion, has observed that the unregistered Will dated 17.03.2008 produced on the side of the objectors is surrounded by suspicion and thus, come to the conclusion that the registered Will dated 21.03.2007 produced on the side of the petitioners is true Will. According to the learned counsel for the objectors, the discussion made by the Court below with regard to the Wills produced on either side is totally beyond the scope of the prayer made in the petition filed by the petitioners seeking permission of the Court to sell the property of the minors represented by their mother. In this regard, the learned counsel for the objectors further submitted that the objectors have already filed a suit in O.S. No.279 of 2009 on the file of the learned Principal District Judge at Erode, for partition in respect of the subject property. Now, the observation made by the Court below with regard to the Wills produced by the parties, would affect the case of the objectors in the suit in O.S. No.279 of 2009. Therefore, by setting aside the said observations made by the Court below in respect of the Will produced on the side of the objectors, this Court has to hold that as the mother of the minor petitioners has filed the petition without obtaining the order of the Court appointing her as guardian of the minors' property, the petition filed by her itself is not maintainable.

13. That apart, the learned counsel for the objectors further submitted that in the claim petition filed in respect of the death of the minors' father, the maternal grand-father of the minors alone represented the minors as their guardian. Therefore, now they cannot change the guardianship according to their whims and fancies.

14. Per contra, the learned counsel for the petitioners submitted that the petition under Section 8(2) of the Hindu Minority and Guardianship Act has been filed by the mother of the minors seeking the permission of the Court to sell the minors' property only as natural guardian and since she is the natural guardian, absolutely there is no need to get herself appointed as guardian of the minors' property by the order of the competent Court. Only if the persons other than the natural guardian intend to sell the minor's property, they have to obtain necessary orders appointing themselves as guardian of the minor's property as required under Section 29 of the Guardians and Wards Act, 1890. In this regard, the learned counsel for the petitioners submitted that Section 29 of the

Guardians and Wards Act, 1890 cannot be made applicable to the natural guardian, since the definition for "guardian" under Section 4(2) of Guardians and Wards Act 1890 does not mean the natural guardian. Thus, the learned counsel for the petitioners submitted that the submissions made by the learned counsel for the objectors that as the petitioners have not furnished the particulars as required under Section 10(1) of the Guardians and Wards Act, the petition is not maintainable, has no significance in this matter, since there is no need for the natural guardian to get herself/himself appointed as guardian of the minor by the order of the competent Court. Therefore, the question of dismissing the petition filed by the mother of the minors seeking the permission of the Court to sell the minors' property on the ground of maintainability does not arise in this case.

15. With regard to the observation made by the Court below in respect of the unregistered Will dated 17.03.2008 (Ex.R.6) produced on the side of the objectors, the learned counsel for the petitioners submitted that the said observations were made by the Court below only based on the evidence adduced on the side of the objectors and therefore, it cannot be said that the observations made by the Court below is beyond the purview of the evidence placed before it. Under such circumstances, there is no need to set aside the said observations made by the Court below.

16. With regard to the denial of the permission to sell the minors' property by the Court below, it is the submission of the learned counsel for the petitioners that the Court below had failed to consider the intention of the petitioners for selling the subject property. The petitioners intend to sell the subject property only to construct a residential building for the benefit of the minors, since the subject property is not yielding any income. Further more, before the Court below it has been clearly established by the petitioners that the subject property situated in undeveloped area without having any proper approach road. Under such circumstances, the Court below ought to have come to the conclusion that the subject property is in no way beneficial to the minor petitioners in its present position and thus, the Court below ought to have allowed the petition. Thus, the learned counsel for the petitioners submitted that by setting aside the reasons stated by the Court below for dismissing the petition, permission may be granted to the mother of the minor petitioners to sell the subject property on behalf of the minors.

17. Heard the submissions made on either side and perused the materials available on record.

18. In view of the submissions made on either side, now, the following questions fall for consideration-

(I) Whether the mother of the minor petitioners is entitled to invoke Section 8(2) of the Hindu Minority and Guardians Act, 1956, seeking permission of the Court to sell the minors' property, without getting herself appointed as guardian of the

minors" property by order of the competent Court?

(II) Since the minor petitioners were represented by their maternal grand-father as guardian in another proceedings in M.C.O.P. No.399 of 2005, whether now the mother of the minor petitioners can represent them as natural guardian in the present petition filed under Section 8(2) of the Hindu Minority and Guardianship Act, 1956?

(III) Whether the observation made by the Court below in respect of the unregistered Will dated 17.03.2008 (Ex.R.6) produced on the side of the objectors is unwarranted and whether the same is liable to be set aside?

(IV) Whether the reasons assigned by the Court below in not granting permission to the mother of the minors to sell the property of the minors is liable to be set aside?

19. Question No.(I) It is the main submission of the learned counsel for the objectors that under Section 8(4) of the Hindu Minority and Guardianship Act, 1956, the Court should not give permission to natural guardian to do any act mentioned in Sub-Section 2 to Section 8, except in the case of necessity or for an evident advantage of the minor. As per Section 8(5) of the Act, if an application for obtaining the permission of the Court under Section 8(2) of the Hindu Minority and Guardianship Act is filed, it has to be construed, in all respects, as if it were an application for obtaining the permission of the Court under Section 29 of the Guardians and Wards Act, 1890. In this regard, the learned counsel for the Objectors by inviting the attention of this Court to Section 29 of the Guardians and Wards Act, 1890, submitted that Section 29 deals about three categories of persons viz., Collector, Guardian appointed by a Will or any other instrument and the person, who has been appointed or declared by the competent Court to be the guardian of the property of a ward. As regards the person appointed/declared by the competent Court to be the guardian of the property of a minor child, he/she cannot alienate the property of the minor without prior permission of the Court.

20. It is further submitted by the learned counsel for the objectors that a combined reading of Section 8(5) of the Hindu Minority and Guardianship Act and Section 29 of the Guardians and Wards Act would show that the natural guardian/mother, who intends to sell the minor's property by filing an application under Section 8(2) of the Hindu Minority and Guardianship Act, necessarily has to be appointed as a guardian of the minor's property before seeking permission of the Court to sell the minor's property, since Section 29 of Guardians and Wards Act gives right to get a permission of the Court only to the persons who has been appointed as a guardian of the property. Under Section 8(5) of the Hindu Minority and Guardianship Act it has been stated that in all respects, the application filed under sub-section 2 to Section 8 has to be treated as if it were an application filed under Section 29 of the Guardians and Wards Act. Hence, unless the natural guardian get herself appointed as a guardian of the minor's

property, as required under Section 29 of the Guardians and Wards Act, the petition filed by her seeking the permission of the Court to sell the property of the minor is not maintainable. When that being the legal position, now the application filed by the mother of the minors straightaway seeking the permission of the Court to sell the minors' property without getting herself appointed as guardian of the minor's property by the competent Court, is liable to be dismissed at threshold.

21. But, according to the learned counsel for the petitioners, question of obtaining the order appointing as guardian of the minor to sell the property of the minor would arise only if the petition is filed by the persons, other than the natural guardian. So far as the natural guardian is concerned, obtaining the order from the Court under Section 7 of the Guardians and Wards Act, 1890, appointing as guardian of the property of the minor, does not arise.

22. In view of the submissions made on either side, it would be appropriate to extract the relevant provisions of the law-

Section 8 of the Hindu Minority and Guardianship Act, 1956-

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 realization, 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 any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof.

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, "Court" means the city civil court or a district court or a court empowered under section 4A of the Guardians 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.

Section 29 of the Guardians and Wards Act, 1890-

29. Limitation of powers of guardian of property appointed or declared by the Court.-Where a person other than a Collector, or than a guardian appointed by will or other instruments, has been appointed or declared by the Court to be guardian of the property of a ward, he 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 his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

A close reading of Section 29 of the Guardians and Wards Act, 1890, would show that except the

(i) Collector; and

(ii) guardian appointed by a Will or any other instrument if a person has been appointed/declared by the competent Court to be the guardian of the property of the minor, he/she shall not alienate the property of a ward without the permission of the Court in the manner mentioned in clause (a) and (b) of the Section 29 of Guardian and Wards Act. Therefore, the requirement under Section 29 of Guardians and Wards Act, 1860 is only to obtain a permission from the Court to sell the property of minors, for the person who has been appointed or declared as guardian of the property of the minor. Section 29 of Guardians and Wards Act does not state anything with regard to the requirement for the natural guardian to get herself/himself appointed as a guardian of the property of the minor before selling the minor property. Hence, in my considered opinion, what was required under Section 8(2) of Hindu Minority and Guardianship Act for the natural mother, is only a permission from the Court to sell the property. The said permission could be obtained by the natural guardian by filing an application under Section 8(2) of Hindu Minority and Guardianship Act before the competent

Court by establishing the necessity for selling the property or selling the property would be for the evident advantage of the minor.

23. Now, it is the submission of the learned counsel for the Objectors that since under Section 8(5) of the Hindu Minority and Guardianship Act it has been stated that an application for obtaining permission of the Court under Sub-Section(2), has to be construed, ""in all respects as if it were an application for obtaining the permission of the Court under Section 29 of the Guardians and Wards Act"". Since Section 29 of the Guardians and Wards Act speaks about obtaining permission of the Court by a person who has been appointed or declared as a guardian of the minor's property, even if a natural guardian/mother seeks the permission of the Court to sell the minor's property by filing an application under Section 8(2) of the Hindu Minority and Guardianship Act, unless she is appointed/declared as guardian of the property of the minor, as required under Section 29 of the Guardians and Wards Act, she cannot seek for permission of the Court to sell the minor's property by filing an application under Section 8(2) of the Hindu Minority and Guardianship Act. In this regard, the learned counsel for the Objectors further submitted that the person, who is seeking to be appointed as guardian of the minor has to furnish the particulars in the form of application as mentioned in Clause (a) to (l) in Section 10(1) of the Guardians and Wards Act; but, in the instant case, the mother of the minors have not given proper particulars as required under Section 10(1) of the Guardians and Wards Act and since she has not got appointed as guardian of the minors by the competent Court, she has no locus standi to represent the minors as guardian/next friend; hence, the very petition itself is liable to be dismissed.

24. But, from the close reading of Section 29 of the Guardians and Wards Act, I find that the said provision does not say anything with regard to the requirement for the natural guardian to get herself appointed as the guardian of the minor's property before seeking the permission of the Court to sell the property of the minor. Section 29 of the Guardians and Wards Act speaks about only a mandate for a person, who has been appointed as a guardian of the property of the minor by the Court, to seek the permission of the Court before selling the property of the minor. The heading of Section 29 of the Guardians and Wards Act reads as follows-

"Limitation of powers of guardian of property appointed or declared by the Court "

From the reading of the heading of the section, it is clear that when the provision under Section 29 of the Guardians and Wards Act exempts the Collector and the guardians appointed by a Will or any other instrument to sell the property of the minor, it limits the power of the person, who has been appointed/declared as guardian of the property of the minor by the Court, to sell the property of the minor without obtaining the permission of the Court. Section 29 of the Guardians and Wards Act only prevents the person, who has been appointed/declared as guardian of the property of the minor, to sell the property prejudicial to the benefit of the minor without obtaining permission from the Court by taking

advantage of his/her appointment/declaration as guardian of the property of the minor by the Court, and not more than that.

25. Similarly, the wording in Section 8(5) of the Hindu Minority and Guardianship Act viz., "shall apply to and in respect of an application for obtaining the permission of the Court under Sub-section (2) in all respects as if it were an application for obtaining the permission of the Court under Section 29 of that act" would give a clear meaning that the application filed by the natural guardian under Section 8(2) has to be considered as if it were an application filed by the person, who has been appointed/declared as guardian of the minor's property by the competent Court. Therefore, in my considered opinion, absolutely there is no need for the natural mother to get herself appointed as guardian of the minor's property for seeking the permission of the Court to sell the property of the minor, since the combined reading of Section 8(5) of the Hindu Minority and Guardianship Act and Section 29 of the Guardians and Wards Act would show that the application filed by the natural mother has to be treated as an application filed by the person, who has been appointed as guardian of the minor's property under Section 29 of the said Act. Hence, the interpretation made by the learned counsel for the Objectors that since the application has been filed under Section 8(2) of the Hindu Minority and Guardianship Act, first natural guardian/mother necessarily get herself appointed as guardian of the property of the minor before seeking the permission of the Court to sell the property of the minor, cannot be accepted.

26. In this regard, it would be appropriate to see Section 6 of the Hindu Minority and Guardianship Act, 1890, which deals about the natural guardians. The clause (a) to Section 6 of the Hindu Minority and Guardianship Act, 1956, reads as follows-

"in the case of a boy or an unmarried girl, the father and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother "

From Section 6(a) of the Hindu Minority and Guardianship Act, it could be seen that after the father, mother is recognized as natural guardian under the statute. In the instant case, the father of the minor petitioners died on 24.05.2004 in a motor accident. Hence, under the statute, the mother is the natural guardian of the minor petitioners. When the mother is recognized as natural guardian under the statute, in my considered opinion, absolutely there is no need for the mother of the minor to get herself appointed as guardian of the minor's property to invoke Section 8(2) of the Hindu Minority and Guardianship Act, 1890, seeking permission to sell the property of the minors. So far as the other persons, who intend to seek the permission of the Court to sell the minor's property and who are having the care of the minor's property, are concerned, unless they are appointed or declared as guardian by the competent Court, they may not have any legal right for seeking the permission of the Court to sell the property of the minors.

27. In this regard, a reference could be placed in the judgment reported in Ms. Githa Hariharan and Another Vs. Reserve Bank of India and Another, . In that case, the petitioners 1 & 2 therein jointly applied to the Reserve Bank of India for the issuance of Relief Bonds in the name of their son. They stated expressly that both of them agreed that the mother of the child ie., the first petitioner therein would act as the guardian of the minor for the purpose of investments made with the money held by their minor son. Accordingly, in the prescribed form of application, the mother signed as the guardian of the minor. But, RBI replied to the petitioners advising them either to produce the application form signed by the father of the minor or a certificate of guardianship from a competent authority in favour of the mother, stating that the mother is not the natural guardian of a minor when father is alive. In the said case, the Hon"ble Supreme Court, by interpreting Section 6 of the Act, has held as follows:-

"In our opinion, the word "after" shall have to be given a meaning which would subserve the need of the situation, viz., the welfare of the minor and having due regard to the factum that law courts endeavour to retain the legislation rather than declare it to be void, we do feel it expedient to record that the word ""after"" does not necessarily mean after the death of the father, on the contrary, it depicts an intent so as to ascribe the meaning thereto as ""in the absence of""- be it temporary or otherwise or total apathy of the father towards the child or even inability of the father by reason of ailment or otherwise and it is only in the event of such meaning being ascribed to the word ""after"" as used in Section 6 than and in that event, the same would be in accordance with the intent of the legislation, viz., the welfare of the child."

Thus, the Hon"ble Supreme Court held that if the father is wholly indifferent to the matters of the minor even if he is living with the mother or if by virtue of mutual understanding between the father and mother, the latter is put exclusively in charge of the minor, or if the father is physically unable to take care of the minor, either because of his staying away from the place where the mother and the minor are living or because of his physical or mental incapacity, in all such like situations, the father can be considered to be absent and the mother being a recognized natural guardian, can act validly on behalf of the minor as the guardian.

28. Therefore, when the mother of the child was recognized as natural guardian, in the absence of father, absolutely there is no need for her to get herself appointed as guardian by the Court for the purpose of selling the immovable property of the minor. As stated about, what was required under Section 8(2) of the Hindu Minority and Guardianship Act, 1956, is only a permission from the Court to sell the immovable property of the minor. In the instant case, on filing the application by the mother, objections were called for by publication. Pursuant to the publication, objectors have filed their objections before the Court below and considering the same, the Court below has negated the objections. Therefore, I am of the opinion, absolutely there is no infirmity in filing the

application by the mother under Section 8(2) of the Hindu Minority and Guardianship Act, 1956, seeking permission to sell the property of the minors without obtaining orders from the Court to appoint herself as a guardian of minor.

29. In view of the above finding, I am of the opinion that the other submission made by the learned counsel for the objectors that the petitioners have not furnished the particulars as required under Section 10 of the Guardians and Wards Act, 1890, need no consideration. Therefore, I hold that for filing application under Section 8(2) of the Hindu Minority and Guardianship Act, 1956, by the natural guardian/mother, absolutely there is no necessity to obtain orders from the competent Court appointing her as guardian of the minors. Hence, I am not inclined to accept the submission made by the learned counsel for the objectors in his connection.

30. Question No.(II) It is the submission of the learned counsel for the objectors that the minor petitioners were represented by their maternal grand-father in another proceedings in M.C.O.P. No.399 of 2005 which was filed for compensation for the death of their father in the motor accident. Now, their mother Kalaivani cannot be appointed as a guardian for the minors, since the guardianship cannot be changed according to the whims and fancies of the petitioners. But, I find that the maternal grand-father was not appointed by the competent Court as guardian of the minors in the said MCOP, to claim compensation against the Insurance Company. Since the mother Kalaivani has filed a separate claim petition, the minors were represented by their maternal grand-father in the said MCOP. Unless a person other than the natural guardian is appointed as guardian by a competent Court under Section 7 of the Guardians and Wards Act, 1890, representation made by the said person in other legal proceedings as guardian of a minor, will not have any significance, and the same will not prevent the mother of the minor who is a natural guardian to file a petition under Section 8(2) of the Hindu Minority and Guardianship Act, 1956. Therefore, I am of the opinion that the mother of the minor petitioners is legally entitled to file application under Section 8(2) of the Hindu Minority and Guardianship Act, 1956, seeking permission of the Court to sell the property of the minors.

31. Question No.(III) It is the submission of the learned counsel for the objectors that it is an application filed by the mother of the minors seeking permission of the Court to sell the minors' property. Under such circumstances, the Court below ought to have dealt with the question only with regard to granting permission to the mother of the minors to permit her to sell the petition scheduled property. In fact, the Court below has framed a issue with regard to the entitlement of the petitioners to seek permission of the Court to sell the petition scheduled property. But, while dealing with the said question, the Court below, by discussing the Wills produced on either side has observed that the registered Will dated 21.03.2007 marked on the side of the petitioners as Ex.P.1 alone is genuine document and the unregistered Will dated 17.03.2008 marked

on the side of the objectors as Ex.R.6 is surrounded by suspicion. According to the learned counsel for the objectors, the said observation made by the Court below is totally unwarranted because the same is beyond the scope of the application filed by the petitioners under Section 8(2) of the Hindu Minority and Guardianship Act, 1956.

32. But, on perusal of the materials available on record, I find that it is the case of the petitioners that the subject property was bequeathed to the minors by their paternal grandfather by way registered Will dated 21.03.2007. The objectors defended their case, by examining the three witnesses and marking eight documents, including the unregistered Will dated 17.03.2008 as Ex.R.6. According to the learned counsel for the objectors, the earlier registered Will dated 21.03.2007 executed by the late Gopalakrishnan in favour of the minor petitioners was subsequently revoked by way of unregistered Will dated 17.03.2008 executed in favour of the objectors. But, the objectors have not mentioned anything about the said unregistered Will dated 17.03.2008 in their objection petition. But, only during the cross-examination, they produced the unregistered Will dated 17.03.2008. The attestors to both the Wills were examined before the Court below. Only in view of the evidence adduced on either side, the Court below was forced to discuss about the Wills produced on either side, since both parties are claiming right over the subject property based on the Wills. Therefore, in my considered opinion, observation with regard to the Wills was invited by the objectors themselves by producing the Will and also examining the attestors to the Will. The Court below, after discussing about the Wills, has come to the conclusion that the Court is not in a position to go into the details with regard to the rights of the parties, since the petition itself is for limited purpose of seeking permission to sell the property of the minors. Both the parties have not even sought to establish their right over the subject property on the basis of the Wills. Since the Court below has not arrived at any conclusion with regard to the right of the parties over the subject property, now absolutely there is no need to set aside the observation made by the Court below on the Wills produced on either side, since the said observation was made by the Court below only based on the evidence adduced before it. Only if there is any finding which is not based on the evidence, the question of setting aside the same will arise.

33. Question No.(IV) It is the submission of the learned counsel for the petitioners that the Trial Court has failed to see that the subject property is not yielding any income to the petitioners and intention of the petitioners is only to sell the property to construct a residential building in the vacant place, only for the benefit of the minors. Therefore, according to the learned counsel for the petitioners, by setting aside the impugned order, permission has to be given to the mother of the minors to sell the subject property.

34. But, I find that the trial Court, by considering all the materials placed on record particularly Ex.P.1-registered Will, has come to the conclusion that the

petitioners are owning several residential houses and the petition mentioned property is situated in a prime locality within the limits of corporation of Erode and the market value of the land is likely to be increased every year and further, the petition scheduled property is the subject matter of the suit in O.S. No.279 of 2009 pending on the file of the learned Principal District Judge of Erode, and thus, the Court below has rejected to grant permission to sell the property at this juncture. Under such circumstances, absolutely, I do not find any infirmity in the order passed by the Court below.

35. For the foregoing reasons, both the above Civil Miscellaneous Appeals are liable to be dismissed and the same are dismissed accordingly. No costs.