

(2008) 10 BOM CK 0026
In the Bombay High Court
Case No : First Appeal No. 2859 of 2008

Smt. Dropadabai	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Guardians and Wards Act, 1890 — Section 29, 31, 31(2), 31(3), 31(4)
Hindu Minority and Guardianship Act, 1956 — Section 8, 8(2)

Citation : (2008) 6 ALLMR 559 : (2009) 2 BomCR 490 : (2008) 110 BOMLR 3600

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : P.F. Patni, for the Appellant; N.N. Jadhav, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—The present first appeal is directed against the final judgment and order passed by the District Judge-2, Aurangabad dated 3.5.2008 in M.A.R.J.I. No.62/2008.

2. The background facts of the case are as under:

The petition was filed by the appellant herein u/s 8 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as the said Act) to sell the immovable property belonging to the minor sons of the petitioner. the petitioner is mother of Krishna Babu Aade and Ratansingh Babu Aade.

3. As per petitioner, the land bearing G.No.1 admeasuring 9 Hectar 46 Ares, 35 Ares Potkharab land, having revenue assessment Rs.13.72 ps. out of which to the extent of 5 acres 34 Gunthas land situated at village Girnera Tanda was owned and possessed by the father-in-law of the petitioner and after his death, the names of all the legal heirs were recorded in the 7/12 extract. Thereafter, vide registered partition deed dated 20.12.2007, 59 Ares of land out of said land G.No.1 came to the share of minor sons of the petitioner by name Krishna Aade and Ratansingh Aade.

4. It is contended by the appellant that after death of her husband, she used to reside at village Girnera Tanda, tq. and Dist. Aurangabad along with her children and the land which came to their share is inferior quality and is situated at long distance from village Girnera Tanda. Under these circumstances, she has decided to sell the said property for Rs.5,00,000/- and accordingly "Issar Pawati" has been executed in favour of one Nandkishor Baldava on 26.1.2008 by accepting part consideration.

5. The petitioner intends to invest the sale proceeds of the said land by purchasing the land out of the land bearing G.No.53 situated at village Girnera Tanda for consideration of Rs.4,20,000/- and she intends to purchase the said land in the name of her two minor sons i.e. Krishna Aade and Ratansingh. The petitioner claims that her family had incurred loan and to meet the legal necessity she has sought permission to sell the said land.

6. To support her claim the petitioner has placed on record the death certificate of Babu Aade, copies of 7/12 extracts, Record of Rights, Isar Pawati in favour of Nandkishor Baldava and Isar Pawati executed by Smt. Mandhabai w/o Bhima Chavan and other who agreed to sell the part of their land in favour of Krishna Aade and Ratansing Aade i.e. the sons of petitioner. The petitioner has also filed on record the registered partition deed under which the petitioner got the ancestral land. The petitioner has also filed an affidavit (Exh.4) on record to support her intention.

7. The paper publication was made. However, nobody has appeared to resist the application, nor the respondent / State appeared before the court. The petitioner, therefore, filed an affidavit (Exh.9) and also placed on record the documents called as "Bharna Pawati", thereby they have paid Rs.2,00,000/-to the vendors of the land bearing G.No.53 out of which the petitioner intends to purchase the land.

8. The learned District Judge, after hearing the Advocate for the appellant, formulated points for his determination as under:

1) Whether the petitioner is entitled to the permission to sell the property of minors u/s 8 of the Hindu minority and Guardianship Act, 1956?

Findings: In the negative.

9. The learned District Judge rejected the petition. being aggrieved by the judgment and order dated 3.5.2008 passed by the District Judge-2, Aurangabad, the present first appeal is filed by the appellant. This appeal was admitted on 14th July, 2008. Hearing of the appeal was expedited and appellant was granted liberty to move for fixed date of hearing.

10. Today the matter is for final hearing. The learned Counsel for the appellant submitted that the District Judge was not right in dismissing the petition filed by the appellant. He submitted that the sale agreement which is to be made is in the interest of the minors. The appellant is interested to purchase new land from Gat No.53 in the name of two minor sons.

11. The learned Counsel for the appellant submitted that the findings recorded by the District Judge in paragraph 10 of the judgment are not correct. The issue involved in the petition was only the permission sought by the appellant for sale of 59 Ares of land. As regards the observations made by the District Judge in paragraph 10 that the present appellant has signed as consenting party to the partition deed on behalf of Mangal Babu Aade who is minor daughter of the present petitioner, without consent of the court, the learned Counsel for the appellant submitted that in the said partition deed, which is annexed to this appeal at pages 21 to 36, on page 23 all the lady members of the family have consented for the partition deed. The name of the daughter of the petitioner is mentioned at Sr.No.9 in the list of consenting parties. Advocate for the appellant submitted that this is mere mistake made by the writer of the partition deed. He further submitted that the share for which the deceased Babu Aade was entitled has been rightly allotted to the share of the petitioner and her L.Rs. There is no dispute on that. There was no occasion for the District Judge to give any finding on the partition deed.

12. The learned Advocate for the appellant further submitted that the observations of the District Judge in paragraph 11 of the judgment that the present petitioner sought permission to sell the share which presently stands in the name of both minor sons of the petitioner, however, the name of the daughter of the petitioner is not mentioned as a sharer though she has right by birth in the said property, he submitted that though the name of the daughter is not mentioned, the name of the daughter can be added in the agreement of purchase of another property in the name of two minor sons if this Court permits to do so. He submitted that if the name of the daughter Mangal Aade along with other two minor sons is mentioned as a purchaser of the new property, the appellant may be allowed to sell the property in the interest of minors. He further submitted that the name of Mangal Aade, minor daughter of the petitioner is shown in the partition deed as a consenting party by mistake committed by the writer as all women members are shown consenting party to the partition deed. He submitted that whatever mistakes have been committed can be rectified or cured if this Court permits to do so. He further submitted that by imposing conditions, sale deed can be executed by mentioning the name of the daughter. He further submitted that if this Court permits, the appellant is ready to deposit some amount if directed by this Court to be fixed in the name of minor daughter. The Advocate for the appellant submitted that since the steps taken by the appellant for sale of the land and purchase of new land are exclusively in the interest of minor children and not for the benefit of appellant, permission sought u/s 8 of the said Act deserves to be granted by setting aside the judgment and order passed by the District Judge.

13. The learned Assistant Government Pleader appearing for the State submitted that the entire events as narrated in the petition are suspicious. The partition deed is executed by showing 7 years daughter of the appellant as a consenting party to it without seeking permission from the Court as required under law. The

partition is effected on 20.12.2007. The petitioner has agreed to sell the property to one Nandkishor Baldava for total consideration of Rs.5,00,000/- on 26th January, 2008. He further submitted that in that area, property is fetching around Rs.60,00,000/-per acre. He submitted that the actions of the appellant to execute the partition deed hurriedly by giving consent on behalf of the minor daughter, aged 7 years without seeking permission from the court, subsequent action to enter into agreement to sell on 26th January, 2008 are suspicious and, therefore, it cannot be said that the petition filed by the appellant before the District Court for permission u/s 8 of the said Act was for the benefit of the minors. He further submitted that the natural guardian has to act only in the interest of the minors in the manner provided u/s 8 of the said Act. The natural guardian is supposed 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 minors estate. He further invited my attention to the provisions of Section 8 of the said Act and submitted that the District Judge has rightly rejected the petition filed by the appellant because said petition only seeks permission to sell the property and purchase the property in the names of two sons excluding the daughter who has share in the property. He further submitted that the name of the daughter should have figured in the original property along with other two sons of the appellant. In sale of the property in which there is share of the daughter, her name should have necessarily included. He further submitted that the property which is proposed to be sold is 59 Ares. However, the property which the appellant intends to purchase is only 30 Ares. He submitted that the District Judge after proper appreciation of the contentions of the appellant and documents on record, has rightly rejected the petition. No interference is called for and, therefore, the present appeal deserves to be dismissed.

14. The provisions of Section 8 of the said Act reads thus:

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 minors 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, 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 u/s 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 shall 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 u/s 4A of the Guardians and Wards Act, 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.

15. Mere perusal of the provisions of Section 8 of the said Act would show that 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 minors estate. The import of this section is that protection of the interest of minors alone should be the necessary criteria. Further, Sub-section (2) of Section 8 of the said Act specifically bars the natural guardian to mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or lease out 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 or disposal of the immovable property etc. without permission of the Court.

16. In the instant case, it is admitted position that the appellant has two sons namely, Krishna Aade and Ratansingh Aade and daughter Mangal Babu Aade. In the partition deed, which is placed on the record, Mangala Aade, aged 7 years, daughter of the appellant is shown to be consenting party. In fact, her name should have been included as co-sharer along with Krishna and Ratansingh, minor sons in the property of the deceased Babu Aade.

17. The District Judge in paragraph 10 has rightly observed:

Surprisingly, the present petitioner has signed as consenting party to the said

partition deed on behalf of Mangal Babu Aade who is minor daughter of the present petitioner. It is nowhere the say of the present petitioner that she sought permission u/s 8 of the Hindu Minority and Guardianship Act, 1956 before signing as consenting party, because such permission is mandatory.

18. It is an admitted position that daughter of the petitioner Mangal Babu Aade is also having right by birth in the property inherited from Babu Aade, husband of the appellant and father of the minor children Krishna, Ratansingh and Mangala Aade.

19. The learned District Judge, taking into consideration the claim of the petitioner has rightly held that the claim of the petitioner that she wants to sell the property which is standing in the name of her minor two sons is erroneous because apart from these two sons, daughter of the petitioner namely Mangal Aade has also right in the said property.

20. It is pertinent to note that while giving consent on behalf of the minor Mangal Aade in the partition deed, the petitioner has not sought any permission from Court and the permission which is applied for the sale showing only two minor sons as holders of the property and excluding the minor daughter, is also an attempt by the appellant to ignore completely the interest of the minor daughter. The petition which was filed by the appellant u/s 8 of the said Act totally ignoring the interest of the minor daughter, is rightly rejected by the District Judge. The chronology of the events i.e. effecting partition deed on 20.12.2007 by showing daughter Mangal Aade, aged 7 years as consenting party without taking permission from the Court and thereafter, immediately after one month entering into an agreement to sell the property to which real daughter was not shown as a co-sharer along with other two minor sons certainly creates suspicion in the mind about the transaction of sale and purchase. Certainly, giving consent to effect partition without permission of the court on behalf of daughter by the appellant and subsequently entering into an agreement to sell are not necessary and reasonable and proper steps for the benefit of the minor daughter and, therefore, the petition which was filed by the present appellant u/s 8 of the said Act was rightly rejected by the District Judge.

21. In my view, the basic act of the appellant signing the partition deed as a consenting party on behalf of Miss Mangal Babu Aade without taking permission of the Court itself goes to the roots of the matter. Further, the names of only two sons are shown in the petition seeking permission for the sale excluding the daughter. That further strengthens the situation that the appellant has acted in suspicious manner and excluded the interest of the minor daughter.

22. The District Judge has recorded in para 12 of the judgment that he has noticed the suspicious circumstances during the enquiry that the petitioner could not disclose the name of the purchaser of the land of the minor sons of petitioner and similarly, she has agreed to sell the land for Rs.5,00,000/-, whereas if partition deed is perused, the value of the said property is shown as only

Rs.1,33,000/- and the period between these two documents is of hardly one month.

23. The learned District Judge has rightly concluded that the proposed sale by the appellant appears to be not in the interest of minor sons and daughter for their benefit. I do not see any infirmity in the findings recorded by the District Judge. I have examined the case both on the facts and law and I do not find any reason to interfere in the judgment and order of the District Judge. First Appeal is dismissed.