

**HIGH COURT OF TRIPURA
AGARTALA
FA No.1 of 2024**

1. Smt. Sampa Das Paul,
Wife of Late Jayanta Paul,
Resident of village: College Square,
P.O. Sarashima, P.S. Belonia,
District: Sourth Tripura

---- **Petitioner Representing(s)**

1. Miss Sayantika Paul,
Daughter of Late Jayanta Paul,
(Minor DOB 29.02.2015)

2. Miss Jeetsha Paul,
Daughter of Late Jayanta Paul,
(Minor DOB 18.08.2009)
- Both are resident of village: College Square, P.O.
Sarashima, P.S. Belonia, District: South Tripura

Versus

1. Smt. Kalyani Paul,
Wife of Late Jadunath Paul,

2. Smt. Sumita Paul,
Daughter of Late Jadunath Paul,

3. Sri Sukanta Paul,
Son of Late Jadunath Paul

- All are resident of village: College Square, P.O.
Sarashima, P.S. Belonia, District: South Tripura

----**Respondent(s)**

For Appellant(s) : Mr. D. Sarkar, Adv.
Ms. Papiya Goswami, Adv.

For Respondent(s) : Mr. A. T. Paul, Adv.

Date of Hearing and
date of delivery of
Judgment and Order : 24.09.2024

Whether fit for
Reporting : NO

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order (Oral)

[Amarnath Goud, J]

This appeal is preferred under Section 8 Sub-section
5(c) of Hindu Minority and Guardianship Act, 1956 read with

96 of CPC challenging the judgment and order dated 22.09.2023 in connection with Case No. Civil Misc.(G.C) No.05 of 2023. By the said judgment and order Learned Trial Court below has dismissed the application filed by the petitioner under Section 8(2)(a) of Hindu Minority & Guardianship Act, 1956 seeking permission to transfer shares of the minor daughters namely Sayantika Paul and Jeetsha Paul by way of sale of the following description of properties:

Description of the Property:

The land measuring 1.20 acres appertaining to Hal CS Plot Nos.1173 and 1174 of Khatian No.7 under Mouja-Madhya Bharat Chandra Nagar, TK-Chittamara under Belonia Revenue Circle and land measuring No.0.388 acres of Hal CS Plot No.5085, 5085/5854, 5085/5855 appertaining to Khatian No.1882 of Mouja & T.K-Belonia under Belonia Revenue Circle.

02. Heard Learned Counsel Mr. D. Sarkar along with Ms. P. Goswami, Learned counsel appearing for the petitioner-appellant and also heard Learned Counsel Mr. A. T. Paul appearing for the OP respondents.

03. In course of hearing of argument Learned Counsel appearing for the appellant-petitioner submitted that the predecessor husband of the petitioner namely Jayanta Paul expired on 05.06.2020 leaving behind the petitioner and his two daughters namely Miss Sayantika Paul (DOB 29.02.2015) and Jeestha Paul (DOB 18.08.2009)

as his only legal heirs to succeed to his property as per law of inheritance and succession. Learned counsel further submitted that presently the petitioner-appellant is staying at Agartala along with his two minor daughters who were prosecuting their studies in a private school and for want of money she is facing severe financial hardships to maintain herself and two minor daughters. So she intended to transfer the respective share of her deceased husband to the paternal property so that by the sale proceeds she can maintain the expenses of education of the minor daughters. Accordingly she filed an application but the Learned court below did not consider and dismissed the same. The operative portion of the judgment runs as under:

"Coming to the present case, manifestly, evidence of the petitioner is conspicuous by the absence of essential facts necessary for determination of the question before us, i.e., whether the sale is for necessity or is for an evident advantage of the minors. The petitioner did not disclose the profession her deceased husband was carrying and also the nature/cause of his death. She also did not disclose whether the deceased husband/father had left any other property or security fetching income. Further, the petitioner also did not disclose her individual income as well as total family income and the total monthly expenses. Moreso, there is no averments either in the application or in the deposition with regard to the earning of the husband or the savings left by him including the details of the bank accounts of the deceased husband. There is also no mention about the fact that what other properties, except mentioned in the application are there in the name of the husband either independently or jointly with even the family members. Here also in absence of all such details, on mere averment of the petitioner that sale is expedient, it cannot be inferred that the sale is essential for the benefit of the minors or that it is advantageous to them. Welfare of the minors being of paramount importance, in absence of cogent materials for consideration for the court, no such permission for alienation of minors' immovable properties can be granted."

04. Learned counsel Mr. A. T. Paul for the OP respondents appeared and submitted that before the Learned Trial Court they did not submit any objection and

they submitted that they shall have no objection if the prayer made by the petitioner-appellant is hereby allowed and before this court also in course of hearing Learned counsel for the OP respondents shared the same view.

05. Heard both the sides at length and perused the record of the Learned court below including the connected documents. It appears that the deceased husband of the present appellant-petitioner was a co-sharer of the paternal property left by his deceased father. But said husband of the present appellant-petitioner Jayanta Paul expired on 05.06.2020 leaving behind the petitioner-appellant and her two daughters as his only legal heirs. It is an admitted position that since the petitioner-appellant is staying with her two minor daughters at Agartala and she is to maintain the expenses of the minor daughters who were prosecuting their studies so considering all it appears that in absence of a reasonable amount it would be difficult on the part of the petitioner-appellant to maintain the expenses of the two minor daughters. As there is no objection from the side of the OP respondents and no other third party raised any objection on the application of the petitioner-appellant so considering all the judgment and order delivered by the Learned District Judge, South Tripura, Belonia in connection with Case No.Civil Misc.(G.C) No.05 of 2023 appears to be bad in law in absence of satisfactory grounds. Hence the judgment and order delivered by the Learned District Judge, South Tripura, Belonia in connection with Case No.Civil Misc.(G.C) No.05 of 2023 is hereby set aside. The appeal

filed by the present appellant is hereby allowed. The present appellant-petitioner and her two minor daughters are legally entitled to the respective share of their deceased predecessor Jayanta Paul to the extent of his share to his paternal property as mentioned above. The present appellant-petitioner is hereby allowed to dispose of the respective share of her deceased husband of the aforementioned property on behalf of her two minor daughters including herself, if any, for the purpose of maintaining their educational and other expenses and also for their better future. However, the sale proceeds of the relevant share of her deceased husband be kept in a nationalized bank in FD Schemes equally in favour of minor daughters till they attaining the majority. The petitioner-appellant being mother is at liberty to withdraw the interest for the purpose of maintaining expenses for the welfare & education of her two minor daughters as indicated above.

06. With this observation and direction this appeal filed by the appellant stands allowed on contest.

Send down the LCR along with a copy of this order.

JUDGE

JUDGE

**MOUMITA
DATTA**

Moumita

Digitally signed by
MOUMITA DATTA

Date: 2024.09.26 16:53:02
+05'30'