

Court No. - 20

Case :- FIRST APPEAL No. - 43 of 2024

Appellant :- Mithlesh Kumari

Respondent :- District. Judge Barabanki And Another

Counsel for Appellant :- Arvind Kumar Shukla, Arvind, Rahul Rai

Hon'ble Manjive Shukla, J.

1. Heard learned counsel appearing for the appellant.
2. This Appeal has been filed challenging therein the order dated 05.12.2023 passed by the learned District Judge, Barabanki whereby application filed by the appellant under Section 7 of the Guardians and Wards Act, 1890 for permission to sale the share of Respondent No. 2 in Gata No. 472 measuring 0.197 hectare, has been rejected.
3. Learned counsel appearing for the appellant has submitted that in application filed before the learned District Judge, Barabanki, appellant has categorically demonstrated that her house is in dilapidated condition, therefore, in her life-time, she wants to get the house constructed for his son i.e. Respondent No. 2 and as such about Rs. 10,00,000/- are required out of which, Rs. 4,00,000/- can be arranged by selling the land belonging to Respondent No. 2 and rest Rs. 6,00,000/- shall be arranged by selling land of the appellant's share.
4. Learned counsel for appellant has argued that appellant is mother of Respondent No. 2 as such being natural guardian, she intends to sale land of her share and land of share of Respondent No. 2 for construction of a new house for the life of Respondent No. 2 but learned District Judge, Barabanki has rejected application for permission for sale of land of the share of Respondent No. 2 on the presumption that appellant does not want to sale her share of land and only wants to sale land of share of Respondent No. 2, therefore, it is patently manifest that the impugned order dated 05.12.2023 is based on wrong premise.
5. I have considered arguments advanced by the learned counsel appearing for the appellant and I find that though in the application filed before the learned District Judge, appellant has tried to demonstrate the facts but it appears that somehow an impression has been created before the learned District Judge

that appellant is intending to sell-out only the share of Respondent No. 2 and that is why the learned District Judge, Barabanki has rejected application filed by the appellant.

6. It appears from the record that the facts of the case were not properly placed before the learned District Judge, Barabanki and therefore he has rejected the application filed by the appellant.

7. In the aforesaid circumstances, this First Appeal From Order is ***allowed***.

8. Order dated 05.12.2023 is set-aside.

9. Matter is remanded to learned District Judge, Barabanki to consider the entire matter afresh and to pass a fresh order within a period of two months from the date of presentation of certified copy of this order.

10. It is also made open to the appellant to file a Supplementary-Affidavit before the learned District Judge, Barabanki explaining therein the exact factual position of the case.

Order Date :- 14.3.2024

A. Mandhani