

THE HIGH COURT OF TRIPURA AGARTALA

MAT APP 03 of 2015

Smt. Chameli Ghosh (Dey Sarkar)

W/O late Biswajit Dey Sarkar
Resident of Indranagar, Agartala
P.S. at present New Capital Complex
P.O. Kunjaban, District- West Tripura,
Pin-799006

.... Appellant.

VERSUS

Smt. Sefali Dey Sarkar

W/O late Amarendra Dey Sarkar
Resident of Indranagar, Agartala
P.S. at present New Capital Complex
P.O. Kunjaban, District- West Tripura,
Pin-799006

.... Respondent

BEFORE

**THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE U.B. SAHA**

For the appellant : Mr. HK Bhowmik, Advocate

For the respondents : Mr. P. Majumder, Advocate

Date of hearing and : 09.09.2015.
delivery of judgment.

Whether fit for reporting : NO

JUDGMENT & ORDER(ORAL)

Deepak Gupta, CJ

This is an appeal against the order dated 24.02.2015 passed by the the learned Family Judge, West Tripura, Agartala whereby he permitted the mother to be the guardian *ad-litem* of the daughter Miss Debalina Dey Sarkar but rejected her prayer for selling the land which she had inherited from her late husband Biswajit Dey Sarkar.

2. The undisputed facts are that Biswajit Dey Sarkar expired on 30.05.2009 leaving behind three heirs i.e. his mother, the appellant widow and a minor daughter Debalina Dey Sarkar. It appears that the husband

was running an electrical goods shop in GB bazaar in this very shop. He has also left behind some other landed properties. The widow claims that she had no source of income and, therefore, she sought permission to sell the property to meet her needs and the needs of her minor daughter. The learned Family Court held that in the absence of any evidence to show extreme necessity for selling the shop, in question and in the absence of showing any interest of the minor, the application is rejected.

3. We have gone through the evidence ourselves and we find that other than making a bald statement that the mother is not earning and that she has no source of income, there are no reasons given for selling the shop.

4. The deceased husband was running an electrical goods shop. He must have had stocks in that shop when he died. What has happened to those stocks? We do not know whether the widow is educated and if educated, to what extent. In today's day and age a women can also run a shop that too an electrical goods shop which does not require any special expertise. She can even explore the possibility of renting out the shop for a limited term instead of selling the same. Even if it is necessary to sell the shop, in an application of this nature, it is incumbent upon the guardian to tell the court what is the market value of the property which is sought to be sold and also inform the court how the share of the minor is to be invested. It is the duty of the court before granting permission to ascertain the market value and see that the market value reflected is actually the correct market value. Blanket permission to sell the shop could not have been granted and, therefore, we find no merit in the appeal which is accordingly rejected.

5. We, however, make it clear that the petitioner can apply again for such permission and if such application is filed then Smt. Sefali Dey Sarkar, mother-in-law shall be made a party and no order shall be passed without hearing her in the matter. The learned Family Judge before granting any permission shall satisfy himself that the interest of the minor is not jeopardized in any manner and shall take all steps to protect the interest of the minor. We are in agreement with the trial court that on the basis of the evidence on record no order could have been passed.

6. Therefore, we do not find any merit in the appeal which is accordingly dismissed.

JUDGE

CHIEF JUSTICE

Saikat