

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

First Appeal No. 16 of 2005

Dinkar s/o. Hiranman Kadam,
Age ; 24 years,
Occupation : Driver,
R/o. Gajanan Colony, Manmath Swami
Chowk Nalwandi Naka, Beed, .. Appellant.
Taluka & District : Beed. (Original petitioner)

versus

1. Gorakh s/o. Rangnath Tambe,
Age : 63 years,
Occupation : Agriculture,
R/o. Tamba Rajuri,
Taluka : Patoda,
District : Beed.
2. Sakarbai s/o. Gorakh Tambe,
Age : 59 years,
Occupation : Household,
R/o. Tamba Rajuri,
Taluka : Patoda, .. Respondents
District : Beed. (Original respondents)

.....

*Mr. V.C. Patil, Advocate, holding for
Mr. S.M. Godsay & Mr. S.K. Naikwade, Advocates,
for the appellant.*

*Mr. Prashant D. Suryawanshi, Advocate, holding
for Mr. K.J. Suryawanshi, Advocate, for respondent
nos.1 and 2.*

.....

CORAM : A.M. BADAR, J.

DATE : 19TH NOVEMBER 2015

ORAL JUDGMENT :

1. This is an appeal under Section 47 of the Guardians and Wards Act, 1890, by original applicant / unsuccessful maternal uncle who failed to secure appointment as guardian to the person and property of minor Priyanka.

2. The facts in nutshell leading to institution of the present appeal can be summarized thus :-

(a) Minor Priyanka is daughter of Vinayak and Mangalabai. Unfortunately both these parents of minor Priyanka died prematurely. Deceased Vinayak was serving in Maharashtra State Road Transport Corporation and has left behind some estate for minor Priyanka. Non-applicants are grandparents of minor Priyanka. According the appellant / applicant - Dinkar Kadam, respondents are in possession of immovable property of minor and they are getting income from the suit property. Apart from that, they are also holding Fixed Deposits of the minor. It was contended on behalf of applicant - Dinkar, that he is fit person to be appointed as guardian for person as well as property of Priyanka @ Priyadarshani as she is daughter of his deceased sister Mangalabai. According to applicant - Dinkar, non-applicants have not paid any amount for maintenance of minor though income from agricultural land is capable to maintain minor. According to him, properties of minor Priyanka are not

in safe hands with non-applicants. The applicant relied on alleged will deed of his deceased sister.

(b) The application came to be opposed by filing written statement by non-applicants by contending that the applicant is auto-rickshaw driver having his own family to maintain. Non-applicants further submitted that out of their three sons, Vinayak died. They further submitted that they are holding 11 Acres of agricultural land as well as house property at village Tamba Rajuri in Patoda Taluka of Beed District. Non-applicants denied all adverse averments and also contended that reliance on will deed of Mangalabai placed by the applicant is improper and incorrect. Non-applicants contended that they are having love and affection towards minor Priyanka who is the granddaughter and as such, applicant cannot be appointed as her guardian. They are properly looking after minor Priyanka as well as her property.

(c) On the basis of rival pleadings, parties went for trial and in support of his claim, applicant Dinkar examined himself as well as adduced evidence of Baban Laxman Yede and Hiranman Narsu Kadam in order to prove will deed of his deceased sister Mangalabai wherein she desired that the applicant should maintain her daughter Priyanka. In rebuttal, non-applicants examined non-applicant no.1 - Gorakh Tambe, grandfather of minor Priyanka.

3. After hearing the parties, by the impugned judgment and order dated 29-9-2004, in Misc. Civil Application No. 21/2003, the learned Vth Ad hoc Additional District Judge, Beed, was pleased to hold that

applicant - Dinkar has failed to establish that he is fit person for being appointed as guardian for person and property of minor Priyanka. The application is accordingly dismissed by the impugned judgment and order.

4. Heard Mr. V.C. Patil, the learned Counsel appearing for the appellant / original applicant. He vehemently argued that the applicant being maternal uncle of minor Priyanka, was having natural love and affection towards her and as he is a man of family residing at Beed, he was fit person to take care of person and property of minor Priyanka. Reliance was also placed on will deed of deceased Mangalabai, by the learned Counsel for the appellant.

5. Per contra, the learned Counsel appearing for respondents / non-applicants supported the impugned judgment and order and submitted the learned trial court was right in leaning to the considerations on which guardian can be appointed for taking care of person and property of minor.

6. With the assistance of the learned Counsel appearing for the parties, I have carefully perused record and proceedings including oral as well as documentary evidence tendered on record.

7. At the outset, it needs to be put on record, that in such matters, welfare of minor is the paramount consideration. The Court is required to keep in mind what will be best in the interest of minor. In the case in hand, undisputedly appellant / applicant is maternal uncle whereas non-applicants are grandparents of minor Priyanka. It is trite that according to Hindu Law, in the event of loss of both parents, nearest male

kinsman needs to be appointed as guardian in respect of person and property of minor over maternal relatives. No doubt, regard is also required to be kept to the interest, well being and happiness of the minor. In the instant case, the applicant is an auto-rickshaw driver who in normal course needs to be busy for earning his livelihood whereas, grandparents of the minor are agriculturist. They can devote more time for looking after the minor. Though reliance is placed on will deed reflecting alleged last wish of mother of the minor, that the applicant should take care of her daughter, the learned trial Court after meticulous scrutiny of evidence of witnesses examined by the applicant, came to the conclusion that physical as well as mental condition of deceased Mangalabai was not sound at the time of execution of will. Needless to mention here that it is for the propounder of the will to establish the will. In the case in hand, considering the nature of evidence adduced by the applicant, the learned trial Court rightly rejected the will deed being suspicious. No perversity can be found in the findings so recorded.

8. Evidence on record shows that the applicant is an auto-rickshaw driver and he maintains his own family. As against this, grandparents of minor Priyanka are holding sufficient agricultural land apart from house property and they are in a better position to maintain minor Priyanka. Applicant - Dinkar in his cross examination has admitted that there is facility of education at village Tamba Rajuri. As such, it was established on record that non-applicants were in better position to look after person as well as property of minor Priyanka in preference to the claim of the appellant / applicant. As such, I find no reason to interfere with well reasoned judgment and order of the learned Vth Ad hoc

(6)

F. A. No. 16 / 2005

Additional District Judge, Beed, in rejecting the application of the appellant.

9. In the result, the Appeal fails and the same is dismissed with no order as to costs.

(A.M. BADAR)
JUDGE

.....

puranik / FA16.05