

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

FIRST APPEAL NO.462 OF 2015

Smt.Minakshi Wd/o Sitaram Pawar
Age 34 years, Occ-Household,
R/o Aarole Wasti, Jamkhed, Tq. Jamkhed
DistAhmednagar as an Natural
Guardian of her son Maharudra
s/o Sitaram Pawar, age 7 years
Occ-Education, R/o Aarole
Wasti,Jamkhed, Tq.Jamkhed,
Dist.Ahmednagar. ..APPELLANT

VERSUS

Shivram s/o Baburao Pawar
Age Major, Occ-Agri,
R/o Kumbhar, Tq. Jamkhed
Dist.Ahmednagar. .. RESPONDENT

...

Shri A.R.Devkate,Adv. for appellant
Shri G.N.Chincholkar, Adv.for respondent

...

CORAM : S.V.GANGAPURWALA,J.

DATED : 21ST SEPTEMBER, 2015

ORAL ORDER :-

The application filed by present appellant seeking permission to sell the property of the minor Maharudra is rejected. Aggrieved thereby, the present appeal.

2] Mr.Devkate, learned counsel submits that vide registered sale deed dated 9/5/1986, the husband of the appellant and father of the minor Maharudra had purchased Gat No.719 admeasuring 8 hectare 34 Aar situated at village Jamkhed. Vide registered Will Deed dated 20/10/2010, the deceased Sitaram Pawar executed Will Deed in respect of his entire property including the present property in favour of Maharudra his son. On 21/6/1013, Sitaram died. The present appellant that is the natural mother filed an application seeking permission to sell 2 hectare out of 8 Hectare 34 Aar of Gat No.719. The sale is for the benefit of the minor as is detailed in the application. The learned counsel submits that the present respondent in fact has no right, title and interest in the said property. The Suit bearing R.C.S.No.111/2013 filed by the present respondent in respect of Gat No.719 is pending, however, his application seeking temporary injunction restraining the appellant to alienate the said property is rejected. According to the learned counsel, the District Court without any reasons has rejected the application.

3] Mr.Chincholkar, learned counsel for the respondent submits that the alienation is not in the interest of minor and the right of the present respondent is also involved.

4] The respondent in the present matter cannot contend about the interest of the minor. The appellant Smt.Minakshi who is natural mother of the minor Maharudra has a locus-standi to file application seeking permission to sell the property. The scope of enquiry would be as to whether the sale of which the permission is sought is in the interest and benefit of the minor. Ofcourse the alienation cannot be made of the property of another person. However, the Court is required to consider the registered sale deed

in respect of the said property, order passed by Civil Court in that matter. Paramount consideration would be whether the sale is for the benefit and in the interest of minor. Perusal of the impugned order it is manifest that the learned Judge has not at all applied his mind in this regard. No reasons are given as to whether the said sale is in the interest of minor or otherwise or how the interest of minor is to be protected. The impugned order is bereft of any reasonings in this regard. Such an order cannot be sustained.

5] The impugned order is quashed and set aside. The matter is relegated before the concerned District Court which shall decide application bearing M.C.A.No.129/2013 afresh in light of the observations made hereinabove. The party may appear before the District Court on **15th October, 2015**. Record and proceeding be sent back immediately.

[S.V.GANGAPURWALA,J.]

umg/