

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Sr. No.230

FAO-1927-2015

Decided on : 13.10.2015

Harjinder Kaur

.... Appellant

VERSUS

General Public

..... Respondent

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MS. JUSTICE REKHA MITTAL

Present: **Mr.Dheeraj Mahajan, Advocate, for the appellant.**

RAJIVE BHALLA, J. (ORAL)

The appellant challenges order dated 01.11.2014, passed by the Civil Judge, Senior Division, Gurdaspur, whereby her application, filed under Section 8 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as the “1956 Act”), for permission to sell land belonging to her three minor children, was dismissed.

Counsel for the appellant submits that land belonging to the minors is situated in two different villages i.e. 7 kanals and 2 marlas in village Nawan Pind and 18 marlas in village Bandianwala, both in Tehsil and District Gurdaspur. After the death of her husband, the appellant and her three minor children were turned out of their matrimonial home by her in-laws. The appellant has a meager source of income and as the land, in dispute, is situated in

two different villages, it is difficult for her to manage the land while residing in a different village. The trial Court has, however, rejected the application for reasons that are neither germane nor relevant for the present controversy namely the appellant should have taken steps to irrigate the land or should have rented out the land. It is submitted that as the land is situated in two different villages and in two parcels, it would be presumptuous to presume that somebody would agree to lease out this land for agricultural purpose or for any other purpose.

Despite service upon the general public, no-one has filed any objection.

We have heard counsel for the appellant and perused the impugned order.

The appellant's prayer for permission to sell land belonging to the minors has been rejected, by the Civil Judge, Senior Division, Gurdaspur, exercising powers of the Guardian Judge under Section 8 of the 1956 Act, by assigning reasons that are neither germane nor relevant for the controversy. The trial Court lost sight of the fact that the appellant is a widow, who resides in a different village namely village Nurpur, whereas the two parcels of land owned by the minors are situated in two different villages i.e. Nawan Pind, and Bandianwala, though in Tehsil and District Gurdaspur.

The parcels of land are too small, in our considered opinion, to be effectively irrigated so as to be economically viable for anyone to

take on rent. The appellant's intention is to sell the land by purchasing another parcel of land and in case any money is left over, to place the same in some fiscal instrument that would secure the future of the minors. We are, therefore, of the firm opinion that the court below misdirected itself and committed an error in dismissing the application filed by the appellant for permission to sell land belonging to the minors.

Consequently, we allow the appeal, set aside the impugned order and allow the appellant to sell the land, in dispute, subject, however, to her purchasing alternative land in the names of the minors and filing a copy of the sale deed of the land, so purchased, before the Guardian Judge, Gurdaspur. If, however, the appellant decides to place the amount received in a fiscal bank instrument, she shall file a copy of the said instrument before the Guardian Judge, Gurdaspur.

[RAJIVE BHALLA]
JUDGE

13.10.2015
shamsher

[REKHA MITTAL]
JUDGE