

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

FIRST APPEAL NO. 49 OF 2016

NIRMALA DNYANESHWAR GAVANDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Appellants : Mr K N Shermale
AGP for Respondent: Mr K N Lokhande

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CORAM : V.K. JADHAV, J.
Dated: March 07, 2016

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PER COURT :-

1. Aggrieved by the order passed by the learned District Judge-2, Sangamner, dated 12.10.2015 below Exh.1 in Guardian Misc Application No.32 of 2015 the original applicants preferred this appeal.

2. Brief facts giving rise to the present appeal are as follows :-

a] The applicants are the owner and possessor of the land block No.408 admeasuring 0.24 R situated at Chaitanyapur, Tq. Akole. The appellant no.1 is real mother of the minor applicants no. 2 and 3. Said agricultural landed property is the ancestral property of

the applicants. This land was belonging to deceased Dnyaneshwar, he died on 02.12.2014. After his death, the land was mutated in the name of minor applicants no.2 and 3. The name of the applicant no.1 is recorded as guardian of applicant nos. 2 and 3. The applicants have incurred the medical expenditure for the treatment of deceased Dnyaneshwar. On that count, the applicant no.1 had taken loan. Since she wanted to repay the said loan, the land under the said application is required to be sold. Furthermore, the applicant no.1 has to make the provisions for educational expenses of the minor applicant nos. 2 and 3 and also need amount in future for their education. It is also the case of the applicants that, the applicants have another agricultural land, and even if, this land is sold, no prejudice is likely to be caused.

3. The learned District Judge-2, Sangamner, by its impugned order dated 12.10.2015 rejected the application on two grounds. Firstly, the learned District Judge-2, Sangamner, has concluded that no permission of the Court u/s 8 of the Hindu Minority and

Guardianship Act read with the provisions of Guardians and Wards Act, would not be necessary where an interest in the joint family property of minor is sought to be disposed of. Secondly, the learned District Judge-2, Sangamner, has concluded that no pressing need is pointed out by the applicants to sell the land and the same is not for the welfare of the minor applicants no.2 and 3.

4. The learned counsel for the appellant submits that, the observations made by the learned District Judge-2, Sangamner, are self contradictory. The learned District Judge-2 has concluded that no permission is required when the interest of the minor in a joint family property is sought to be disposed of. Under these circumstances, there was no reason for the District Judge to consider the circumstances and then to conclude that such a permission cannot be granted.

5. In order to substantiate his contention, the learned counsel for the appellant places reliance on following judgments :-

1. Shripati s/o Santu Mane Vs. Goroba s/o Nivarti Ghutukade and another reported in AIR 2009 BOMBAY 6.
2. Ramnath Rambhau Gujar (dead through L.Rs.) Vs. Shamrao Gopal Petkar and others reported in 2010 (6) Mh.L.J. 737.

6. I have heard the learned AGP for the State.

7. Law is well settled that, the applicant no.1 who is a natural mother and after death of her husband she is now become guardian of minor applicants no.2 and 3 has a legal right to sale minor's undivided interest in the joint family property. In view of this, permission under Section 8 of the Hindu Minority and Guardianship Act is not required to be obtained and recital to that effect in the sale deed would suffice the purpose.

8. In view of above, further observations of the learned District Judge-2, Sangamner, in the impugned order appears to be unwarranted and uncalled for. Hence, following order.

O R D E R

- I. First Appeal is hereby partly allowed.

- II. The order dated 12.10.2015 passed by the learned District Judge-2, Sangamner, below Exh.1 in Guardian Misc Application No.32 of 2015 is hereby quashed and set aside.
- III. Guardian Misc Application No.32 of 2015 is disposed of in view of the observations made in the order passed by this Court.
- IV. First Appeal is disposed of. No costs.

(V.K. JADHAV, J.)

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