

SHEPHALI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION NO.5 OF 2016

Nayna Durlabhbhai Soni

...Petitioner No.1

And

Falguni Haresh Soni

... Petitioner No.2

Mr. Vishal Thaker, *with Anjali Trivedi, i/b Vthakers' Associates for the Petitioners*

Mr. Bakulesh D Mer, *Purchaser present.*

CORAM: G.S. PATEL, J

DATED: 20th July 2016

PC:-

1. Heard Mr. Thaker for the Petitioners.
2. Accepted. Made returnable forthwith.
3. The matter requires some factual narrative. The 1st Petitioner (“**Nayna**”) is the paternal aunt of the 2nd Petitioner (“**Falguni**”). Nayna’s brother Haresh Durlabhbhai Soni (“**Haresh**”) was earlier married to one Nisha Haresh Soni (“**Nisha**”). They had three children: the 2nd Petitioner Falguni born on 4th June 1996; a son Hardik born on 4th January 1999 and another son Mihir born on 20th August 2001. Falguni is now an adult. Hardik and Mihir are as yet minors. Hardik has certain learning disabilities.

4. Haresh and Nisha took a divorce by mutual consent on 3rd December 2009. A copy of that order is annexed to the Petition. That order also provides for custody of the three children. Permanent custody was given to Haresh.

5. After his marriage with Nisha was dissolved, Haresh and his sister Nayna jointly purchased Flat No.516, Sunder Dham Building, Ram Baug Lane. Off. S.V. Road, Borivali (West) 400 092. A copy of the agreement for sale dated 3rd April 2010 is annexed as Exhibit “B” to this Petition. The flat is about 855 sq.ft. built up area. The share certificate of this flat stands in the name of Haresh and the 1st Petitioner Nayna.

6. The Petitioner says that over time, Haresh’s divorced wife reduced her access. She has not been in touch with the children for some time.

7. Falguni attained majority on 4th June 2014. A few days later on 17th June 2014, Haresh died in Mumbai. He was survived by the three children, Falguni, Hardik and Mihir. It was then that Nayna and Falguni jointly applied to the society to transmit Haresh’s 50% share, right, title and interest in the Sunder Dham flat in the name of the 2nd Petitioner Falguni and her two brothers, Hardik and Mihir. A copy of the death certificate is annexed. Copies of the various documents submitted to and correspondence with the society are also annexed. A public notice was also issued, and the copy of this is annexed as well.

8. At present, the Sunder Dham flat is occupied by Nayna, her own daughter Hetal, Falguni, Hardik and Mihir. Nayna earns about Rs.50,000/- per month from rent from other properties that she holds. She is the only member of the family with an income. Falguni is a first year college student. Nayna looks after the family.

9. Over time, as the children have grown, the needs have increased and the family now needs a larger house. Nayna had identified a flat No. B-503, Veena Geet Sangeet, 'Gangotri Yamnotri', Opp. Raj Residency-1, Mahavir Nagar, Kandivli (West). Mumbai 400 068. This was a much larger flat of about 1075 sq.ft. carpet area. Nayna did not have the finances for the full consideration of this flat. She has some savings, but the purchase of that flat would have had to be largely met out of the sale of the Sunder Dham Flat.

10. As it happens,, the ready reckoner value of the Sunder Dham flat is Rs.74.50 lakhs. Nayna has identified the purchaser, who is present in Court, for the price of Rs.1 Crore. It now transpires that the flat at Veena Geet Sangeet is no longer available. Nayna has since found another flat No. B-2001 in a newly constructed building called Harmony situated at Mahavir Nagar. This is slightly smaller than the Veena Geet Sangeet flat but it is apparently larger than the existing Suder Dham flat. The carpet area of the new flat is 775 Sq.ft. as against the 855 Sq.ft. built area of the Sunder Dham flat. The new flat also has the advantage of being very close to Nayna's mother's and brother's house. The total purchase value for the new flat is Rs.1,32,25,332/-. Nayna has filed an Additional Affidavit dated 7th July 2016. In this she confirms that the sale price of the

Sunder Dham flat is Rs.1 crore and that she has assets of value of Rs.33,69,191/- which she will make available for the purchase of new flat at Harmony Building. Some of Nayna's holdings are in the form of fixed deposits. These are held by in the joint names of Nayna, her daughter Hetal and her younger brother Manoj, in one or the other combination. There is also today an Affidavit of 7th July 2016 by Manoj and Hetal jointly confirming, first, that they have no claim, right, title or interest in those fixed deposits, and, further, that if those deposits are used towards the purchase of a new flat, neither of them will have any independent claim, share, right, title or interest in that new flat. It, of course, goes without saying that Hetal may well succeed to her mother's share in that flat, but that is a separate matter.

11. In addition, Nayna's Affidavit goes a step further. On page 3, in paragraph 4(f), she clearly states that she will retain and take only a 50% title in the new flat in Harmony and that her brother Haresh's three children Falguni, Hardik and Mihir will jointly have the remaining 50%. This statement is accepted as an undertaking to the court. It is an important safeguard. The reason is obvious: Nayna has a 50% share in Rs.1 Crore, which is the sale price of the Sunder Dham flat; and she is in addition contributing the remaining Rs.32 lakhs from her own savings. Yet she has agreed to acquire only a 50% title in the Harmony flat. Her interest is, therefore, not adverse to that of the minors. I am satisfied that the sale of the immovable property is in the interest of the minors and is also for legal necessity.

12. I note that the purchasers of the Sunder Dham flat are represented in Court today, represented by Mr. Bakulesh D. Mer. There is an Affidavit filed by one Mr. Sameer Bakulesh Mer, his son, confirming the purchase price of Rs.1 Crore for the Sunder Dham flat.

13. Having regard to all these circumstances, I am satisfied that the Petition deserves to be allowed. I am inclined to allow the Petition with some moulding of relief. The Petitioners are both appointed joint guardians of the two male minors Hardik Haresh Soni and Mihir Haresh Soni. In addition, there will be also be an order in terms of prayer clause (c). It is further clarified that the Petitioner No.2 Falguni will be required to sign the necessary documents in respect of the Harmony Building flat in relation to her one-third of one-half share, i.e., her one-sixth therein.

14. The Petition is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)