

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION NO.4793 OF 2016

Between:

P.Vimala Desai

.. Petitioner

and

All concerned if any

.. Respondents

DATE OF THE ORDER PRONOUNCED: 28.10.2016

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR**
+ CIVIL REVISION PETITION NO.4793 OF 2016

% DATED 28th OCTOBER, 2016

P.Vimala Desai .. Petitioner

Vs.

\$ All concerned if any .. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner : Sri Peddada Narasimha Rao

^Counsel for the Respondents : --

? CASES REFERRED:



THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.4793 OF 2016

O R D E R

The petitioner filed O.P.S.R.No.12732 of 2016 before the learned Principal District and Sessions Judge, Ranga Reddy District at L.B.Nagar, under Section 8(2) of the Hindu Minority and Guardianship Act, 1956 (*hereinafter*, 'the Act of 1956') seeking the permission of the Court to sell the property of her son, a minor. However, the OP was not entertained on the ground that the legal heir certificate of the father-in-law of the petitioner was not filed and his heirs were also not made parties to the proceedings. This objection was raised because the property stood in the name of the father-in-law of the petitioner. Despite the petitioner filing copies of the death certificates of her father-in-law and also her husband and explaining as to why the legal heirs of the father-in-law were not necessary parties to the proceedings, the Court below upheld the objection taken with regard to adding of legal heirs of the petitioner's father-in-law and returned the file for compliance. Aggrieved thereby, the petitioner is before this Court by way of this Civil Revision Petition filed under Article 227 of the Constitution.

Heard Sri Peddada Narasimha Rao, learned counsel for the petitioner.

Admittedly, the property now sought to be sold, a residential flat, was purchased in the name of the petitioner's father-in-law, Gundavarapu Lakshminarayana, under registered sale deed bearing Document No.6462 of 2006 dated 03.03.2005. However, there was a clear recital in the said sale deed that the petitioner's father-in-law intended to purchase the said flat for the benefit of his grand son,

Gundavarapu Himamshu Dutt, a minor, represented by his parents, Gundavarapu Rama Subbaraya Balaji and G.Vimala Desai, the petitioner, as his guardians. The death certificates produced by the petitioner demonstrated that her father-in-law died on 16.10.2007 and her husband, Gundavarapu Rama Subbaraya Balaji, the father of the minor, died on 29.11.2013. In terms of the recitals in the registered sale deed, the petitioner herein, being the mother, is the sole guardian for her minor son, Gundavarapu Himamshu Dutt, in so far as this property is concerned. She therefore filed the subject petition under Section 8(2) of the Act of 1956 seeking permission of the Court to alienate the said residential flat for his benefit.

The question that falls for consideration is whether the legal representatives of the deceased father-in-law are necessary parties to this proceeding at the threshold?

The clear intention of the father-in-law, as set out in the registered sale deed itself, is to the effect that the residential flat in question was purchased for the benefit of his minor grand son. The parents were designated as the guardians. The petitioner, being the mother, is now the sole guardian as the father already expired.

The procedure to be followed while dealing with a petition under Section 8(2) of the Act of 1956 is set out in Section 8(5) thereof. As a corollary thereof, the procedure under Sub-sections (2), (3) and (4) of Section 31 of the Guardians and Wards Act, 1890 (*for brevity*, 'the Act of 1890') is brought into play. Thereunder, it would be open to the Court to cause notice of the present petition being given to any relation or friend of the ward who should, in its opinion, receive notice thereof and the Court is also empowered to hear and record the statement of such person who appears in opposition to the

petition. This being the envisaged procedure under the statute, it was not open to the Court to refuse to entertain the petition filed under Section 8(2) of the Act of 1956 unless all the relations who may possibly have an interest are impleaded. This is a step for the Court to take later, under Section 31(4) of the Act of 1890, if it so desires.

The facts in the present case demonstrate that in terms of the intention of the purchaser of the subject flat, it was meant for the benefit of his minor grand son and as matters stand, the petitioner, being the mother of the minor child, is his only guardian in respect thereof. Her petition therefore ought not to have been returned on the ground that she had not impleaded the legal heirs of the deceased father-in-law.

The Civil Revision Petition is accordingly allowed overruling the objection raised and thereafter upheld, in connection with impleading of the legal heirs of the deceased father-in-law. The Court below shall entertain the OP, if it is otherwise found to be in order, and adhere to the procedure contemplated under the statute. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

28th OCTOBER, 2016

**Note: L.R. copy to be marked
B/o Svv**