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

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Date of Decision: 07.01.2016

Smt. Santra Devi

... Petitioner(s)

Versus

Nitin and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Mukesh Yadav, Advocate,
for the petitioner.

Paramjeet Singh Dhaliwal, J.

Instant revision has been filed under Article 227 of the Constitution of India for setting aside the judgment dated 31.07.2014 passed by learned Addl. Civil Judge (Sr. Divn.), Mohindergarh whereby petition filed by the respondents under Section 8 of the Hindu Minority and Guardianship Act, 1956 (for short, 'the 1956 Act') has been allowed and the judgment dated 21.10.2015 passed by learned Addl. District Judge, Narnaul whereby appeal preferred by the respondents has been dismissed.

The facts relevant for disposal of the revision are to the effect that respondents-minors through their mother filed petition under Section 8 of the 1956 Act seeking permission to sell the property to the

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extent of 1/5th share in land measuring 114 kanals 13 marlas comprised in khewat No.133, khatoni No.190 to 193 and mutation No1626 dated 10.04.2013, lying in their favour, situated within the revenue estate of village Bas (Satnali), Tehsil and District Mohindergarh. It was averred that the respondents herein are minors; their father has expired; they are living with their widow mother and money is required for their better schooling, upbringing and to meet out their day to day requirements but their mother, being house wife does not have any source of income to meet out the expenses to be incurred upon them. It was also averred that after death of father of the respondents, their mother was turned out of her matrimonial home by her father-in-law and other members of the family. The land which is sought to be sold, is very small chunk of land and there is no irrigation facilities and the same is far from the village due to which the same is not cultivable. Notice of the petition was given to the General Public through publication in newspaper 'Dainik Chetna, Bhiwani' dated 03.01.2014, but none appeared on behalf of the general public and it was proceeded against exparte.

After appreciating the evidence and contentions of learned counsel for the respondents herein, learned Addl. Civil Judge (Sr. Divn.), Mohindergarh allowed the said petition vide impugned judgment dated 31.07.2014.

Against that, the petitioner filed appeal before learned Addl. District Judge, Narnaul which has been dismissed vide impugned judgment dated 21.10.2015. Hence, this revision.

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I have heard learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner contended that the petitioner is grand-mother of the minors. The permission to sell the property has been obtained by Smt. Monu Devi secretly. The market rate of the property has also not been disclosed and sale is not in the welfare and betterment of the minors-respondents. Smt. Monu Devi, mother of the respondents, has not sold the property lying in her share. It reveals from the statements of witnesses that there is no dire need of money for the interest and welfare of the minors. The publication was not made in the daily newspaper having wide circulation in the area. From the perusal of publication, it does not transpire as to for what purpose, the petition has been filed.

I have considered the rival contentions of learned counsel for the petitioner.

Before proceeding further, it would be apposite to reproduce Section 8 of the 1956 Act which reads as under:

“8. Powers of natural guardian.- (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.
(2) The natural guardian shall not, without the previous permission of the court,-

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(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular-

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof.

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, "Court" means the city civil court or a district court or a court empowered under section 4A of the

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Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.”

The aforesaid provision envisages the powers of a natural guardian of a Hindu minor and it provides that natural guardian has power to do all acts which are necessary or reasonable and proper for the benefit of the minor or his estate.

Now adverting to the facts of present case, it is admitted fact that the respondents are residing with their mother. In the present case, it is stated that the property is to be sold for the proper benefit of the minors, their protection, education and marriage. The witnesses examined by the respondents clearly stated that Smt. Monu Devi has no adverse interest against the interest of minors. Both the courts below were satisfied that property is to be sold for the welfare of the minors. The Civil Court has granted the permission to sell the property of minors on certain terms and conditions that the property will be sold on proper market price and the sale consideration will be kept in fixed deposit in some nationalized bank and the amount will not be withdrawn without prior permission of the Court or unless and until minors-respondents attain age of majority and the guardian/mother of respondents has been granted permission to use the interest part of the fixed deposit for the benefit of the minors. In view of the conditions imposed upon Smt.

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Monu Devi, this Court is satisfied that money received by Smt. Monu Devi after selling the land shall be used for the betterment of the minors.

The lower Appellate Court has rightly held that notice was duly published in newspaper Dainik Chetna, Bhiwani dated 03.01.2014 and names of minors and their mother Smt. Monu Devi have been mentioned and defect, if any exists in the publication notice, cannot be a ground to dismiss the case of the minors-respondents.

In view of above, I do not find any illegality or perversity in the impugned orders.

Dismissed.

07.01.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge