

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A.NO.495 OF 2017

JUDGMENT (ORAL) (Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, appellant seek direction thereby setting aside the dismissal order and decree dated 13.03.2017 passed in G.W.O.P.No.674 of 2016 on the file of Principal District Judge, Guntur, filed under Section 8 of Hindu Minority and Guardianship Act, 1956 (for short 'the Act') seeking permission to sell the petition schedule property standing in the name of the minor daughter.

Brief facts of the case are that, the respondent is the father-in-law of the petitioner and paternal grandfather of the minor daughter. He purchased the schedule property under a registered sale deed bearing document No.457 of 1972 dated 17-5-1972 on the file of Sub Registry, Macherla. After the death of the husband of the appellant, the respondent executed a gift deed in favour of the minor daughter by name Pagadala Venkata Durga Jahnvi on 8.6.2010. However, he retained the life interest with him over the said property. The petition schedule property is an agricultural land admeasuring Ac.0.58 cents in D.No.631/7 and Ac.0.40 cents in D.No.631/8 situated in Durgi Village, Macherla Mandal, Guntur District. By the time of execution of the gift deed, the minor is aged eight years and now, she is aged about thirteen years. She is growing and the appellant is in financial difficulties, due to which, she is unable to maintain the family as well as the minor daughter.

Learned counsel appearing on behalf of the appellant submits that, the learned court below failed to see the present financial position of the appellant and the needs of the growing child, such as food, education, clothing, facilities etc., and erroneously dismissed the petition by observing that there is no legal evidence produced by the appellant with regard to the proper and real necessities of the minor.

It is pertinent to note that respondent has filed the counter affidavit before the court below whereby stated that permission for sale of petition schedule property to the third party may be given. Thus, the said respondent has no objection.

As per Section 8 of the Act, there shall be necessity to sell the property of the minor to his/her advantage. In the present appeal, the appellant is unable to bear the expenses of the child, such as education, clothing and other necessities. The child is at the growing age. At this stage, she needs good education, nutrition and other necessities, which may not be required after her attaining the age of majority.

Though we do not find any fault in the order passed by the court below, however, the said court ignored the fact that if the necessities of the minor are not met at this stage, then the very purpose of well being of the minor shall be defeated.

Therefore, keeping in view the averments made in the instant petition and the submissions of the learned counsel for the appellant, we deem it proper to allow the appellant to sell the

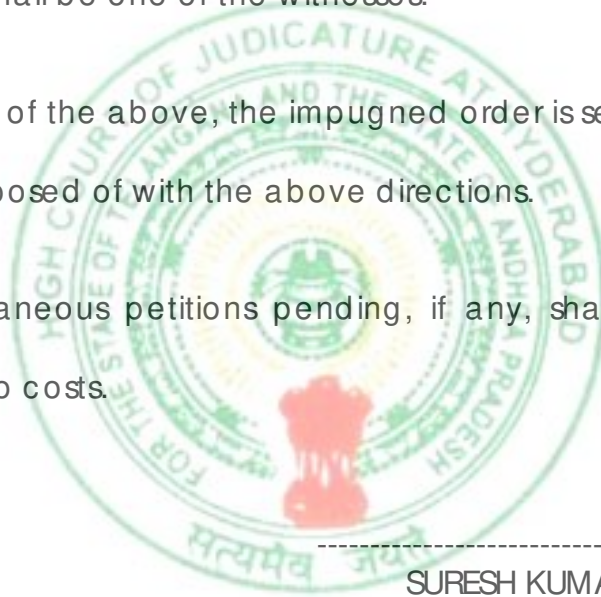
petition schedule property, which stands in the name of the minor and the sale proceeds shall be deposited in any nationalised bank at Guntur in the name of the minor, in fixed deposit. Such amount shall remain in the fixed deposit till she attains the age of majority.

We hereby make it clear that the appellant shall be at liberty to withdraw the interest accrued on the said fixed deposit and spend the amount for the well being of the minor.

We further make it clear that in the sale proceedings, the respondent shall be one of the witnesses.

In view of the above, the impugned order is set aside and the appeal is disposed of with the above directions.

Miscellaneous petitions pending, if any, shall stand closed.
No order as to costs.



SURESH KUMAR KAIT, J

T. AMARNATH GOUD, J

DATE: 22—12—2017

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