

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

901 FIRST APPEAL NO. 2526 OF 2019

SOBHA ASHOK MORE @ SHOBHA DHANJI PAGARE
AND ANOTHER
VERSUS
NIL

...
Advocate for Applicant : Mr. H.M. Hussain.

...
CORAM : MANGESH S. PATIL, J.

DATE : 29.11.2019

PER COURT :

This is an appeal under Section 8 of the Hindu Minority and Guardianship Act, 1956, filed by the mother of a minor, being aggrieved and dissatisfied by the judgment and order passed by the District Court dated 18.04.2019, refusing to accord her permission to sell the share of the minor daughter.

2. The notice/citation has been duly published and objection has not been raised by anybody.

3. Learned advocate for the appellant submits that in fact the appellant is the natural guardian and mother of the minor daughter. The property was purchased by her jointly with her husband. Consequently, it stood in their joint name. The husband having died, the name of the minor has been mutated as his heir to that property. Since the property is inconvenient for her to commute between her residence and the place of work where she has been working as teacher, she has decided to purchase another property in the same town but at a convenient place. She has entered into an agreement of sale to sell the property

standing in the joint name with the minor and also has entered into agreement to purchase another property. There being nothing to demonstrate that the interest of minor was not being duly protected by the natural mother, the District Court has grossly erred in refusing to accord permission on flimsy grounds that the statements in her affidavit were an improvement than what was actually mentioned in the application. Learned advocate also cites the decision in the case of *Shri Narayan Bal vs. Shridhar Sutar*, **(1996) 8 Supreme Court Cases 54**.

4. I have carefully gone through the impugned order and papers. Obviously, in an application under Section 8 of the Hindu Minority and Guardianship Act, in my considered view, strict rules of pleadings are not expected to be followed. The paramount consideration in dealing with such applications would be the interest of the minor.

5. Bearing in mind the fact that the appellant is the natural guardian and mother of the minor, there has to be some element or reason to doubt her *bona fides* particularly when her husband has died and the whole responsibility to bring up the child now rests with her. It is not that she is an illiterate lady. She has been employed as a teacher. Since before the death of her husband, the property sought to be sold was jointly acquired by the couple and it is after his demise that the name of the minor has been mutated jointly with the appellant.

6. In the absence of any material to doubt the *bona fides* of the appellant, simply by referring to some discrepancies in the statement in the affidavit and the statements made by her in the application, the District Court ought not to have rejected the

application. In such matters, the approach of the Court should not be to find fault, rather a pragmatic view is to be taken. A mother is applying for selling the property for acquiring another property at a convenient place. No one has any objection and in the absence of contrary material, there can be no doubt about *bona fides*. She has entered into an agreement of sale to sell the property and has also entered into another agreement to purchase another plot and is intending to build a house thereon.

7. When a query was put to the learned advocate for the appellant as to how interest of the minor is proposed to be protected, on instructions, he submits that in fact the property to be purchased now would be purchased in the name of the appellant mother and the minor daughter and that the major portion of the proceeds will have to be applied towards passing of the consideration and for carrying out the construction. Still, the appellant mother is ready to deposit an amount of Rs. 2,00,000/- as a fixed deposit in the name of the minor by way of security.

8. Considering all the aforementioned facts and circumstances, the appeal is allowed. The appellant's application is allowed. She is allowed to sell the property to the person with whom she has entered into agreement for consideration mentioned therein subject to the following conditions :

(a) She purchases the property pursuant to the agreement of sale in the joint name of herself and the minor.

(b) She files a copy of the sale deed on record of the District Court immediately after selling and purchasing the properties.

(c) She deposits an amount of Rs. 4,00,000/- in the name of the minor daughter as a fixed deposit in any nationalized bank for a period of five years.

(d) She shall file an undertaking before the District Court to the above effect within four weeks.

(MANGESH S. PATIL, J.)

S.P.C.