

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

APPEAL AGAINST ORDER NO. 12/2021

APPELLANTS

**[ORI. APPLICANTS
ON R.A.]**

- 1] Smt. Babita wd/o Sanjay Rathod,
Aged 30 years, Occu: Cultivator.
- 2] Ku. Kanchan d/o Sanjay Rathod,
Aged 11 years, Occu: Education,
Minor by Natural Guardian/Mother
Appellant No.1- Smt. Babita Sanjay
Rathod, Aged 30 years,
Both R/o Khadki, Tq. Barshi Takli,
District-Akola.

...V E R S U S...

RESPONDENT

NIL

Shri C.A. Joshi, Advocate for the Appellants.

CORAM : S.M.MODAK, J.
DATE : 21/10/2021.

ORAL JUDGMENT.

1] Heard learned Advocate Shri C.A. Joshi for the appellants. Their application filed under Section 8(2) of the Hindu Minority and Guardianship Act, 1956 (for short 'the Act of 1956') was rejected by the Court of the District Judge-4, Akola, vide order dated 18/03/2021. The appellant No.2- Ku. Kanchan d/o Sanjay Rathod is 11 years old and appellant No.1 – Smt Babita wd/o Sanjay Rathod is her mother-natural guardian. The husband of appellant No.1 by name Sanjay Rathod expired. The natural

guardian-mother has sought permission from the District Court to sell the share of minor daughter in the land bearing Survey No.7/1 ad-measuring 1 H. 57 R situated at Mouza- Sewanagar, Taluka-Barshitakli, District Akola.

2. Before the District Court, the natural guardian-mother has filed her affidavit, 7/12 extract, copy of Issar Pawati dated 06/01/2021 issued to the prospective purchaser Sanjay Ratan Jadhav and a copy of valuation report. The learned District Judge was pleased to reject that application for two reasons as follows :-

- a] No necessity has been made out by the natural guardian-mother.
- b] No documentary evidence was produced to show that total consideration was Rs. 8,00,000/-.

3. The correctness of the said order is challenged on behalf of the appellants. She also admits that before the District Court they have not filed any document showing total consideration of Rs. 8,00,000/-. About the necessity, it has been pleaded that the natural guardian is not having any source of income, so as to maintain the minor daughter and the situation has been aggravated due to the death of her husband on 14/05/2009. She has pleaded that considering her place of residence at village Khadki, Taluka-Barshitakli, it has become difficult for her to cultivate the land which is situated at Sewanagar, Taluka-Barshitakli at the distance of 10 K.m.

4. When the appeal was argued, it was also noticed that there is no document on record showing what were the terms

agreed between the natural guardian as a Vendor and the said purchaser Sanjay Ratan Jadhav. Appellant No.1 has taken note of the observations and accordingly Vendor-Sanjay Ratan Jadhav has filed an affidavit, thereby mentioning the amount of total consideration and how it is to be paid. Along with Pursis Stamp No.2/2021, the natural guardian-mother has also filed copy of agreement titled as Kararnama executed 01/10/2021.

TERMS OF AGREEMENT

5. Learned Advocate Shri C.A. Joshi took me to various terms of that Kararnama. The main terms are as follows :-

- a] Total consideration agreed is Rs. 8,00,000/- out of that Rs. 50,000/- were paid on 06/01/2021.
- b] Rs. 4, 00,000/- is to be paid to natural guardian-mother and Rs. 4,00,000/- to be paid to the minor daughter.
- c] The amount of Rs. 4,00,000/- coming to the share of the minor daughter is to be kept in Fixed Deposit of Nationalized Bank for a period of seven years and the minor daughter can withdraw that amount after attaining the majority.
- d] The sale-deed is to be executed within three months upto 31/12/2021.
- e] There were other terms about the consequences, if either of the party will fail to compel with the commitments.

VALUATION

6. In order to ascertain the market valuation prevailing

in that area, the copy of the valuation report issued by Sub-Registrar, Barshitakli filed at Page No.21 is perused. The valuation of agricultural land which is being used for *Jirayat* purpose is Rs.4,21,000/- per hector and the total valuation for 1 H 62 R is shown to as Rs.6,82,020/-. The Gat No.7 village Sewanagar, Taluka Barshitakli is shown therein. As against this, the consideration agreed as per the agreement is Rs.8,00,000/-. Certainly, the agreed consideration is more than the Government Valuation. Rs.50,000/- is already paid. Out of Rs.7,50,000/-, Rs.4,00,000/- is to be paid to appellant No.2 and Rs.3,50,000/- is to be paid to Appellant No.1.

7/12 EXTRACT

7. Photocopy of 7/12 extract is also filed on Page No.18. The names of the natural guardian-mother and daughter Ku. Babita were shown on it. The land is shown as Gat No.7/1 ad-measuring 1H. 62R. Today, the copy of 7/12 extract standing in the name of all concerned persons from the family of the natural guardian-mother is also shown to me. It is taken on record and marked as Annexure-X. The two facts are revealed from the said 7/12 extract - (i) apart from the name of the natural guardian-mother and her minor daughter, names of other persons were also shown. But, it is also true that the area belonging to the appellants has been separately shown and it comes to 1H. 62R. (ii) Furthermore, there are certain charges of the Co-operative Society in respect of loan obtained.

8. It is submitted that the Vendee will pay Rs. 8,00,000/- (Rs. Eight Lakh only) towards agreed consideration and whatever

the charges are there, he will repay those charges. Though this clause is not mentioned in the agreement, orally submitted that the Vendee will clear those charges. The Court can accept this statement.

NECESSITY

9. From clause No. 2 of the agreement, the Vendee has agreed to bear the expenses of the execution of the sale-deed. When the appeal memo is perused and particularly para Nos. 3, 4 and 5, it can be said that the natural guardian-mother wants to sell the share of minor daughter, considering the family and financial requirements. In fact, they were also pleaded in para Nos. 1, 2 and 3 of the application. Even, while filing an affidavit before the trial Court, these reasons are mentioned in para Nos.1, 2 and 3. So there is every reason to believe that the District Court has not paid attention to these clauses and came to wrong conclusion that necessity has not been made out. Factually, that observations is not correct.

10. From the above discussion, it is also clear that the terms orally agreed between the parties were reduced into writing by way of an agreement.

INTEREST OF MINOR

11. Ultimately, prior to granting the permission, the Court has to protect the interest of the minor. Section 8(2) of the Act of 1956 casts an obligation of natural guardian to seek permission of the Court prior to selling any immovable property. Whereas,

Section 8(5) of the Act of 1956 makes the provisions of the Guardians and Wards Act, 1890 (for short “the Act of 1890”) applicable when such permission has been sought. Accordingly, the provisions of Sections 29 and 31 of the Act of 1890 they are made applicable. This Court do not find any reason to refuse the permission for sale of minor’s share. The natural guardian-mother has agreed to keep the amount of Rs.4,00,000/- coming to the share of the minor in the Fixed Deposit and the said amount is to be withdrawn after the minor has attained the majority. At present, the minor is aged about 11 years of old. This is sufficient for protecting the interest of the minor. Furthermore, the vendee is paying the amount more than the Government Valuation. In that way also, the interest of minor is protected.

12. For the above reasons, the order passed by the District Court cannot be said to be an order passed after considering all the aspects. It needs to be set aside. Hence, the following order:-

ORDER

- 1] The Appeal is allowed.
- 2] The order dated 18/03/2021 passed by the Court of District Judge-4, Akola in M.J.C. No. 07/2021 is set aside.
- 3] The appellant No.1- Smt. Babita wd/o Sanjay Rathod is permitted to sell the share of minor daughter Ku. Kanchan d/o Sanjay Rathod.

- 4] The appellant No.1 is permitted to sell the share of the minor daughter to Vendee – Sanjay Ratan Jadhav for consideration of Rs. 8,00,000/-(Rs.Eight Lakh only).
- 5] The sale-deed be executed in terms of the copy of the agreement dated 01/10/2021.
- 6] The appellant No.1 through the Vendee-Sanjay Ratan Jadhav shall deposit an amount of Rs. 4,00,000/- (Rs. Four Lakh only) in any Nationalized Bank for a period of seven years and to produce the fixed deposit receipt in the Court before the learned Registrar (Judicial).
- 7] It is made clear that appellant No.1-mother will not be entitled to withdraw the amount of Rs.4,00,000/- (Rs. Four Lakh only) coming to the share of minor daughter and the minor daughter will be entitled to withdraw that amount after attaining the age of majority.
- 8] Appellant No.1 will be entitled to withdraw the amount of interest, which the bank will pay on the deposit, it may be quarterly interest or yearly interest, the necessary instructions can be given by the appellant No.1 to the Bank.
- 9] The deposit receipt be produced in the Court within one month from today.
- 10] The sale-deed can be executed only after the Fixed

Deposit receipt is produced in the Court.

- 11] The Registrar (Judicial) is directed to keep that receipt in safe custody and the receipt be returned to the minor daughter after she attained the age of majority.

JUDGE

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