

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

CR-920-2021

Date of decision : 08.07.2021

Meena Dawar and others

...Petitioners

Versus

General Public

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Puneet Jindal, Sr. Advocate with
Mr. Tajinder Singh, Advocate for the petitioners.
(Through Video Conferencing)

VIKAS BAHL, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 02.02.2019 (Annexure P-5), orders dated 28.08.2019, 27.09.2019 and 23.11.2020 (Annexure P-6, Colly) passed by the learned Civil Judge (Senior Division)/Guardian Judge, Faridabad directing the petitioners to implead the natural father and grandparents of the minors as party to the petition, by observing that the said persons are necessary parties for the just decision of the case.

The facts as per the case set up by the petitioners which are apparent from the averments made in the revision petition and also from the brief synopsis handed over by the learned Senior Counsel for the petitioners, are stated hereas under:-

1980 onwards	Harish Chand Dawar was alive (Died 08.12.1982), he was exclusive owner of residential plot No.743, Sector-19, Faridabad measuring 383.73 Sq. Yd.
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09.05.1989 P-4	After death of Harish Chand, Plot transferred by natural succession in the name of Meena Dawar (Widow/Petitioner No.1), Vikram Dawar (Minor Son/petitioner No.2), Preeti Dawar (Minor Daughter died on 22.08.2007) and Vineet Dawar (Minor son/Petitioner No.3)
29.11.2002	Preeti Dawar got married with Rajiv Arora
27.11.2003	Kashish Arora (Elder Minor Daughter) born
03/01/06	Gayatri Arora (Younger Minor Daughter) born
22.08.2007	Wife Preeti Dawar died under mysterious circumstances at matrimonial home of Rajiv Arora. Since that day both minor are under care and custody of petitioners.
23.08.2007 P-1	Panchayatnama/Settlement, whereby it was agreed that no FIR on account of death of Preeti Dawar would be lodged by petitioners however they will get permanent custody of minor daughters. Rajiv Arora promise to return entire Istridhan and FDR of Rs.5 Lac each in the name of two minor daughters.
2014-15	Rajiv Arora challenged the settlement, litigation in respect of custody of minor daughters started, however the said transferred by this Hon'ble High Court to itself.
19.11.2015 P-2	This Hon'ble Court after interactions with minors ordered custody of both minors daughters to remain with the maternal side of the family. The said order continuous till date and applications filed by Rajiv Arora declined.
2007-2020	Meanwhile, minors have grown up, presently studying in 12 th class and 9 th class respectively and require higher education expenditure.
14.05.2018	Meanwhile, application filed by maternal side of the minors for permission to sell $\frac{1}{4}$ share (25%) share of the minors in respect of the plot in Faridabad, which was owned by Harish Chand Dawar filed before Guardian Judge at Faridabad. The total sale consideration Rs.1,40,00,000/- Market rate/Circle Rate: Rs.27,000/- per sq. yd. According to which the same comes to Rs.1,03,60,710/-, therefore, the sale is in the best interest of the minor as being sold more than market value.

Mr. Puneet Jindal, learned Senior Advocate appearing for the petitioner has relied upon the settlement dated 23.08.2007 (Annexure P-1), order passed by this Hon'ble High Court dated 19.11.2015 (Annexure P-2), Allotment Letter of plot dated 09.05.1989 (Annexure P-4) and has also referred to the application dated 14.05.2018 (Annexure P-3) filed under Section 8 of the Hindu Minority and Guardianship Act, 1956 (hereinafter to be referred as "the Act of 1956"). The averments of the said application have been highlighted and it has been stated that after the death of Preeti Dawar, share of Preeti was transferred in the name of Baby Kashish Arora and Baby Gayatri Arora and that the petitioners are in great need of money and are therefore, intending to sell the property. Learned Senior Counsel has further placed reliance on the provision of Section 8 of the Act of 1956, 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,—

(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 by 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 shall 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 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.”

Reliance has also been placed upon Sections 29 and 31 of the Guardians and Wards Act, 1890. The said provisions are reproduced hereinbelow:-

“29 . Limitation of powers of guardian of property appointed or declared by the Court.- *Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,-*

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

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

31. Practice with respect to permitting transfers under section 29.-

(1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be

done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The Court may in its discretion attach to the permission the following among other conditions, namely:-

(a) That a sale shall not be completed without the sanction of the Court;

(b) That a sale shall be made to the highest bidder by public auction before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court subject to any rules made under this Act by the High Court, directs;

(c) That a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(d) That the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 29, the court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion,

receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.”

It has also been submitted by the learned Senior Counsel for the petitioners that the certified copies of the orders which are annexed alongwith the present revision petition were also submitted before the learned trial Court. It is the argument of learned Senior Counsel that neither the natural father nor the grand parents are necessary parties in the present case and the question whether a particular party is necessary or not is to be seen in the light of the provisions of the Act of 1956 and the Guardians and Wards Act, 1890 as referred to above. It is, thus, submitted that the impugned order impleading the father and the grand parents of the minors is absolutely illegal and against law and would result in delaying the proceedings before the learned Court below.

I have heard learned Senior Counsel for the petitioners and have given my thoughtful consideration to the arguments raised and I have also perused the revision petition and am of the considered opinion that the impugned orders which have been passed, are in accordance with law and the revision petition challenging the same deserves to be dismissed.

It would be pertinent to note that the first impugned order has been passed on 02.02.2019, the subsequent orders were passed on 28.08.2019, 27.09.2019 and 23.11.2020. A perusal of the subsequent orders would show that it has been specifically mentioned therein that there has been no compliance of the order dated 02.02.2019 by the

petitioners.

The present revision petition has been drafted on 07.04.2021 and has come up for hearing today i.e. on 05.07.2021. The petitioners are themselves to be blamed for the delay, if any, in the proceedings. In case, the petitioners had complied with the said order dated 02.02.2019, then in all probability, the application under Section 8 of the Act of 1956 (Annexure P-3) would have been decided by the learned trial Court. Neither the said orders were complied with nor the same were challenged until filing of this present revision petition in the year 2021.

Perusal of the application (Annexure P-3) as well as the impugned orders would show that the present case has been filed against the General Public. It is, thus, apparent that in such a case, any person from the General Public can come up and raise a defence and oppose the application filed by the petitioners. The principle of '*Dominus litus*' does not apply where the respondent is stated to be the General Public. Moreover, the impugned orders passed are in accordance with the provisions of Order 1 Rule 10(2) of CPC. Order 1 Rule 10(2) of CPC is reproduced hereinbelow:-

“Order 1 Rule 10(2) of CPC:-

Order 1 Rule 10(2). Court may strike out or add parties.

— The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as

plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

Perusal of the said provision would show that the Court at any stage of the proceedings, even without an application of either party can order that the name of any party who ought to have been joined whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit, be added. Thus, the Court has power to add any party without any application made from either of the said parties, in case the Court comes to the conclusion that the parties to be added are necessary for adjudicating the matter.

In the present case, this Court feels that father and grand parents of the minors are necessary parties for proper adjudication of the petition under Section 8 of the Act of 1956, where the property in which the minors have admittedly got 1/4th share is sought to be sold. The reasons for them to be joined are more than one. Even as per the documents, moreso, the order of the Hon'ble High Court dated 19.11.2015, which have been relied upon by the learned Senior Counsel for the petitioners, it is apparent that the natural father Mr. Rajiv Arora was given visitation rights. He was also granted the liberty to celebrate birthday of his daughter in Pathankot and the parties were given liberty to make application for further direction as the future may demand. The petitioners who are maternal grandmother and the maternal uncles of the

minor children have projected their side of the case in their application dated 14.05.2018 (Annexure P-3) but it is very necessary for the Court to know the side of the natural father and grand parents of the minors. There could be any subsequent event which might have taken place after the passing of the order by this Hon'ble Court (Annexure P-2) which could be of great relevance in deciding the application under Section 8. There could be some issues between the petitioners and the minor children or there could have been some inclination of the minors to live with the natural father or paternal grand parents. Any such fact, if having occurred, can only be brought to the notice of the learned trial Court by the natural father or the paternal grand parents after they are made parties to the proceedings in the trial Court.

The facts that would emerge after respective replies have been filed would greatly help the learned trial Court to properly and finally adjudicate the petition under Section 8 of the Act of 1956.

Reliance sought to be placed by the learned Senior Counsel on the provisions of Section 8 as well as Sections 29 and 31, mentioned hereinabove, does not take the case of the petitioner any further. The issue in the present case is whether the learned trial Court has correctly impleaded the natural father and the grand parents or not. Whether the application under Section 8 would be allowed or not is not the issue which arises at this stage. Section 8 of the Act of 1956 only states about the powers of the natural guardian. The said Section does not in any way restrict the power of the Court to add a person as a party in a case. In fact,

the duty cast on the Trial Courts as mentioned in Section 8 Sub-Section 4, makes it all the more necessary for the Trial Courts to gather all the relevant facts before granting permission to sell the property of the minors.

I find that it is extremely relevant that the side of the natural father and the grandfather is also before the learned trial Court so that no order is passed which is not to the advantage of the minors. Even the provision of Section 29 of the Guardian and Wards Act, 1890 only deals with the limitations on the powers of a guardian of property, appointed or declared by the Court. Section 31 deals with the practice with respect to permitting transfer under Section 29. All the said provisions referred to above deal with the situation as to how the petition under Section 8 is to be decided and what are the relevant factors to be considered in deciding the said application. The said provisions do not even remotely curtail the power of the learned trial Court to implead the necessary parties for the just decision of the application under Section 8. Even perusal of Section 31(4) of the Guardians and Wards Act, 1890 would show that before granting permission to the guardian to do acts as mentioned in Section 29, the Court may cause notice of the application for permission to be given to any relative or friend of the ward who should, in its opinion, receive the notice thereof and shall hear and record the statement of any person who appears in opposition to the said application. After considering the abovesaid provisions, I am of the considered opinion that even the said provisions, when read in the right perspective, support the fact that all the

parties who are in the knowledge of the facts concerning the minors and their property should be impleaded and heard before any order in a petition under Section 8 is passed.

It is, thus, apparent that before granting permission to sell the share of a minor, the Court has to consider all the aspects very carefully and it is only in the case of necessity or for evident advantage of the minor that the same should be allowed. For the said purpose, the Court has every right, rather has a duty to hear all concerned parties, the natural father and the grand parents in the present case, so as to know all the facts which are relevant for adjudication of application under Section 8 of the Act of 1956.

Learned Senior Counsel has also submitted that Kashish Arora (elder minor daughter) who was born on 27.11.2003 is going to turn major on 28.11.2021. Even the said fact would not help the petitioners as once the said girl would attain majority, then it would be she who would have a right to dispose of her share in the property in question, in the manner she wants.

In view of the aforesaid facts and circumstances, this Court is of the opinion that the impugned order deserves to be upheld and the present revision petition deserves to be dismissed. It is, however, clarified that any observations made in the present order should not be construed as an expression on the merits of the petition under Section 8 of the Act of 1956, which petition would be independently decided in accordance with law and the observations made in the present order are only for the

purpose of considering whether the natural father and the grand parents of the minors have been rightly impleaded or not.

In view of what has been observed above, the present revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

08.07.2021
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**