

13.07.2023
Item No.103.
Court No.1.
S. De

Circuit Bench of Calcutta High Court at Jalpaiguri.

F.M.A.T. 18 of 2023

Nadita Das Mallick.

Vs

Estate of Minor Bedanta Mallick.

Mr. Nripen Das,
Mr. Debanjan Das,
...for the petitioner/appellant.

Heard learned advocate for the
petitioner/appellant at length.

e-Assessment Slip filed by the
petitioner/appellant in respect of the valuation of
the schedule mentioned land which the appellant
proposes to sell for the benefit of her minor son is
taken on record.

The present appeal is now taken up for hearing
and disposal.

By filing the instant appeal, the
petitioner/appellant has impugned Order No. 10
dated 22.02.2023 passed by learned District Judge,
Darjeeling in Act-VIII, Case No.24 of 2022 whereby
the said Court rejected the application under
Section 7 read with Sections 10 and 29 of the
Guardian and Wards Act, 1890 (hereinafter referred
to as the 'said Act') filed by the appellant herein.
The petitioner/appellant who is the biological

mother of the minor felt aggrieved and thus preferred the instant appeal.

In course of hearing, Mr. Das, learned advocate for the appellant took us through a certified copy of the said application filed by the present appellant before the learned Trial Court. It was contended by Mr. Das that while passing the impugned order, learned Trial Court failed to appreciate the requirement of the present appellant/mother for sale of the schedule mentioned property for the purpose of welfare of the child. It was contended further by Mr. Das that learned Trial Court though considered that creation of a fund is necessary by selling the scheduled land in question for the purpose of better education and maintenance of the child, yet for no reason whatsoever rejected the petitioner's prayer. Learned Trial Court has failed to appreciate the true spirit and implication of Sections 10, 7 and 29 of the said Act of 1890. Mr. Das thus submitted that this is a fit case for allowing the instant appeal by setting aside the impugned order and by permitting the present appellant to sell the schedule mentioned property.

We have meticulously gone through the said application for permission as filed before the learned Trial Court including a certified copy of the impugned judgment.

We have also considered the submission of Mr. Das learned advocate for the petitioner/appellant. By filing the said application under the said Act of 1890, it appears to us that in paragraph nos.7 and 8 of the said application, the present petitioner/appellant being the biological mother of the minor Bedanta Mallick has categorically stated that for better education and for proper maintenance, a corpus is required to be created and that can be done only by way of sale of the schedule mentioned property. It appears to us that before the learned Trial Court the present appellant being PW-1 adduced oral evidence in support of her pleadings. It appears further that the present petitioner/appellant is the widow and she has got no other means except the property as mentioned in the schedule for maintaining and for better education of her own son.

Such being the position, we are satisfied that the present appellant being the biological mother of the minor Bedanta Mallick is successful in making out a case for obtaining permission to sell the schedule mentioned property basically for the welfare of the child Bedanta Mallick.

Accordingly, the instant appeal is hereby allowed.

Consequently, the application under Section 7 read with Sections 10 and 29 of the Guardian and Wards Act, 1890 as filed by the present appellant/petitioner before the learned District Judge, Darjeeling Act VIII Case No.24 of 2022 stands hereby allowed.

Consequently, the impugned Order No.10 dated 22.02.2023 passed by learned District Judge, Darjeeling Act VIII Case No.24 of 2022 is hereby set aside.

As a result, liberty is given to the present appellant to sell the schedule mentioned land at a price not less than Rs.36,63,114 (Rupees Thirty Six Lakhs Sixty Three Thousand One Hundred Fourteen) to any intending purchaser with a direction that after completion of sale, the entire consideration money shall have to be deposited in a fixed deposit account in a Nationalized Bank solely in the name of the minor with liberty to the present appellant to withdraw interest of the said fixed deposit amount for expending the same for the welfare of her biological minor son Bedanta Mallick till he attains majority.

It is further ordered that the present appellant is, however, not permitted to withdraw the aforesaid fixed deposit amount for any reason whatsoever

unless the same is permitted by learned District Judge, Darjeeling for cogent and acceptable reason.

With the aforementioned observations, the instant appeal being FMAT 18 of 2023 is disposed of. All interim applications, if any, stand disposed of.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Partha Sarathi Sen, J.)

(Arijit Banerjee, J.)