

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.1316 OF 2022**

PRANAV MAHADEO RATHOD AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. K. B. Jadhav, Advocate for the Appellants.
Mr. A. B. Chate, AGP for Respondents-State.

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 31st JULY, 2023.

PER COURT:-

1. By this appeal, the order passed by the District Judge-1, Latur dated 16.02.2021 in Civil M.A. (G and W) No.17/2020 is subjected to challenge. The applicant, who is guardian of minors submitted an application under Section 8 of the Hindu Minority and Guardianship Act, 1956 read with Section 8 of the Guardians and Wards Act seeking permission to sale the land admeasuring 41 R from the field Survey No.27 situated at village Aakharwai, Tq. & Dist. Latur.

2. Mr. Jadhav, the learned Advocate appearing for the appellants submits that the proposed alienation of the land is in the interest of minors. It is small piece of land and the minors or their mother are not in a position to cultivate the land. She want to purchase a house in the name of minors. For that purpose an agreement to sale has been executed. As such, the sale of the land would be in the interest of the minors. The learned District Judge without considering the aforesaid aspects of the matter mechanically rejected the permission.

3. Mr. Chate, learned A.G.P. appearing for the respondent-State would submit that it is for the Court to look into the welfare of the minors. He invites attention of this Court to paragraph no.18 of the order to contend that there is a land in the name of mother, however, instead of alienating the said land, she is seeking permission to alienate the land, which is standing in the name of the minors. Therefore, he submits that the proposed sale is not in the interest of the minors.

4. The learned Advocate appearing for the appellants relying on the judgment of this Court in ***First Appeal No.62/2023*** in the matter of ***Sandhya Anant Gharat Vs. NIL*** dated ***02.03.2023*** submits that if the proposed transaction is to be made by natural guardian/mother the permission for sale is not required. He would further submit that if there is joint family property, the sale can be effected without seeking permission. He submits that in the present case there is a separate share allocated to the minors and therefore, the alienation can be made with permission of Court. He further relies upon the judgment of the ***Madras High Court*** in ***O.P. No.747 of 2022*** in the matter of ***Mrs. P. Jayalakshmi*** dated ***06.01.2023*** to contend that if the amount of sale is to be utilized for the benefit of the minors, the sale can be permitted.

5. Having considered the submissions advanced by the learned Advocate appearing for the parties, it can be gathered that in case in hand the minors received ancestral property in view of the compromise terms recorded in Regular Civil Suit No.67/2013 between applicant-mother and father of the minors. Clause nos.6 to 8 of the said compromise terms clearly show that

the applicant has agreed that the land which is allocated to the share of the minor shall not be alienated till they attained majority. Apparently, the permission to sale minors' property is sought inconsistent with the agreed terms of compromise. Further it can be noted that, in the same compromise the applicant mother has received 20 R land. If she intends to purchase a house, the alienation of that small portion of land would have served the purpose without touching to the land falling to the share of the minors. Another aspect which requires consideration is that the agreement to sale for alienation of the land standing in the name of the minors, would show that the agricultural land of more than 1 acre is valued for Rs.4,50,000/- only. Apparently, such valuation is much adequate.

6. In that view of the matter, the proposed alienation is adverse to the interest of the minors. The learned District Judge-1, Latur has considered all these aspects in the impugned order. No perversity is pointed out in the reasoning adopted by the District Judge.

7. Resultantly, appeal fails and is accordingly dismissed.

(S. G. CHAPALGAONKAR)
JUDGE