

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13010 OF 2018

Chaya D/o Ambadas Chambhar
@ Waghmare @ Chaya W/o Vitthal Shiledar. ..Petitioner.

Versus

Uddhav S/o Ambadas Chambhar
@ Waghmare & Ors. ..Respondents.

Mr. A.B. Tajane for the petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : July 25, 2023.

P. C. :

1. The challenge in the petition is to the order dated 30th June 1995 passed below exhibit-1 in civil miscellaneous application no.33 of 1995. The impugned order has been passed on an application which was filed by the brother of the petitioner seeking permission to sell the property on behalf of his minor son, which property, i.e., the Gat No.29/2 admeasuring 1-hectare 37-Are, is according to the petitioner ancestral property. By the impugned order the Additional District Judge Solapur granted permission to sell the property recorded in the name of minor on the ground that it would be in the interest of minor as the application contended that he intended to utilise the sale

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proceeds of the property towards the education of the minor.

2. Mr. Tajane, learned counsel appearing for the petitioner submits that as regards the impugned order the only remedy was by way of the present writ petition as the permission has been granted under the provisions of section 8(2) of the Hindu Minority and Guardianship Act 1956. He would further submit that the late Ambadas who was her father had applied for partition and that the order of partition passed by the Tahsildar is subject matter of the suit being RCS No.651 of 2018. He would further contend that subsequent sale-deeds which were executed in respect of the ancestral property are also subject matter of challenge in the said suit.

3. Considered the submissions.

4. The impugned order has been passed on an application filed by one of the Coparceners of the family seeking permission to sell the property of minor. If the submission of learned counsel for the petitioner is accepted that the same is an ancestral property then considering the provisions of Section 6 of the Hindu Minority and Guardianship Act, 1956 the natural guardian of a Hindu minor in

respect of the minor's person as well as in respect of the minors property excluding his or her undivided interest in the joint family property is the father. That being the mandate of the provisions of section 6 if the property in question is the undivided interest in the joint family property then the permission as contemplated under section 8(2) cannot be granted as said provision does not apply to the minor's undivided interest in the joint family property, considering the provisions of section 6 of the Hindu Minority and Guardianship Act, 1956.

5. In the present case, the petitioner has already challenged the order of the tahsildar partitioning the property as well as the subsequent sale deeds which have been entered into. In my opinion the impugned order which is challenged in the present petition is required to be challenged by way of suit in as much as it will be necessary for evidence to be led as regards whether the property in question is a joint family property or as to whether the same was sold for any legal necessity.

6. In the light of above, the writ petition is disposed of with liberty to the petitioners to challenge the same in RCS no. 651 of 2018. If an application for amendment is made by the petitioners seeking to

incorporate the challenge to the impugned order the trial court to consider the same on its own merits and in accordance with law.

7. Needless to clarify that the observations made hereinabove are made for testing the validity of impugned order and the trial Court has to decide the application for amendment on its own merits uninfluenced by the observations made hereinabove.

8. Writ petition stands disposed of in above terms.

[Sharmila U. Deshmukh, J.]