



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

APPEAL AGAINST ORDER NO. 64 OF 2023

1. Rajni w/o Nandkishor Chandekar,
aged about 32 years, Occ. Household.
2. Dattatray s/o Nandkishor Chandekar,
aged about 10 years, Occ. Student,
through Natural Guardian Rajni w/o Nandkishor Chandekar.
3. Nandkishor s/o Marotrao Chandekar,
aged about 43 years, Occ. Nil.

All are R/o Plot No.11, Sanmarg Nagar,
Hudkeshwar Road, Nagpur.

...APPELLANTS

Versus

NIL

...RESPONDENT

Shri T.T. Mirza, Counsel for the appellants.

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CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 7, 2024

ORAL JUDGMENT :

The appellants, who are parents and minor son, are aggrieved by order dated 16/6/2023 passed by District Judge – 3, Nagpur in Civil Misc. Application No. 124/2021, thereby partly allowing the application filed under sub-section 2 of

Section 8 of the Hindu Minority and Guardianship Act, 1956 (for short “Act of 1956”). The trial Court has permitted the appellants to deal with the suit property by entering into transaction, but were not permitted to sell the property until appellant no.2 attains majority.

2] Having heard the learned Counsel for the appellants, it appears that the appellants had filed an application under sub-section 2 of Section 8 of the Act of 1956 seeking permission to sell property of the minor. The property under question consists of two rooms, one bathroom and one toilet. It appears that the grandfather of appellant no.2 has, by registered will dated 2/8/2013, bequeathed certain properties, which included some shops and the property noted above. The grandfather, in his lifetime, has sold three shops. What has remained is two rooms, one bathroom and one toilet, which is referred to as suit property by the Court below. Since the grandfather has sold shops, the suit property came to be bequeathed in favour of appellant no.2. There is, however, a recital in the will that appellant no.2 may enjoy the property

and dispose of in the manner he desire but with a restriction that until he becomes major, he will not have authority to sell the property. The District Court has applied this wish will of the grandfather to decline the request made by the appellants.

3] The learned Counsel for the appellants has rightly pointed out that once the District Court came to the conclusion that there are reasons to permit the minor's guardian/parents to sell the suit property, and the reason was medical ailment, it could not have permitted the guardian/parents to only deal with the property and not to sell it. In other words, the learned Counsel intends to suggest that despite finding merit in the application, the District Court has erroneously put a restriction on sell. The restriction is creating hurdle in dealing with the property.

4] It is quite natural that a party intending to purchase the property will be interested in getting document recorded in his/her name. Appellant no.2 was ten years old at the time of filing application. Thus, the purchaser will have to wait for

eight years to get the sale-deed executed. The purchaser, who has parted with money, may not wait for such a long period to get the document executed in his favour and in that sense, the learned Counsel is fully justified in submitting that though the application has been partly allowed, the purpose of filing application has been not served. The restriction imposed by the District Court, to deal with the property but to not sell it until appellant no.2 attains majority, is contrary to the aim and object of Section 8 of the Act of 1956. Once it is found that the transaction under question is for the benefit of the minor, the restriction imposed by the testator will have to be understood in the context of the necessity of the minor to enjoy the property. One of the ways is to spend the proceeds of property for the welfare of the minor.

5] In view of above, the appellants have made out a case. Hence, the following order :

ORDER

i] The appeal is allowed.

ii] The order dated 16/6/2023 passed by District Judge – 3, Nagpur in Civil Misc. Application No. 124/2021 is quashed and set aside to the extent of imposing restriction to not sell the property.

iii] The appellants are hereby permitted to sell the suit property with a condition that the sale proceeds shall be utilized only for the medical treatment of minor. The balance amount, if any, shall be invested into Fixed Deposit until appellant no.2 attains majority.

6] The appeal is disposed of in the above terms.

JUDGE

Sumit