



FAO-3960-2024

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In the High Court of Punjab and Haryana at Chandigarh

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FAO-3960-2024

Date of Decision: 28.08.2024

SUMANDEEP KAUR

..... APPELLANT

VERSUS

GENERAL PUBLIC

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR**HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Narinder Singh Dadwal, Advocate for the appellant.

SURESHWAR THAKUR, J. (ORAL)

1. The instant appeal is directed against the verdict rendered on 14.05.2024 in Case No.10 CIS No.GW-10-2023 by the learned Addl. Civil Judge (Sr. Division), Jagraon, exercising the powers of Guardian Judge under Hindu Minority & Guardianship Act, 1956 (hereinafter referred as to 'the Act of 1956'), whereby, the petition filed under Section 8 of the aforesaid Act, became dismissed.

2. The reasons, as made in the impugned order, become detailed in paragraph no.9 thereof, para whereof becomes extracted as under:-

“After hearing the learned counsel for the petitioner and perusing case file, I am of the view that petitioner has miserably failed to explain the necessity of selling the land owned by minors namely Manjit Kaur and Taranveer Singh and also welfare of minor children in selling the land owned by them. Not only this, daughter of minor Manjit Kaur who is born on 10.01.2007 itself reflects that she will become major after few months while son of the petitioner namely Taranveer Singh born on 23.06.2010 is of aged about 14 years and will attain the age of majority after about four years. The petitioner has also miserably failed to prove that land of minors is lying in different compacts in small pieces and said land is not being cultivated at present. Much



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more, selling the land of minors will affect the rights of minors as rate of property will increase with passage of time. The welfare of minors in selling the landed property is not proved on record. Thus, it can be said that petitioner is not entitled to the relief claimed for”

3. A reading of the above made reason(s), as carried in the impugned order, reveals qua the same being in terms of the provisions carried in sub-section (4) of Section 8 of the Act of 1956, provisions whereof become extracted hereinafter, provisions whereof curtail rather the statutory empowerment vested in the learned Trial Judge concerned to, in terms of sub-section (1) and sub-section (2), make an order for the alienation, in any manner whatsoever *vis a vis* the estate(s) of the minor children. Therefore, the provisions as embodied in sub-section (4), were to be imperatively borne in mind by the learned Trial Judge concerned, while making an order for permitting the guardian of the minor children to alienate the estate(s) of the minor children concerned.

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 realisation, 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 to 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 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 advantages to the minor.

(5) The Guardian and Wards Act, 1890 (8 of 1890), shall apply to and in respect of any application for obtaining 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 4-A thereof;

(b) the court shall observed 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 Guardian 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.....”

4. The necessity or accrual of evident advantage to the minor but is the *sine qua none*, for therebys, the learned Trial Judge concerned,



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becoming coaxed to grant the relevant permission to the mother and natural guardian of the minor.

5. It appears on a reading of the above extracted paragraph, that the present appellant had completely failed to adduce evidence in respect of, thus, the apposite grave necessity or even in respect of accrual of evident advantage to the minor, upon the permissions, as became asked for, by her from the learned Trial Judge concerned, in terms of sub Section (1) & sub Section (2) of the Act of 1956, becoming accorded in her favour.

6. Therefore, the omission of adduction of evidence in respect of the supra ingredients enshrined in sub Section (4) of Section 8 of the Act of 1956, thus, constrain this Court to agree with the reasons (supra), as became afforded by the learned Trial Judge concerned, in declining the asked for relief by the present appellant.

7. For all the above stated reasons, this Court does not find any merit in the in the instant appeal and the same is hereby dismissed.

8. Pending application(s), if any, also stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 28, 2024
Anjal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No