

Form No. J(2)

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
 And
 The Hon'ble Justice Supratim Bhattacharya

FMAT 412 of 2025
IA No: CAN 1 of 2025

Smt. Mithu Ghosh and others
Vs.
XXXXX

For the appellants : Mr. Pinaki Ranjan Mitra

Heard on : 12.11.2025

Judgment on : 12.11.2025

Sabyasachi Bhattacharyya, J.:-

1. In view of arguable questions being involved, we admit the appeal on the grounds taken in the memorandum of appeal.
2. Since there is no scope of service of notice, as the litigation is not adversarial in view of the nature of the same, having arisen out of the refusal of an application under Section 8 of the Hindu Minority and

Guardianship Act, 1956 (for short “the 1956 Act”), seeking leave to transfer the property of minors, we take up the appeal itself for hearing.

3. By the impugned order, the learned Trial Judge rejected an application filed by the present appellants, whereby the appellant no.1-mother sought to enter into a development agreement in respect of the property, of which the appellant no.1-mother and her two minor children, being appellant nos. 2 and 3, are co-owners.
4. The primary premise of the rejection of the said application was that the details and particulars of the proposed agreement and/or transfer have not been furnished before the learned Trial Judge.
5. The learned Trial Judge observed that although there is no straitjacket formula to determine the criterion of “legal necessity” of a minor and it has to be interpreted and determined taking into consideration the factual aspect of each and every case independently, in the present case, the appellant no.1 has spent only a few lines to show the urgency and has failed to establish the legal necessity for developing the property for the welfare of the children.
6. The learned Trial Judge also observed that the daily family expenses and educational expenses of the minor children were also not disclosed but only the school identity cards of the children were produced to show the expenses of the minors.
7. The learned Trial Judge further observed that the current market value of the property, including the possible enhancement in the valuation of the property, was also not disclosed before the learned

Trial Judge by the present appellants and, as such, the learned Trial Judge was apprehensive in granting blanket permission to the petitioner to enter into any development agreement representing the minors with regard to their respective shares without first settling the terms and conditions specifically as far as practicable, which is, according to the learned Trial Judge, completely lacking in the present case.

8. The brief facts of the case are that one Kartick Chandra Ghosh, along with his brother Lakshman Chandra Ghosh, were co-owners in equal shares of the subject property. On the demise of the said Kartick, his share, that is, fifty per cent of the property devolved on the present appellants, being respectively the widow and the minor children of the said Kartick.
9. As averred in the application under Section 8 of the 1956 Act, as well as before this Court, the appellant no.1 is unemployed and a housewife whereas the appellant nos. 2 and 3, her minor children, are school-going adolescents, respectively aged about 13 and 11 years.
10. Thus, it is clear from the averments in the application itself that the appellants have no source of income whatsoever. Even the learned Trial Judge did not cast any doubt on that aspect of the matter.
11. Thus, the over-reliance of the learned Trial Judge on lack of production of proof of the educational and other expenses of the children was misplaced, since such proof is an irrelevant yardstick for the present consideration. It cannot be denied that two school-going children of 11 and 13 years require substantial educational expenses

and other living expenses, irrespective of the quantum of the same. In the context of the averment that the appellants have no income at all, whatever may be their expenses, it is an absolute legal necessity for the appellants to enter into some sort of an arrangement with regard to transfer of the property (which is the only substantial capital that they have) for the purpose of having even the means to run their daily livelihood and meet the expenses of the education of the children and their upbringing.

12. The learned Trial Judge proceeded on the further premise that no details of the proposed agreement or copy of the development agreement was produced. It was also observed by the learned Trial Judge that the learned Judge was apprehensive about the nature of the agreement and the details thereof which is proposed to be entered into.
13. However, Section 8 of the 1956 Act, unlike Section 92 of the Code of Civil Procedure and other similar provisions in respect of trusts, does not impose on the Court a duty to monitor or frame a scheme regarding the transactions to be entered into on behalf of the minor by the natural guardian.
14. Section 8(1) provides that the natural guardian of a Hindu minor has power, subject to the provisions of the said Section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; however, the guardian can in no case bind the minor by a personal covenant.

15. Sub-section (2) of Section 8 provides that the natural guardian shall not, “without the previous permission of the court”, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor or lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the period on which the minor will attain majority.
16. The safeguard inbuilt in Section 8 is stipulated in sub-section (3) thereof, which provides that any disposal of immovable property by a natural guardian, in contravention of sub-sections (1) or (2), is voidable at the instance of the minor or any person claiming under him.
17. Sub-section (4) of Section 8, on the other hand, stipulates that 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 advantage to the minor.
18. Thus, while under sub-section (1) of Section 8, the power to transfer the minor’s property for the benefit of the minor or for realization, protection or benefit of the minor’s estate vests by default in the natural guardian, and the minor has a power to repudiate the same in case the provisions of sub-sections (1) and (2) are violated, the scope of enquiry by the court is enumerated in sub-section (4), which is restricted to ascertain whether a case of necessity or an evident advantage to the minor is made out.
19. In the present case, however, the learned Trial Judge proceeded on an over-zealous approach by seeking virtually to monitor the entire

transaction by seeking the particulars of the proposed development agreement, without appreciating that the scope of examination of the Court is limited only to grant of permission and to ascertain for such purpose whether there is any necessity or evident advantage of the minor at the time when such permission is granted.

20. Even sub-section (2) does not contemplate a monitoring or framing of scheme or detailed interdiction by the Court but merely provides that the natural guardian shall not, without the “previous” permission of the Court, transfer the property as contemplated therein.
21. Hence, in the present case, the charter of the Court was limited to ascertain legal necessity and evident advantage of the minor.
22. The very fact that the appellants are without any source of income on the demise of the sole bread-earner of their family, namely late Kartick Chandra Ghosh, the husband of the appellant no.1 and father of the appellant nos. 2 and 3, is a sufficient indicator that there is immediate and urgent legal necessity and an evident advantage to the minor if a development agreement is entered into in respect of the property-in-question, for the purpose of fetching a quantum of money which would enure to the benefit of the minors and pay for their upbringing and education as well.
23. Even otherwise, unless a prior permission, as contemplated in sub-section (2) of Section 8, is granted, no development agreement can be entered into by the appellants at all. Thus, there was no scope of producing any development agreement before the Court, since the

same would tantamount to the proverbial “putting the cart before the horse”.

24. In such view of the matter, on a careful perusal of the application under Section 8 of the Hindu Minority and Guardianship Act, 1956, a copy of which is handed over in Court to us, we are of the opinion that the learned Trial Judge erred in law in proceeding on an erroneous legal premise to dismiss the application of the appellant no.1.
25. Accordingly, FMAT 412 of 2025 is allowed, thereby setting aside the impugned judgment and order bearing Order No. 16 dated July 25, 2025 passed by the learned Additional District Judge, First Court at Howrah, District: Howrah in Miscellaneous Case No. 243 of 2023 and allowing the said miscellaneous case under Section 8 of the 1956 Act. The appellant no.1 is hereby permitted to enter into a development agreement in respect of the share of the minor appellant nos. 2 and 3 in the subject property, as prayed for in the application, with third parties with the rider that the monetary gain extracted from such development agreement by the appellant no.1 shall be expended primarily for the welfare and benefit of the two minors, being the appellant nos. 2 and 3, and a corpus will be created from the said income in the name of the appellant nos. 2 and 3 to cater to the future educational and other needs of the appellant nos. 2 and 3.
26. CAN 1 of 2025 is also disposed of in the light of the above observations.
27. There will be no order as to costs.

28. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

AD-08
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