



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
APPEAL FROM ORDER NO.37 OF 2024**

1. Sau. Tejashree Amit Jain,
Age: 40 years, Occu: Agriculture
2. Ku. Samay Amit Jain,
Age: 17 years, Occu: Education,
3. Ku. Danish Amit Jain,
Age: 13 years, Occu: Education,
4. Ku. Pomesh Amit Jain,
Age: 07 years, Occu: Education,
All R/o. 7, Dhakewadi, Near Lathi
School, Zilha Peth, Jalgaon,
Tq. and Dist. Jalgaon.
Appellants 2 to 4 are minors
u/g Guardian of their Mother i.e.
Appellant No.1.

..Appellants

Versus

Nil

..Respondent

...

Mr. V. B. Patil, Advocate for the Appellants.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 13th JANUARY, 2025.

PRONOUNCED ON : 31st JANUARY, 2025.

ORDER:-

1. The appellants impugn order dated 07.05.2024 passed by District Judge, Jalgaon in Miscellaneous Application No.143/2024 alongwith order dated 31.07.2024 passed in Review Application No.24/2024.

2. The appellant no.1 filed application under Section 8 of the Hindu Minority and Guardianship Act, 1956 (for short 'the Act, 1956') seeking permission to sell minors property, which is specifically described in paragraph no.1 of the application.

According to appellant no.1, she is mother/natural guardian of appellant nos.2 to 4. The appellant nos.2 to 4 are pursuing their education. According to appellant no.1, she has purchased properties in the name of minors out of her own funds under three different sale deed dated 30.11.2021. However, now she required funds for supporting education of appellant nos.2 to 4. Therefore, seeks permission to sell out property purchased in the name of minors. The learned District Judge vide his order dated 07.05.2024 rejected appellants' prayer. Thereafter, she filed Review Application No.24/2024 alleging error apparent on record while making observation in the judgment. However, said Review Application also came to be dismissed vide order dated 07.05.2024.

3. Mr. Patil, learned Advocate appearing for the appellants submits that properties described in Claim Clause Nos.A to C are agriculture lands those have been purchased by appellant no.1 in the name of her minor children. Now, she is in dire need of funds to support education of children. Therefore, requires to sell out properties. Mr. Patil invites attention of this Court to the proposed expenses towards tuition and classes fees of appellant no.2-Samay Amit Jain worth Rs.1,59,000/-. Similarly, school and classes expenses for appellant nos.3 and 4. He would further rely upon observations of this Court in case of ***Sachin Vitthalrao Chaudhari*¹**.

¹ 2021 (1) AIR Bom R 47.

4. Having considered submissions advanced, it can be observed that permission is sought to sell out three properties as mentioned in Claim Clauses of the application. The area of agriculture lands proposed to be sold is almost 7H. The purchase price of the property in the year 2021 as per Government valuation is more than 23,00,000/-. Looking to the education expenses of the appellant nos.2 to 4, it is difficult to accept contentions of appellant no.1 that to meet out expenses of education, entire property is required to sell out. The appellant no.2 is aged about 17 years and pursuing education in 12th Standard. Once he attained majority, certainly he can take decision as to disposal of property, if so required to pursue his higher education. The expenses of school going appellant nos.3 and 4 cannot be considered as necessity to sell huge agriculture property.

5. Sub-section (4) of Section 8 of the Act, 1956 puts rider that Court shall not grant permission to guardian, unless it is proved to the satisfaction of the Court that there is legal necessity or there is evident advantage to the minor. The word 'evident advantage' is interpreted to mean 'actual advantage' and not illusory or nominal.

6. One more glaring aspect of the matter that can be observed in this case is that although father of the minors is alive, application is made seeking permission to sell out land through mother. It is true that mother could be considered as natural

guardian, if father is not taking any interest in the affairs of minor and minor is in exclusive custody of mother. However, from the stipulations in the application, it cannot be gathered that father is not taking interest in affairs of minors or he is under any disability that prevents him to do so. Even his affidavit or supporting evidence is not filed showing his incapacity to provide requisite financial assistance to the minors. One does not know whether father has consented for transferring properties standing in the names of minors. Although appellant no.1 states that she purchased properties out of her own funds in the year 2021, in that case, it is difficult to believe that she is not in a position to fund expenses towards education of minors. If appellant no.1 was really taking care of interest of minors, she would have made application seeking permission to sell out piece of land that would have taken care of expenses towards education, but she had proposed to sell out entire agriculture land, which lacks bonafide in moving this application. The learned District Judge observed that proposed sell would not give any advantage to minors and pressing necessity to sell out properties is not discernible from material on record.

7. Mr. Patil relies upon observations of this Court in case of ***Sachin Vitthalrao Chaudhari*** (supra), wherein it is observed that the Court should not normally interfere in the judgment of guardian, who is best person to assess the situation. However,

such observations are made while setting aside order of learned District Judge, wherein permission was sought to sell out properties to meet out expenses of the medical student and the father who had purchased properties himself has made an application seeking permission for such sell. In present case, application is coming from mother without disclosing inability of father to act as natural guardian or take care of minors. The Supreme Court of India in case of ***Panni Lal Vs. Rajinder Singh and Another***² relying upon earlier judgments in case of ***Jijabai Vithalrao Gajre Vs. Pathankhan, AIR 1971 SC 315*** observed that in case of father's incapability or ignorance, mother can be considered as natural guardian. In present case, since there is no evidence to show that father of minors failed to take their care or secure their interest or any pleading that mother is only looking after welfare of minors, application for seeking permission at the instance of mother without ratification or support of father cannot be entertained. In that view of the matter, there is no merit in the Appeal.

8. Consequently, Appeal from Order stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE