



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO.1593/2025

Iarkeshwar Devidas Golghate and anr. .Vs. Anant Shivaji Revatkar and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. V. Gaikwad, Advocate for petitioners.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 24, 2025

Heard.

2. Challenge is to order dated 19.12.2024 in Misc. Civil Application No.881/2022, thereby allowing application Exh.-17, filed by the respondents.

3. Having heard counsel for the petitioners, it appears that petitioners – original applicants had filed application under Section 30 of the Guardians and Wards Act, 1890 (hereinafter referred to as the, “Act of 1890”), seeking declaration that the sale deed dated 18.03.1985 executed by their father as guardian was null and void and not binding on them with a further prayer to put them in possession. The Court below was of the view that the application is not maintainable.

4. The Court below, by relying upon the judgment of the Supreme Court in the case of *Murugan Vs. Kesava Gounder*; [AIR 2019 SC 2696] as also judgment of *Bhaskarrao Vs. Pushpa* [S.A.NO.11/1983, 1996(4) All M.R. 635], held that where the property of a minor is sold by the guardian without prior permission of the Court, the minor, after attaining the age of majority, has to institute appropriate suit subject to provisions of the law.

5. Counsel for the petitioner has invited my attention to Section 30 of the Act of 1890, which provides that disposal of the

immovable property by a guardian in contravention of Sections 28 and 29 is voidable at the instance of any other person affected thereby.

6. Section 28 of the Act of 1890 provides that where a guardian has been appointed by Will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, the immovable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under the Act been declared guardian and the Court which made the declaration, permits him to dispose of immovable property. Section 29 provides that where a person other than guardian appointed by Will is declared/appointed by the Court as guardian of property of a ward, he shall not, without the previous permission of the Court Court, alienate the property.

7. Learned counsel for the petitioner, however, failed to show that the guardian herein was appointed through Will or in terms of Sections 28 and 29 of the Act of 1890. It appears that the sale deed under question has been challenged on the ground that there was no legal necessity. If that be so, the Trial Court was fully justified in holding that the application filed under Section 30 of the Act of 1890, is not maintainable and the appropriate remedy will be to file civil suit.

8. As such the counsel for the petitioner has relied upon judgment in **Mohammad Shafi .Vs. Shamim Banoo [AIR 1979 BOM. 156]**, however, there is nothing in the judgment that would highlight the issue involved in the present case. The issue before Coordinate Bench of this Court was pertaining to application filed under Section 25 of the Act of 1890 and in that context the issue of guardianship of a minor and the procedure to be adopted vis-a-vis personal law has been dealt with. There is no whisper in the judgment as regards the

scope of Section 30 of the Act of 1890. The judgment, therefore, will be of no help to the petitioner.

9. The petitioners have, for no good reason, filed application before the Trial Court and further approached this Court. The unjustified petition is accordingly dismissed in *limine* with costs of Rs.5,000/- to be paid by the petitioner to the Library of High Court Bar Association, Nagpur.

(Anil L. Pansare, J.)

Kahale