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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 29th April, 2025**

+ **FAO 359/2024**

DIMPLE GUPTA

.....Appellant

Through: **Mr. Gaurav Kohli, Adv.**

versus

THE STATE OF NCT OF DELHI & ORS.Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. Notice of the present appeal has been served upon the respondents No. 2 to 5. However, there is no contest to the reliefs which are sought by the appellant as is evident from the impugned order dated 02.09.2024 passed by the learned District Judge-03, Shahdara District, Karkardooma Courts, Delhi.

2. Hence, after hearing the learned counsel for the appellant and upon perusal of the record, this Court proceeds to decide the present appeal under Section 8 of the Hindu Minority and Guardianship Act, 1956¹ read with Section 47 of the Guardianship and Wards Act, 1890, moved on behalf of the appellant to set-aside/modify the order dated 02.09.2024, passed by the learned Trial Court, whereby the appellant/petitioner was seeking permission to sell, alienate or

¹ HMGA



dispose of the shares of her two minor children, in the said property left behind by her husband being their mother and natural guardian had been dismissed.

3. Shorn of unnecessary details, it is submitted that Smt. Shakuntla Devi, who was the mother-in-law of the present appellant, was the absolute owner of the property bearing No. 89, Jagriti Enclave, Delhi-110092 measuring 183.40 sq. meters, which she had purchased from Sh. Manoj Monga s/o Sh. Janak Raj Monga and Sh. Sunil Kumar Gumber by virtue of a registered Sale Deed dated 24.05.2002 registered as document No. 2702 in Additional Book No.1, Volume No. 633 on page 69 to 77 with the office of Sub-Registrar-VIII, Delhi.

4. It is stated that Smt. Shakuntla Devi during her life time executed her last registered Will and testament dated 11.01.2021 thereby bequeathing the right, title and interest in respect of the aforesaid property in favour of her son Pankaj Gupta and daughter Chhavi Gupta (respondent No.2).

5. It is claimed that Smt. Shakuntla Devi had executed the said Will in perfect health and sound disposing state of mind. It is pertinent to mention that Smt. Shakuntla Devi was survived by two sons, namely Pankaj Gupta and Vinay Gupta, besides daughter Chhavi Gupta (respondent No.2), but unfortunate as it appears that after her death on 19.04.2021, both the sons also passed away in a short span of time: Vinay Gupta passed away on 26.04.2021 and Pankaj Gupta passed away on 01.05.2021. The appellant is the wife of deceased Pankaj Gupta and who is survived by two minor children namely Adya Gupta, aged about 15 years and Vaibhav Gupta, aged about 14



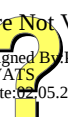
years.

6. The respondent No.3 happens to be the brother of the present appellant. Respondent No.4 is the brother-in-law i.e. husband of respondent No.2 and Vandana Gupta is the daughter-in-law of the deceased Smt. Shakuntla Devi, who is arrayed as respondent No.5. The appellant is claiming right, title and interest in the aforesaid property alongwith her two children to the extent of her $\frac{1}{2}$ share, and therefore, instituted a petition under Section 8 of the HMGA seeking permission to dispose of the share of her two children in the aforementioned property out of sheer necessity and for bringing about financial advantage to her children.

7. It appears that the learned Trial Court interacted with the minor children during the course of trial on 22.05.2024. The learned Trial Court also called upon the appellant to file an affidavit detailing her movable and immovable assets as well as that of the minor children which was placed on the record and marked as Ex.PW1/7.

8. At this stage, it would be apposite to reproduce the reasons which prevailed in the mind of the learned Trial Court while dismissing the petition:-

“19. Therefore there are two guiding principles for the court granting permission to the natural guardian for the disposal of immovable property of minor which are “necessity” or “for an evident advantage to the minor”. Perusal of petition shows that the petitioner averred in her petition that petitioner has no source of income of her own and now she has left with no alternative except to sell undivided $\frac{1}{2}$ share of herself and her minor children in order to survive and for good education. It has been further averred by the petitioner that she has no income to support herself and the minor children except the said property and that the minor children will be deprived from their further studies and there is also apprehension of starvation if the permission is not granted.





20. It is pertinent to note that I had interacted with the petitioner and two minor children baby Adya Gupta and Master Vaibhav Gupta in my chamber on 22.05.2024. During the said interaction, it was revealed that the school fees of both the children have been waived off by the concerned school till the current session and at the beginning of every session, they have to file an application before the school for the waiver of the fees. It was further revealed that the father of the petitioner Sh. Krishan Gupta and her brothers have helped her financially in the past. It was further revealed that both the children and petitioner are having substantial amount in the mutual funds and petitioner is also having jewellery with her.

21. In view of my above said interaction with the petitioner and two minor children, the petitioner was directed to file affidavit of movable and immovable assets of the petitioner and her minor children.

22. The petitioner filed affidavit of her moveable and immovable assets as well as of minor children which is exhibited as Ex.PW1/7. The Ex.PW1/7 contains the details of jewellery, bank statement, Fixed Deposits funds shares and equities in the name of petitioner and her minor children.

23. Considering the privacy of the petitioner and her minor children, the details of the assets as disclosed in Ex.PW1/7 are not being discussed here. However, in view of the details of assets mentioned in Ex.PW1/7, I have no hesitation to conclude that financially, the petitioner is very sound and there is no question of any "necessity" whatsoever, to dispose off the share of the minors in the immovable assets as has been prayed for. Further, the petitioner has also not led any evidence which can demonstrate that there is "any evident advantage" in favour of the minor children by selling their shares in the said immovable property.

24. Therefore, in view of the above discussion, present petition deserves to be dismissed. Hence, dismissed."

9. At the outset, the reasons given by the learned Trial Court, holding the appellant/petitioner is not entitled to any relief since the appellant is financially very sound and there is no question of any



necessity to dispose of the share of her minor sons, cannot be sustained in law.

10. Evidently, the appellant being the mother and the natural guardian of the two minor children has been taking care of the upbringing of the two children since the death of her husband. The learned Trial Court had an occasion to interact with the children and there is nothing to discern that the children had any kind of mis-giving or mistrust in the intention of the appellant to dispose of the property in question. It appears that the family is a well-knit family having moral values and social bondages. The intention of the appellant to dispose of the subject property in question to the extent of their share including that of the minor children and thereby purchase another property cannot be faulted in law.

11. During the course of arguments, it was submitted by learned counsel for the appellant that even respondent No.2/Chhavi Gupta is desirous of selling her $\frac{1}{2}$ undivided share in the said property. It was also suggested that in case the permission is granted by this Court, the appellant would sell the property and purchase another property jointly in the name of herself and her two children.

12. That being the case, there appears to be no legal impediment in allowing the relief which is claimed by the appellant. Accordingly, the present appeal is allowed, the impugned order dated 02.09.2024 passed by the learned District Judge-03, Karkardooma Courts, Delhi, is hereby set-aside. The appellant is permitted to sell the subject property, viz., bearing No. 89, Jagriti Enclave, Delhi-110092 to the extent of her share as well as the share of her two minor children,





namely, Adya Gupta and Vaibhav Gupta. It is directed that the sale consideration received on disposal of the property to the extent of shares of the minor children shall be invested either in an interest bearing fixed deposit or shall be invested in purchasing a residential or commercial property, as the case may be, in the joint name of the appellant with her children or in the joint name of the children through their mother as the legal guardian.

13. It is directed that after the disposal of the property in question, the appellant shall submit necessary compliance report with the learned Trial Court within one month of disposal and/or purchase of the property, whichever is longer period, in accordance with law.

14. The appeal stands disposed of accordingly.

DHARMESH SHARMA, J.

APRIL 29, 2025/SP/sa