

In the court of Gayatri, Addl. Civil Judge (Senior Division), Samalkha.

Petition No. 04 of 2018

CIS: GW 2/2018

CNR No.HRPPA0-0000027-2018

Date of Institution: 17.01.2018

Date of Decision: 22.01.2019

Pushpa Devi widow of Sh. Maman son of Sh. Tara Chand, resident of Adarsh Colony, Ward No.4, Samalkha, District Panipat.

...Petitioner.

Versus.

General Public.

...Respondent.

Petition u/s 8 of Hindu Minority  
and Guardianship Act.

Present: Shri Vikash Bhardwaj, Advocate for petitioner.  
Respondent already exparte vide order dated 27.02.2018.

JUDGMENT:

Petitioner has filed the present petition under Section 8 of the Hindu Minority and Guardianship Act seeking permission to sale the 1/4th share of minor Dev out of 3/124 share of the Gair Mumkin Land, comprising in Khewat No.516, Rect. No.36, Killa No.5/2(6-4)

(Gayatri)  
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ACJ(SD), Samalkha

(Amit)  
Stenographer Gr.II

i.e. 7 Sarsai (22.66 sq. yds) situated in the revenue estate of Village Samalkha, Tehsil Samalkha, Distt. Panipat vide mutation on inheritance No.14955 sanctioned on 20.04.2010.

2. The case of the petitioner in brief is that the petitioner is a Hindu and is a household lady. Her husband namely Maman was expired on 07.02.2010 leaving behind the petitioner (widow) as well as his three children namely Jyoti Devi, Pooja Devi (daughters) and Dev (minor son) as his only legal heirs. The minor child Dev is living under the care and custody of the petitioner who has no adverse interest against the said minor. After the death of Maman, the land fully detailed in the headnote of the petition was inherited by the petitioner (widow of Maman). The minor Dev is owner in possession over 1/4th share over the said property. The petitioner has no source of income to fulfill the regular expenses of minor's education. Hence, the petitioner want to sell the share of the minor Dev of the suit property for the welfare education and better upliftment of the minor and will not misuse the same for any other purpose.

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3. Notice of the petition was given to the General Public through publication but none turned up. Therefore, G.P was proceeded against exparte vide order dated 27.02.2018.

4. In order to prove her case, the petitioner herself stepped into the witness box as PW1 and tendered her affidavit Ex.PW1/A reiterating the averments made in the petition as detailed above and further got examined Ashok Lumberdar as PW2. The petitioner also produced on record documents i.e. copy of Aadhar Card of petitioner as Ex. PW1/B, copy of death certificate of Maman as Ex. PW1/C, copy of Ration Card as Ex. PW1/D, copy of voter card of petitioner as Ex. PW1/E, copy of birth certificate of minor Dev as Ex. PW1/F, copy of Aadhar Card of Dev as Ex. PW1/G and copy of jamabandi for the year 2000-01 as Ex. PW1/H and copy of mutation No. 14955 as Ex. PW1/I.

5. I have heard the learned counsel for the petitioner and have gone through the case file very carefully with his assistance.

6. In the present petition, the petitioner is claiming the

permission to sell the land falling in the share of minor Dev.

7. While granting permission in present petition, the sole criteria to be kept in mind by this court is as to whether the sale of the land in question would be for the benefit of the minor. In other words, the interest of the minor child is the paramount consideration to be kept in mind by the court.

8. In the present case, the petition has been filed by the mother of the minor. Thus, the present petition is by the natural guardian of the minor child. The minor is under the care and custody of the petitioner. It cannot be expected that the petitioner has any interest adverse to that of the minor. But at the same time, this court cannot be oblivious of the settled law that as per the provisions of Section 8 of the Hindu Minority and Guardianship Act, 1956, the natural guardian of a Hindu minor has limited and qualified power vis he can alienate minor's property only for legal necessity and benefit of estate.

9. The evidence led by the petitioner has gone un-rebutted

and unchallenged. From the oral as well as documentary evidence available on record, this fact has duly been established that minor is owner of the land in question. This fact has also been established that minor is living under the guardianship of petitioner and she has no adverse interest against the minor.

10. Therefore, this petition succeeds and the same is hereby allowed exparte to the effect that the petitioner is allowed to sell the share of the minor from the property, as detailed and described in the head note of the petition, subject to the condition that the sale shall not be effected for a consideration less than the market value prevailing in the vicinity and the funds so realized as sale consideration of the aforesaid land of minor, shall be deposited in the fixed deposit in any nationalized bank in the name of minors to the extent of his said share. The petitioner would also furnish an indemnity bond in the sum of Rs.2,00,000/- with one surety in the like amount to the effect that she would comply with the order as above and shall be answerable to the minor at the time of attaining majority. However, this order shall not

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construed as an expression of any opinion on the title of the minor over the property in question. There is no order as to costs. Memo of cost be prepared. File be consigned to the record room after due compliance.

**Announced:22.01.2019.**

**(Gayatri)  
Additional Civil Judge (Sr. Division)  
Samalkha**

Certified that all the six pages of this Judgment have been checked and signed by me.

**(Gayatri)  
Additional Civil Judge (Sr. Division)  
Samalkha**

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