

Copy of Judgment

HRPL020003072019



Presented on : 27-02-2019
Registered on : 27-02-2019
Decided on : 21.12.2019

IN THE COURT OF
Civil Judge (Senior Division) AT Palwal, Palwal
Presided Over by Sh. Sukhpreet Singh

GW/9/2019

Smt. Bhateri wife of Late Sh. Partap Singh, resident of village Jataula,
Tehsil & District Palwal

.....Petitioner

Versus

General Public

.....Respondent

Petition under Section 8 of Hindu Minority & Guardianship Act
for permission to sell the property of minor namely Subodh son
of Late Sh. Partap Singh

Present: Sh. Zile Singh Khuntela, Counsel for the petitioner.
Respondent exparte VOD 25.04.2019.

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CJ (SD), Palwal. 21.12.2019
UID No. HR-0228

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Authorized by SEC. 76 of
the Indian Evidence Act
21/12/19

1922 and 1923

1924 and 1925
1926 and 1927
1928 and 1929

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CIS No. GW/9/2019

CNR No. HRPL02-0003072019

JUDGMENT :-

The present petition under Section 8 of The Hindu Minority and Guardianship Act for permission to sell the property of minor namely Subodh son of Late Sh. Partap Singh has been filed by petitioner against General Public.

2. It has been averred by the petitioner that she is the natural guardian and real mother of minor namely Subodh son of Late Sh. Partap Singh, resident of village Jataula, Tehsil & District Palwal. The date of birth of the minor Subodh is 14.09.2004 as per the school leaving certificate which is issued by the Adarsh Public High School, Alhapur, Palwal. The father of the minor namely Subodh is owner in possession of agricultural land bearing Khewat/Khatoni No.34/44, Rect. No.38, Killa No.4(8-0), 5/1(3-6), 6/2(2-10), 7(6-10), 8(8-0), 14(8-0), 15/1(4-19), 16/2(2-15), 17(8-0), 18/1(5-10), 23/2(4-13), 24/1(7-4), 25/1(0-3), Rect. No.40, Killa No.4/1(1-16), total measuring 71 Kanal 6 Marla, to the extent of

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1/4th share of Late Sh. Partap Singh which becomes 17 Kanal 16 Marla and minor Subodh to the extent of 1/4th share which becomes 4 Kanal 9 Marla situated within the revenue estate of village Maidapur, Tehsil & District Palwal. The father of the minor namely Partap Singh has been died on dated 10.04.2018 and thereafter a mutation No.911 has been entered and sanctioned in the name of the minor namely Subodh and others, as such minor Subodh is owner in possession of the land mentioned in para no.2 of the plaint to the extent of 1/4 share i.e. 4 Kanal 9 Marla out of the 1/4th share i.e. 17 Kanal 16 Marla which is share of his father namely Partap Singh. The minor son of the petitioner is joint owner in possession of the property detailed in para no.2 & 3 of the petition and the petitioner wants to sell the above said land as such the petitioner wants to purchase other agricultural land in other village in the name of the minor. The petitioner wants to sell the land of the minor and wants to purchase other land in the name of minor at other village. The land mentioned in para no.2 of the plaint is fetching a good market

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value in the area and in lieu of the amount receiving by sale of the land, the petitioner will purchase manifold land. The sale of land in the interest of minor. The land detailed in para no.2 of the petition is not giving good dividend to the minor as the said land is unfit for cultivation and is unleveled land and there is no means for irrigation of the said land. The petitioner will spent the amount of sale for the better education and purchase other lands in the name of minor at other village and now this land is bearing a good price which is beneficial to the minor as well as to the family of the petitioner. Without selling this property, the petitioner is unable to provide better education to minor and better facility. The petitioner will purchase some other land from the remaining amount of sale consideration as the said land. The petitioner is the natural/real mother of the minor and the interest of the minor is not adverse to the interest of the petitioner. The petitioner will spent the amount of sale for purchasing land in the name of the minor and also for the better education of minor. The father of the minor namely Partap

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Singh has been died on dated 10.04.2018. The petitioner will be abide by all the terms and condition which the Hon'ble Court will like to direct the petitioner. The proposed alienation of the land is for the benefit of the minor and minor will gain in this alienation and will loose nothing. The present application/petition is being made for appointment of the guardian of the property of minor and the applicant/petitioner claims to be appointed as such being real mother and natural guardian of the minor. There is no legal impediment why the relief sought for is not granted to the petitioners. Prayer has been made that the the petitioner may be appointed guardian of the minor namely Subodh, and necessary permission to sell the share of the minor in the land detailed in para no.2 of the petition on behalf of the minors be granted to the petitioner.

3. Notice of the petition was given to the respondent General Public through publication in the newspaper "Dainik Chetna". However, despite due publication no one appeared on

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Behalf of the General Public and the respondent General Public was proceeded against exparte vide order dated 25.04.2019.

4. In ex-parte evidence, petitioner Smt. Bhateri has examined herself as PW1, Shyamlal as PW2, Sumer Singh, Numberdar of Gram Panchayat Jatola as PW3 and Deep Chand, Clerk as PW4 and tendered the following documents -

Ex.P1	:	Copy of jamabandi for the year 2014-15
Ex.P2	:	Copy of mutation no.911
Ex.P3	:	Copy of mutation no.877
Ex.P4	:	Certificate of Adarsh Public School, Alhapur
Ex.P5	:	Death certificate of Partap Singh
Ex.P6	:	Admission & Withdrawal Register of the Adarsh Public School, Alhapur
Ex.P7	:	Authority letter dated 30.05.2019
Mark A	:	Aadhar Card of Bhateri
Mark B	:	Aadhar Card of Subodh

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Thereafter, learned counsel for the petitioner closed evidence on behalf of the petitioner.

5. I have heard learned counsel for the petitioner and have carefully gone through the record of the case.

6. In order to prove her case, the petitioner Smt. Bhateri herself appeared as PW-1 and who in her evidence tendered her duly sworn affidavit i.e. Ex.PW1/A vide which she reiterated the contents of the petitioner in letters and spirit and therefore not repeated here again for the sake of brevity and also produced several documents to prove her case. Thereafter petitioner got examined Shyam Lal as PW2, who vide his affidavit Ex.PW2/A supported the case of the petitioner. Thereafter petitioner got examined Sumer, Numberdar of Gram Panchayat, Jatola as PW3, who vide his affidavit Ex.PW3/A supported the case of the petitioner. Thereafter petitioner got examined Deep Chand as PW4, who is summoned witness and proved Ex.P4, Ex.P6 and Ex.P7.

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7. From the un rebutted testimony of PW1 Smt. Bhateri, PW2 Shyam Lal, PW3 Sumer Singh and PW4 Deep Chand, it is dully proved that the minor Subodh is son of Late Sh. Partap Singh and the petitioner Smt. Bhateri. The factum of the death of Partap Singh, husband of the petitioner and father of the minor has been duly proved by the petitioner through his death certificate Ex.P5. The share of the ownership of the said land/property in the name of Partap Singh has been proved by the jamabandi Ex.P1. The devolution of this plot/land at the petitioner and her minor child Subodh has been proved by the mutation no.911 Ex.P2. Admission & Withdrawal Register of the Adarsh Public School, Alhapur is Ex.P6.

8. Now it has to be seen, whether the petitioner can be appointed as guardian to sell the share of minor. As per Section 6 of the Hindu Minority and Guardianship Act, 1956, the natural guardian of a Hindu minor, in respect of his/her person as well as in respect of his/her property is the father and after him the mother. Sub-section (2) of Section 8 provides that natural guardian cannot

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without the permission of the court, mortgage or change or transfer by sale, gift, exchange or otherwise, any part of immovable property, or lease out any part of such property for a term exceeding more than one year beyond the date on which the minor would attain majority. However, sub-section (4) lays down that the court shall not grant permission to the natural guardian to do any such act as mentioned in sub-section (2) except in case of necessity or for the evident advantage of the minor.

9. As per Section 4 (2) of the Guardians and Wards Act, 1890, (later on called the Act) the "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property; and as per Section 8 of the Act an order shall be made on application by any relative or friend of the minor or by the person desirous of being, or claiming to be, the guardian of the minor and as per Section 17 of the Act in appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this Section be guided by what, consistently with the law to which the

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minor is subject, appears in the circumstances to be the welfare of the minor. The court shall have also regard to the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property and as per Section 7 of the Act, on satisfaction of the Court that it is for the welfare of a minor that an order should be made appointing a guardian of his person or property or both, the court may make an order accordingly.

10. After the death of father, mother becomes the sole and first natural guardian of the minor. None has appeared on behalf of the respondent-General Public despite service and now the petitioner requires the permission to sell the share of the minor in the property in question for the welfare, betterment and in the interest of minor. The petitioner has undertaken that the sale proceeds of the share of the minor in the property in question will be spent on their education and for purchasing some other property.

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11. On the basis of aforesaid evidence, it is well established on record that the petitioner is the real mother and custodian of minor Subodh and has no adverse interest to the interest of minor and she is properly looking after his interest. Resultantly, on the basis of unrebutted evidence discussed above, the petition at hand succeeds. Hence, the same is hereby allowed with no order as to costs and necessary permission is granted to Smt. Bhateri, the petitioner/mother of minor Subodh to sell the share of the minor mentioned in para no.2 of the petition. It is pertinent to mention here that the petitioner would not claim her own interest adverse to that of minor in any manner neither in sale proceeds nor in the property of minor. Petitioner is authorized to sell share of minor in the property in question at the price not lower than the prevailing circle rate of the property to a bonafide purchaser. Amount of the sale consideration shall be deposited by the petitioner in a FDR in the name of minor in any nationalized bank till they attain majority. The petitioner shall furnish indemnity bond of ₹ 10 lakhs to secure the interest of minor

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within a period of two months from the date of this judgment. Memo of Costs be prepared accordingly. File be consigned to the record room, after due compliance.

Announced in open Court.

sd-
(Sukhpreet Singh),
Civil Judge (Sr. Division),
Palwal. 21.12.2019
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Note:- All the twelve pages of this judgment have been dictated, checked and signed by me.

Ved Prakash
Stenographer-II

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IN THE COURT OF
Civil Judge (Senior Division) AT Palwal, Palwal
Presided Over by Sh. Sukhpreet Singh

GW/9/2019

Petition no. 9/27.02.2019

Smt. Bhateri wife of Late Sh. Partap Singh, resident of village Jataula,
Tehsil & District Palwal

.....Petitioner

Versus

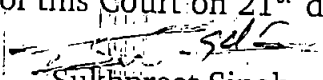
General Public

.....Respondent

Petition under Section 8 of The Hindu Minority and Guardianship
Act for permission to sale the property minor namely Subodh son
of Late Sh. Partap Singh

Memo of Cost		
	Plaintiff	Defendants
Stamp for plaint	Rs. 20/-	-
Stamp for power	Rs. 2/-	0.00
Pleaders fee	Certificate not filed	
Diet money of witness	0.00	
Process fee	Rs. 50.00	-
Misc fee	Rs. 1800/-	0.00
Total	Rs. 1872/-	0.00

Given under my hand and seal of this Court on 21st day of December, 2019.


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 Civil Judge (Sr. Division),
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 UID No. HR-0228

Register Entry No. 1340
 Date of Presentation of Appl. 21.12.19
 Period Received on 21.12.19
 Date of Preparation 21.12.19
 No of Pages 13
 Urgent Fee 25 Total Fee 90
 Copying Fee 45
 Sign of Copyist P. K. K. K. K.
 Date of Delivery 21.12.19

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25 29 33 37 41 45 49 53 57 61 65 69 73 77 81 85 89 93 97 101 105 109 113 117 121 125 129 133 137 141 145 149 153 157 161 165 169 173 177 181 185 189 193 197 201 205 209 213 217 221 225 229 233 237 241 245 249 253 257 261 265 269 273 277 281 285 289 293 297 301 305 309 313 317 321 325 329 333 337 341 345 349 353 357 361 365 369 373 377 381 385 389 393 397 401 405 409 413 417 421 425 429 433 437 441 445 449 453 457 461 465 469 473 477 481 485 489 493 497 501 505 509 513 517 521 525 529 533 537 541 545 549 553 557 561 565 569 573 577 581 585 589 593 597 601 605 609 613 617 621 625 629 633 637 641 645 649 653 657 661 665 669 673 677 681 685 689 693 697 701 705 709 713 717 721 725 729 733 737 741 745 749 753 757 761 765 769 773 777 781 785 789 793 797 801 805 809 813 817 821 825 829 833 837 841 845 849 853 857 861 865 869 873 877 881 885 889 893 897 901 905 909 913 917 921 925 929 933 937 941 945 949 953 957 961 965 969 973 977 981 985 989 993 997 1001 1005 1009 1013 1017 1021 1025 1029 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