

Punjab & Haryana High Court

SS Saron, Bharat Bhushan Parsoon, JJ.

RAJNI CHOPRA V. GENERAL PUBLIC

FAO 3722 of 2013

29.10. 2013

Hindu Minority and Guardianship Act, 1956 S. 8 - Guardians and Wards Act, 1890 - Grant of permission to sell immovable properties - Share of the minors in the two properties is quite negligible and agreement to sell have already been entered into and land of the minors would be sold along with the share of the appellant in the said land - Therefore, permission to sell the land is liable to be granted - Sale proceeds shall be deposited in a fixed deposit receipt which shall be operative till the minors attain the age of majority - Income of the same may be utilized by the appellant till the minors attain majority

S.S. Saron, J.

The appellant Rajni Chopra filed an application under Section 8 of the Hindu Minority and Guardianship Act, 1956 ('Act' - for short) read with the Guardians and Wards Act, 1890 against the general public in the Court of the learned Guardian Judge, Pathankot for grant of permission to sell immovable properties as detailed in the head note of the application, recorded in the names of her minor sons, namely, Divansh Chopra, aged 8 years, and Shivansh Chopra, aged 6 years. Notice of the application was issued to the general public by publication. No one appeared and it was proceeded against ex-parte vide order dated 2.11.2012. The appellant was asked to lead her evidence. After considering the evidence and material on record, the permission to sell the land, as sought for in terms of Section 8 of the Act, has been declined. The appellant, aggrieved against the same, has filed this appeal.

Notice of the appeal is dispensed with as none had appeared for the general public before the Guardian Judge after publication. Notice to the general public can, therefore, be dispensed with in terms of Order 41 Rule 14(3) of the Code of Civil Procedure (as amended in Punjab vide notification No.GSR-39/C.A.5/1908/S.12257 with effect from 11.4.1975). Learned Counsel for the appellant has submitted that notice indeed need not be served as due publication was made in the Tribune dated 3.9.2012 for 2.11.2012 in respect of the petition that was filed before the learned Guardian Judge. On the said date, i.e., 2.11.2012, the respondent general public was proceeded against ex-parte. Photocopy of the publication in the Tribune has been submitted by learned Counsel for the appellant. We have heard learned Counsel for the appellant and with her assistance, perused the record of the trial court that was requisitioned. A perusal of the record shows that the appellant filed an application for getting permission to sell immovable property, i.e., land as detailed

and described below:-

“a) share of 0.75 marlas falling in khasra number 7R/3 (2-8) share 3/192, khewat no.192, khatoni no.211, situated in village Saili, HB No.332, Tehsil and District Pathankot which comes to 0.375 marlas (original jamabandi attached).”

“b) share of 6 marlas falling in khasra number 68R/16 (4-16), 25/1 (2-3), 30(3-4) share 6/203 situated in village Narot Mehra, HB No.1201, Teshil and District Pathankot which comes upto 0-3 marlas. Original jamabandi containing mutation attached.”

“A perusal of jamabandi for the year 2007-08 (Ex.A4) of village Saili, Hadbast No.332, Tehsil Pathankot, District Gurdaspur (now District Pathankot) shows that Smt. Rajni (mother), Smt. Rajni Chopra (widow), Divansh Chopra and Shivansh Chopra (sons) of Saurav Chopra son of Pavan Chopra are recorded as co-sharers in equal shares of 3/192 share and others of 189/192 share in land measuring 2 kanals 8 marlas in khasra No.3 of Rectangle No.7 being legal heirs of Saurav Chopra. It is stated by learned Counsel for the appellant that the name of the mother of Saurav Chopra is Rajni Bala and the name of the widow of Saurav Chopra is Rajni Chopra which is reflected in the jamabandi Ex.A4 and also in the jamabandi (Ex.A5) of the other village Narot Mehra, Tehsil and District Pathankot. The share of the LRs of Saurav Chopra in this land in village Saili, therefore, comes to 0.75 marlas. An agreement to sell Ex.A6 has also been entered into on 7.8.2012 by Rajni Chopra mother of the minors with one Ashok Kumar son of Waryam Chand for sale of share of the minors in land measuring 0.75 marlas. The other portion of land which the appellant seeks permission to sell is land measuring 0.3 marlas in village Narot Mehra, Hadbast No.201, Tehsil and District Pathankot, jamabandi of which is Ex.A5. A perusal of the said jamabandi shows that there are various co-sharers in land measuring 10 kanal 3 marlas which is recorded as uncultivated gair mumkin plot. One Surjit Singh son of Bahadur Singh son of Amar Singh is recorded as share holder of 24/203 share. Said Surjit Singh son of Bahadur Singh, it is submitted, sold his 24/203 shares in the land measuring 10 kanal 3 marls vide registered sale deed dated 27.7.2007 in favour of four persons, namely, Tarun Pal Singh son of Gurdip Singh, Ashok Kumar son of Waryam Chand, Aman Puri son of Mohinder Puri and Saurav Chopra son of Pawan Kumar Chopra residents of Saili Road, Pathankot in equal shares. In the remarks column of jamabandi Ex.A5, mutation No.5152 dated 24.7.2009 has been sanctioned in terms of which Surjit Singh son of Bahadur Singh son of Amar Singh it is mentioned has transferred his 24/203 share in favour of Ashok Kumar son of Waryam Chand to the extent of 6/203 share, Tarun Pal Singh son of Gurdip Singh to the extent of 6/203 share, Aman Puri son of Mohinder Puri to the extent of 6/203 share and Saurav Chopra son of Pawan Kumar Chopra to the extent of 6/203 share. Saurav Chopra, husband of the appellant and father of the minor children, died on 4.9.2011. Photocopy of document mentioning death of Saurav Chopra at Medanta Medicity, Gurgaon Ex.A-3 is on record. Mutation No.5360 dated 13.2.2012 has been sanctioned as per the remarks column of Jamabandi Ex.A5 in respect of the share of Saurav Chopra son of Pawan Kumar Chopra in favour of his widow Rajni Chopra, his sons Divansh and Shivansh Chopra, besides, his mother Rajni Bala to the extent of 3/406 share each. An agreement to sell Ex.A7, this land of the minors has been entered into by Rajni Chopra on 7.8.2012 with Tarun Pal Singh son of Gurdip Singh. The learned Guardian Judge declined the application of the appellant for

the reason that the permission had been sought to sell the properties of minors only to meet their present and future day to day maintenance and educational expenses. It was noticed that the petitioner had alleged that the petitioner had no source of income being a house wife and being the natural mother of both the minors, she needed the sale consideration to meet the present, future day to day maintenance and educational expenditure of the minors. However, it was held that it would not be in the benefit and advantage of both the minor sons if their share in the aforesaid properties was permitted to be sold to meet the present and future day to day maintenance and education expenditure of the minors, more particularly when their mother, i.e., the petitioner was also having share in the aforesaid properties. Accordingly, no force was found in the argument raised on behalf of the appellant and the petition was dismissed. It may, however, be noticed that the affidavit of the appellant Ex.AW is on record. Learned Counsel for the appellant has submitted that the share of the minors in the property is quite negligible and it is likely to be encroached upon. Besides, it is submitted that whatever sale proceeds of the property are got, she would get them put in a fixed deposit receipt till the minors attain the age of majority and only the interest accruing therefrom would be utilized for education and upbringing of the children. It is submitted that the property is earning nothing for the minors. Besides, the share of the appellant is also to be sold. The lands which comprises of several co-sharers would in all likelihood be encroached upon and there would be nothing left."

After giving out thoughtful consideration to the matter, we are satisfied that the contention raised by learned counsel for the appellant that the share of the minors in the two properties is quite negligible and agreement to sell dated 7.8.2012 Ex.A6 in respect of the land at village Saili and agreement to sell dated 7.8.2012 Ex.A7 in respect of the land at village Narot Mehra have already been entered into and land of the minors would be sold along with the share of the appellant in the said land. Therefore, in the facts and circumstances of the case, we are of the view that permission to sell the land is liable to be granted. Accordingly, the appeal is allowed. The impugned judgment and order dated 12.4.2013 of the learned Guardian Judge, Pathankot is set aside. The necessary permission to sell two parcels of land at village Saili and at village Narot Mehra of the minors is granted. The sale proceeds shall be deposited in a fixed deposit receipt which shall be operative till the minors attain the age of majority. Income of the same may be utilized by the appellant till the minors attain majority. Necessary compliance report of the order shall be submitted before the Guardian Judge at Pathankot within one week of the sale deed being executed and the aforesaid conditions shall be incorporated in the sale deed itself.