

Jagjeet Kaur Vs. State

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Court : Delhi

Decided On : Feb-25-2014

Judge : Valmiki J. Mehta

Appellant : Jagjeet Kaur

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % FAO No.155/2013 25th February, 2014 JAGJEET KAUR Through:Appellant Mr. Vineet Sharma, Adv. VERSUS STATE Through: Respondent Ms. Megha Bharara, Adv. for Ms. Zubeda Begum, Adv. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This first appeal is filed under Section 8(5)(e) of the Hindu Minority and Guardianship Act, 1956 against the judgment of the court below dated 19.12.2012 which has dismissed the petition which sought permission to sell the two fifth of the half undivided share of the minor sons of the appellant/petitioner in the back portion of the first floor of property bearing no.10/61, Subhash Nagar, New Delhi.

2. The court below has dismissed the petition by observing that with respect to an undivided share in an immovable property, no permission is required. This is so stated in paras 8 to 10 of the impugned judgment and which read as under:- 3.

8. The counsel for the petitioner submitted that Section 8(2) Hindu Minority & Guardianship Act lays down that no guardian can sell property of minor without permission of the court. To my mind said section applies to exclusive property of minor and not to the share of minor in joint property.

9. Moreover section 12 of Hindu Minority and Guardianship Act debars the court from appointing guardian in respect of undivided share of minor in joint family property. The counsel for the petitioner submitted that said section debars appointment of guardian and not permission to sell. To my mind, appointment of guardian in respect of undivided share of minor in joint family property is for permission to sell the property and nothing else.

10. Section 8 of Hindu Minority & Guardianship Act, 1956 does not speak to any permission of the court for selling the share of minor in joint property. In taking this view, I am supported by decision in AIR 2006 NOC1363MP. The natural guardian can sell the share of the minor so long as the same is justified well under Hindu law without permission from Court. In Sri Narayan Bal & Ors. Vs. Sridhar Sutar & Ors. AIR 1996 SC2371 it was held that Hindu joint family can dispose of family property including undivided interest of minor. In Ansal Property Vs. Anand Nath ILR1992 Delhi 540 it was held that administration of undivided interest of minor in joint family can be by defacto guardian.

Learned counsel for the appellant states that appellant will have difficulty before the sub-Registrar at the time of seeking to register the transfer of interest in the immovable property, and therefore, the present appeal is filed.

4. In my opinion, the court below has erred in dismissing the petition by observing that no permission is required inasmuch as, permission to sell the undivided share of a minor is very much required as per Section 8 of the Hindu Minority and Guardianship Act, 1956. When the provision of the Hindu Minority and Guardianship Act refers to not appointing a guardian for the undivided share of a minor in a joint family property, reference is made to Hindu undivided family property, and not to undivided interest in a property which is a co-ownership property and not a HUF property. In a case of undivided interest in a co-owned property permission of the court would be required under Section 8 of the Hindu

Minority and Guardianship Act.

5. In the present case, the requirement for selling of the property is for upkeep, maintenance and educational expenses of the minor and which facts show sufficient necessity for selling of the property, more so because the appellant-petitioner is a natural mother of the minors Master Avinoor Singh and Master Gurjot Singh and would sufficiently protect the interest of the minors.

6. In view of the above, appeal is allowed and the appellant-petitioner is granted permission to sell the shares of the minors in the back portion of the first floor of the property bearing no.10/61, Subhash Nagar, New Delhi. The amount which is received on account of sale of the property will either be immediately and directly invested in purchase of an immovable property or will be put in a fixed deposit in a nationalized bank and only interest thereof will be used for upkeep, maintenance, educational expenses and other necessary expenses of the minors. In case, there is need to withdraw a lumpsum amount, whole or part of the fixed deposit, then on such a necessity arising, petitioner can approach the competent court and which will examine such application as per the facts as found.

7. The appeal is allowed and disposed of in terms of the aforesaid observations. Parties are left to bear their own costs. Petitioner will give an acceptable surety bond-cum-undertaking to the Guardianship Court in terms of this judgment before selling the shares of the minors in the aforesaid immovable property.
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