

In Re: Tomy George

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SooperKanoon Citation : sooperkanoon.com/725965

Court : Kerala

Decided On : Dec-23-1994

Reported in : I(1995)DMC228

Judge : K.T. Thomas and; P.V. Narayanan Nambiar, JJ.

Acts : [Guardians and Wards Act, 1890](#) - Sections 29 and 31

Appeal No. : M.F.A. 935 of 1994

Appellant : In Re: Tomy George

Disposition : Appeal allowed

Judgement :

P.V. Narayanan Nambiar, J.

1. A petition filed under Section 29 of the Guardian and Wards Act (for short 'the Act') for permission to alienate the property of a minor, was 'closed' by the Court below. According to us, the approach made by the Court below to the problem cannot be justified.

2. Sindu alias Elizabeth is the minor. Her father and mother jointly applied to the District Court for permission to sell the property of the minor. Her father had 56 acres of land in Tellicherry Taluk. He gifted seven acres out of it to the minor as per Ext. A2 gift deed dated 27-1-1982. It is the said land which the petitioners now

want to sell.

3. The petitioners are residents of Poovarani Village in Meenachil Taluk (Kottayam District). The first petitioner had already sold the remaining 49 acres. So, what remains to be sold is the seven acres of property covered by the gift. According to the petitioners, they have no other interest in Tellicherry Taluk and hence they find it difficult to manage the remaining seven acres of property covered by the gift. The land is cultivated with rubber which is reaching the age of tapping. A third party has contacted them to purchase the property at a reasonable fair price of Rs. 60,000/- per acre. It is stated in the petition that the said offer would be beneficial to the interest of the minor as the petitioners will be acquiring a more profitable area in Idukki district with the sale proceeds.

4. The first petitioner was examined as P.W. 7. He said in his evidence that another property has been acquired by them in the name of the minor recently. The documents of such acquisition were produced. The necessary amount for the acquisition was paid by the father. In the course of evidence, first petitioner stated that the petitioners are prepared to deposit the sale proceeds of the property which now stands in the name of the minor in Court till they find out another property for purchase in the name of the minor.

5. The Court below, upon the said evidence came to the conclusion that the petitioner are interested in the welfare of the minor. Learned District Judge observed further that since the parents have produced documents regarding the acquisition of other properties in favour of the minor utilising their own funds, it is not proper to decline permission to alienate the minor's property, as prayed for in the petition. In spite of such findings, learned District Judge 'closed' the petition with liberty to the petitioners to move the Court for sanction to sell the property of the minor after the finding out another property that could be purchased in the name of the minor.

6. Section 29 of the Act forbids that a guardian shall not without the previous permission of the Court transfer by sale any immovable property of his ward. Section 30 of the Act makes disposal of immovable property by guardian of violation of Section 29, voidable. Section 31 of the Act reminds the Court that

permission can be granted only for the necessity or advantage of the minor and shall also satisfy conditions, if any, that could be attached to the permission. The other provisions in the Act make it clear that Courts have supervisory power over the acts of the guardian for overseeing whether the action of the guardian is to the advantage or benefit of the minor.

7. We must bear in mind that it is the natural guardian of the minor who applied for permission for selling the minor's property. It should not be forgotten that the custody of the minor also is with him and that the minor is about 17 years old and till now petitioners have been managing the affairs of the minor. She was given education, food and clothing. Nothing is brought out or even suggest that the petitioners have any adverse interest or any other motive in selling the property of the minor. The property sought to be alienated itself was assigned by the father in favour of the minor. The Court need not approach the request for permission with a penumbra of suspicion when the natural guardian of a minor applies for permission to sell property which belongs to the minor. When an application is filed by the natural guardian and when it is found that he has genuine interest in the welfare of his minor daughter, the statement of such guardian can, normally, be believed and the proposal for sale can be presumed to be for the advantage and benefit of the minor. However, conditions can be imposed by the Court while granting permission.

8. It is not a case where the Court is of opinion that the consideration for the property which is offered by the third party is not reasonable or adequate. It is a case where petitioner have been offered to deposit the sale proceeds in Court till they find out another property to be acquired in the name of the minor. The evidence also discloses that the property sought to be alienated, in fact belonged to the first petitioner and he had made it cover to his daughter.

9. The reason for rejecting the claim of the petitioners is that the petitioners have not so far furnished details of the property which they intend to purchase in the name of the minor utilising the sale proceeds of the property which is now in the name of the minor. This reason is not impressive on the facts and circumstances of the case.

10. Section 31 of the Act stipulates that permission cannot be granted except in a case of necessity or of evident advantage to the ward. The expression 'evident advantage' does not warrant a negative or narrow meaning. The test should be the approach of prudent man to the problem. If this test is applied, we feel that the Court below was not justified in insisting that permission could be granted only when the parents find out another property for purchase. The interest of the minor will not be jeopardised as the petitioners have offered to deposit the sale proceeds in Court or in the manner directed by the Court. The Courts should not take a rigid view in the matter. The Court, after granting permission, could have seen that the money is utilised profitably or to the advantage of the minor by acquisition of an alternate property.

11. Our conclusion is fortified by the decision in *Sakthi v. Kuppathammal* (AIR 1960 Mad, 394). Following the decisions in *Palaniappa v. Deivasikamani Pandora Sannadhi* (AIR 1917 PC 33) and *Jagatnarain v. Mathuradas* (AIR 1928 All. 464-FB) the Madras High Court held as follows :

'A broad view must be taken of the concept of what is a measure to the benefit of the estate of the minor. There cannot be any hard and fast rule laid down in all such matters, of the material which a Court would take judicial notice of, in judging benefit.'

12. For the reasons stated above, the appeal is allowed and the order of the Court below is set aside. The Court below is directed to grant permission to the petitioners to dispose off seven acres of land which now stands in the name of the minor Sindu and make available the sale proceeds at the disposal of the Court so that it could be used for the acquisition of another property in the name of the minor. The Court can impose other conditions, if any, which are absolutely necessary for overseeing that the interest and welfare of the minor are protected.