

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 346 of 2022**

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RAMILABEN VIJAYKUMAR PATEL

Versus

NA

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Appearance:

MR JEET B KARIA(11991) for the Appellant(s) No. 1,2

for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE UMESH A. TRIVEDI****Date : 16/06/2022****ORAL ORDER**

[1.0] Heard Mr. Jeet B. Karia, learned advocate for the appellants.

[2.0] By way of this Appeal under Section 47 of the Guardians and Wards Act, 1890 read with Section 8 of the Hindu Minority and Guardianship Act, 1956, the appellants have challenged refusal of permission to sell the share of minor in the properties mentioned in the application in detail and referred to in the impugned order passed by the 3rd Additional District Judge, Dhrangadhra dated 07.01.2022 in Civil Miscellaneous Application No.39 of 2021.

[3.0] Mr. Jeet B. Karia, learned advocate for the appellants, submitted that appellant no.1 being the mother and natural guardian has spent huge amount for education of the minor, who is aged about 17 ½ years at present after the sad demise of her husband on 14.01.2021. He has further

submitted that now it has become difficult to manage the financial affairs and she is not able to look after the said properties i.e. plots and is not in a condition to earn for their living. He has further submitted that the paramount consideration being the welfare of the child, after the sad demise of the father, the appellant - mother being less educated is not in a position to earn for their living and in absence of any other source of earning, the properties, which are jointly owned with the minor alongwith the share of other co-owners, are required to be sold off. It is further submitted that it has not been stated in the application made to the competent Court nor in the deposition of appellant no.1 before the Court that the minor child is studying in Standard 12th Science stream, who took his exam in March, 2022. The further course of his studies and the expected expenses thereof would be determined only after the result of Standard 12th. He has further submitted that one of the reasons assigned by the Court below that instead of seeking permission to sell off the share of minor, the mother could sell her share of property or put it on rent is not practical and feasible solution as it is jointly owned with other owners. It is further submitted that anybody would intend to purchase the property from all the joint owners not only the share of a part owner and looking at the nature of properties being plots, it cannot be put on rent, and therefore, it is submitted that the said reasons assigned by the learned Judge to deny the permission is not legal.

[3.1] He has further requested that the necessary permission be granted on suitable conditions to safeguard the interest of minor and the sale proceeds may be ordered to be

deposited in the Fixed Deposit till the minor turns major, which would be within six months hereof. Therefore, he has submitted that necessary permission, as sought for, keeping in mind the welfare of the child, be granted to sell off the properties as mentioned in the application and in the deposition before the Court below. In support of his submission, he has placed reliance on the decision of the Kerala High Court Bench at Ernakulam rendered in MFA No.133 of 2009 decided on 22.06.2009 by the Division Bench of it, more particularly, paragraph 8 thereof, which again quotes a paragraph from another decision referred to in it wherein it is mentioned that when a minor child was given education, food and clothing and all the requirements are fulfilled, in absence of anything brought out or suggested that the natural guardian have any adverse interest or any other motive in selling the property of the minor, normally permission should be granted to sell off the share of the minor.

[4.0] Having heard the learned advocate for the appellants as also going through the impugned order as also the documents annexed with it, it is undisputed that as on date minor is about 17 ½ years. The application made to the concerned Court lacks in material detail so as to the expenses either spent, required to be spent in the present or future.

[4.1] The judgement referred to and relied on by the learned advocate for the appellants wherein father had assigned his property to the minor, which was required to be sold off in the facts of that case if Court came to the conclusion that after examining the evidence available on record before that Court and grant any permission, it cannot be argued as a

proposition that since mother being natural guardian of the minor her application seeking permission to sell off the property of the minor should not be looked at with any suspicion. As such, the said argument is without any merit because such permission is not refused based on any suspicion but because of lack of necessary details, which are required to be considered for grant of permission, and therefore, the said authority is not applicable in the present case, and therefore, the said submission is also rejected.

[4.2] As observed by the learned Judge in the impugned order that since the minor is still in the lower class, considering his age to be 16 years, at the time of presenting it, there is no question of selling the properties for the education, maintenance and welfare of the child. The learned Judge has also taken note of the fact that in which standard the minor is studying is not finding place in her application or the deposition. Merely mentioning it in written submission that minor is studying in Standard 12th Science Stream, no further material that what amount was spent towards his studies or his educational performance in the Science stream not only in Standard 12th but in Standard 11th also, is placed before the Court so as to assess even the prospective expenses to be borne by the mother - appellant no.1 in near future.

[4.3] Not only, no details about the occupation of the husband who died, is mentioned except he doing agricultural work whereas details mentioned in the application with regard to purchase of a land and getting it converted into NA alongwith two other partners shows that husband was dealing in at least non-agricultural properties to a sizeable extent. A

possibility cannot be ruled out that he must be a builder purchasing the agricultural land getting it converted into NA alongwith other partners and selling off NA plots and if he himself was not constructing the same. At the same time, there is no averments either in the application or in the deposition with regard to the earning of the husband or the savings left by him including the details of the bank accounts of the deceased husband. There is also no mention about the fact that what other properties, except mentioned in the application are there in the name of the husband either independently or jointly with even the family members. In absence of all those necessary and material details, the refusal of permission to sell off the share of the minor appears to be correct. Permitting anything to be brought on record now by way of additional evidence as suggested by the learned advocate for the appellants would be filling up of lacuna found in the case pleaded by the appellants, and therefore, at this stage, it cannot be permitted. If law permits, appellants may apply again with all necessary details if at all the necessity still continues but no such permission, while exercising appellate jurisdiction over the said order, can be granted in the present case when all the material facts as aforesaid lacks in the application as also the deposition, and therefore, there is no reason to entertain this Appeal. Hence, this Appeal is rejected.

(UMESH A. TRIVEDI, J.)

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