

IN THE COURT OF THE JUDGE, FAMILY COURT,  
BHUBANESWAR.

Present : Shri Pravakar Mishra, OSJS(SB),  
Judge, Family Court, Bhubaneswar.

Civil Proceeding No. 554 of 2013

1. Sri Subhendu Narendra Mohapatra, aged about 12 years,
2. Sri Santanu Mohapatra, aged about 9 years,  
Both are son of Sri Sitanshu Narendra Mohapatra and  
Sukalata Mohapatra  
Plot No. 170, Samantarasahi, Rasulgarh,  
P.S.-Mancheswar, Bhubaneswar, Dist-Khurda.
3. Smt. Sukalata Mohapatra, aged about 39 years  
W/o-Sri Sitanshu Narendra Mohapatra  
resident of Plot No. 170, Samantarasahi,  
Rasulgarh, P.S.-Mancheswar, Bhubaneswar,  
Dist-Khurda.

... Petitioners

... Versus...

Sri Sitanshu Narendra Mohapatra, aged about 44 years,  
S/o-Sri Harekrushna Narendra Mohapatra,  
resident of Plot No. 170, Samantarasahi, Rasulgarh,  
P.S.-Mancheswar, Bhubaneswar Dist-Khurda.

... Respondent

Date of Argument : 17.10.2014  
Date of Judgment: 29.10.2014

J U D G M E N T

The petitioner No.3 has filed application Under Sec. 7 & 8 of Hindu Guardianship and Wards Act with prayer to declare her as guardian of the minor sons Subhendu Narendra Mohapatra and Santanu Mohapatra and grant her permission for sale of the minors property as described in the schedule.

2. The petitioner No.3 has averred that the minors being Hindu governed by the Mitakshayara School of Hindu Law is governed by the Hindu Minority

and Guardianship Act, 1956 and they being the minors, according to Sec.6 of the said Act, she is the natural guardian. According to her the respondent is her husband. She has purchased a piece of land bearing Khata No.1330/5930 corresponding to Khata No. 1205, Plot No. 3872 of an area Ac.0.370 dec. of Kissam- Gharabari at Mouza- Bhubaneswar Sahar Unit No. 38 Pandara and the above land was registered before the Sub-Registrar, Bhubaneswar vide Sale Deed No.1101103960 dated 21.02.2011 for a consideration of Rs.28,49,000/- and its present market value is more than Rs.30,00,000/-. She has further stated that she has purchased the above land for benefit and advantage of the minors to meet their educational expenses and bright future. As the petitioner is in need of money, she approached the nationalised bank to obtain loan by mortgaging the property, but the bank concerned advised her to obtain declaration regarding her guardianship from a competent court. Therefore, she has brought this application seeking permission to be declared her as natural guardian and to permit her to sale such property.

3. The Opp. Party being the father of the minors, has filed written statement admitting the facts and averments made by the petitioner. In other words he has consent to appoint the petitioner as the natural guardian of the minor and to sale her property.

4. For just decision of the case, the following points are to be determined:

(i) Whether the petitioner is the mother and the Opp. Party is the father of minor sons of Subhendu Narendra Mohapatra and Sri Santanu Mohapatra ?

(ii) Whether the petitioner has purchased the land bearing Khata No.1330/5930 corresponding to Khata No. 1205, Plot No. 3872 of an area Ac.0.370 dec. of Kissam- Gharabari at Mouza- Bhubaneswar Sahar Unit No. 38 Pandara and the above land was registered before the Sub-Registrar, Bhubaneswar vide Sale Deed No.1101103960 dated 21.02.2011 for a consideration of Rs.28,49,000/- in the name of the minor sons ?

(iii) Whether the petitioner is entitled to be declared as the natural guardian of the minor sons and whether she is entitled to sale/transfer the land to any other person?

5. In order to establish her case, the petitioner has examined herself as P.W.1. In her evidence she corroborated the averments made by her in her application. The petitioner has proved the registration of the land which she has purchased in the name of her minor sons Subhendu Narendra Mohapatra and Sri Santanu Mohapatra bearing Khata No.1330/5930 corresponding to Khata No. 1205, Plot No. 3872 of an area Ac.0.370 dec. of Kissam- Gharabari at Mouza- Bhubaneswar Sahar Unit No. 38 Pandara and the above land was registered before the Sub-Registrar, Bhubaneswar vide Sale Deed No.1101103960 dated 21.02.2011 for a consideration of Rs.28,49,000/-. The evidence of P.W.1 has not been challenged in any manner by the Opp. Party. Rather, the Opp. Party has supported the claim of the petitioner. Thus, from the evidence of P.W.1 it is forthcoming that the minor as well as the schedule property are under the care and custody of the petitioner No.3. Since the father has no objection if the petitioner No.3 shall be appointed as the natural guardian of the minors especially the minors being male child, their welfare

lies if the petitioner mother be declared as their guardian and in fact, this court did that.

6. As regards to disposal of the property, it is stated that the sale proceed be utilized for the higher education of the minor. It is pertinent to mention here that the minors being 12 and 9 years old respectively, their higher education are yet to begin. Be that as it may, since the property is going to fetch much more value at present than the purchase value, though sale of land at higher value is not a good ground for the welfare of the children, yet the same be saved for future use of higher education of the minor permission is accorded to the petitioner to sale it but with condition that seventy five percentage of sale consideration be deposited in shape of fixed deposit in any nationalized bank in the name of the minors till they attain majority. Hence, it is ordered:

#### O R D E R

The proceeding is allowed in favour of the petitioner without cost. The petitioner No.3 Sukalata Mohapatra is hereby declared as the natural mother guardian of minors Subhendu Narendra Mohapatra and Santanu Mohapatra and they have every right to sale/transfer and mortgage the property to any person as per law but with the condition that seventy five percent of sale proceed shall be deposited in shape of fixed deposit in the name of minors in any nationalized bank till they attain majority, in the case of sale.

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Dictated, corrected by me and is pronounced on this the 29<sup>th</sup> day of October, 2014.

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Witnesses examined for the petitioner:

P.W.1        Smt. Sukalata Mohapatra

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

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