

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

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

Civil Proceeding No. 555 of 2013

1. Manishkajeep Samal, aged about 10 years,
D/o-Sanjit Samal and Smt. Jayanti Samal, Bhagyalaxmi

2. Smt. Jayanti Samal, aged about 41 years,

W/o- Sanjit Samal,

D/o-Ashirbad Behera

Resident of Flat No. 201, Block-A, Asutosh Vihar,

Rabi Talkies Road,

P.S.-Lingaraj, Bhubaneswar, Dist-Khurda.

is represented through their mother guardian Smt. Jayanti
Samal, (the petitioner No.2)

... Petitioners

... Versus...

Sri Sanjit Samal,

S/o-Late Ranka Samal,

Siba Prasad Behera,

Resident of Flat No. 201, Block-A, Asutosh Vihar,

Rabi Talkies Road,

P.S.-Lingaraj, Bhubaneswar, Dist-Khurda..

... Respondent

Date of argument : 27.08.2014

Date of order : 08.09.2014

ORDER

The petitioner has filed application Under Sec. 7 & 8 of Hindu Guardianship and Wards Act with prayer to declare her as guardian of the minor daughter Minskajeep Samal and grant her permission for sale of the minor property as described in the schedule.

2. The petitioner has averred that the minor being a Hindu governed by the Mitakshayara School of Hindu Law is governed by the Hindu Minority and Guardianship Act, 1956 and she being the minor, according to Sec.6 of the said Act, the petitioner is the natural guardian. According to her the respondent is her husband. She has purchased a piece of land bearing Khata No.703/1832 corresponding to Khata No. 703/1678, Plot No. 361/3190 of an area Ac.0.200 dec. of Kissam- Gharabari at Mouza- Patrapada, under Khandagiri Police Station and the above land was registered before the Sub-Registrar, Khandagiri vide Sale Deed No.2592 dated 08.04.2009 for a consideration of Rs.12,00,000/- and its present market value is Rs.20,00,000/-. She has further stated that she has purchased the above land for benefit and advantage of the minor to meet her educational expenses and bright future. As the petitioner is in need of money, she approached the nationalised bank to obtain loan by mortgaging 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 minor daughter, 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 daughter Manishkajeep Samal ?

(ii) Whether the petitioner has purchased the land bearing Khata No.703/1832 corresponding to Khata No. 703/1678, Plot No. 361/3190 of an area Ac.0.200 dec. of Kissam- Gharabari at Mouza-

Patrapada, under Khandagiri Police Station and the above land was registered before the Sub-Registrar, Khandagiri vide Sale Deed No.2592 dated 08.04.2009 for a consideration of Rs.12,00,000/- in the name of the minor daughter ?

(iii) Whether the petitioner is entitled to be declared as the natural guardian of the minor daughter 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 daughter Manishkajeep Samal bearing Khata No.703/1832 corresponding to Khata No. 703/1678, Plot No. 361/3190 of an area Ac.0.200 dec. Of Kissam- Gharabari at Mouza- Patrapada, under Khandagiri Police Station and the above land was registered before the Sub-Registrar, Khandagiri vide Sale Deed No.2592 dated 08.04.2009 for a consideration of Rs.12,00,000/-. 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. Since the father has no objection if the petitioner shall be appointed as the natural guardian of the minor especially the minor being a female child, her welfare lies if the petitioner mother be declared as her 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 minor being 10 years old, her higher education is 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 child, 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 minor till she attains majority. Hence, it is ordered:

O R D E R

The proceeding is allowed in favour of the petitioner without cost. The petitioner is hereby declared as the natural mother guardian of minor daughter Manishkajeep Samal and she has 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 minor in any nationalized bank till she attains majority, in the case of sale.

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Dictated, corrected by me and is pronounced on this the 8th day of September, 2014.

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Witnesses examined for the petitioner:

P.W.1 Jayanti Samal

Witnesses examined for the respondent:

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
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