

**IN THE COURT OF LVII ADDL.CITY CIVIL AND
SESSIONS JUDGE, MAYOHALL UNIT, BENGALURU
(CCH-58)**

Present: Smt. K.G.Shanthi, B.Com, LL.M.,
LVII Addl.City Civil & Sessions Judge
Mayo Hall Unit, Bengaluru.

Dated this the 22nd day of March, 2021

G & WC No.25004/2020

- Petitioners:**
- 1 Mrs. Anika Balveer,
W/o.Late Sudhanshu Balveer,
Aged about 45 years.
 - 2 Sanchi Saxena,
D/o.Late Sudhanshu Balveer,
Aged about 18 years.
 - 3 Avik Saxena
S/o.Late Sudhanshu Balveer,
Aged about 13 years,
Represented by his Natural
Guardian (mother)
Mrs.Anika Balveer.

Petitioners are r/at B-200,
1st floor, Sector 26,
(Near Apollo Hospital)
Noida-201 301.

(By M/s.B.M. Associates, Advocates)

V/S

Respondent: - N I L -

ORDERS

This petition is filed by the Petitioners u/S.8(2) of the Hindu Minority and Guardianship Act, 1956 r/w. Section 29 of the Guardians and Wards Act, 1890 seeking permission to sell the petition schedule property on behalf of minor Petitioner No.3 and any such other order as deemed fit to be granted in the circumstances of the case.

2. The brief case of the petitioners is that, 1st Petitioner is the wife of late Mr. Sudhanshu Balveer, married in customary of Hindu Rites and Customs on 23.11.1999 at Hindi Bhavan, Ghaziabad and the same was registered on 16.2.2008 before the Sub-Registrar, K.R.Purm, Bengaluru in No.KRI-M759-2007-08. Out of their wedlock, Petitioner No.2

Ms.Sanchi Saxena born on 1.5.2001 and Petitioner No.3 Master Avix Saxena born on 12.11.2005 (who is minor).

3. It is stated by the Petitioners that Late Mr.Sudhanshu Balveer was deployed in Nairobi, Kenya on office work where he demised due to Cardio Respiratory failure on 4.6.2017, leaving behind Petitioners 1 to 3 as his Class01 legal heirs and the death Certificate was issued by High Commission of India, Nairobi, Kenya on 9.6.2017. In this regard, Petitioners have also obtained a Succession Cert from Upajilladhikar, Dadri, Uttar Pradesh dtd.5.10.2018 bearing document No.049/ST/SDM/2018. It is further stated that during the life time of Late Mr.Sudhanshu Balveer and 1st Petitioner, they had purchased residential apartment bearing No.L-106, 1st floor, Bloc Lavender,

in project called Hinduja Park approximately measuring 900 Sq.feet. i.e. suit schedule property, from their vendors Mr.Bhaskar Tallam Raju and his wife Mrs.Ranjana Parashar vide registered Sale deed dtd.3.1.2012 registered as document No.BNG(U)-VRT-7265/2011-12 with the office of the Sub-Registrar, Varthur Bengaluru. The khata of the schedule property was mutated in the names of Late Mr.Subhanshu Balveer and the 1st Petitioner. After the demise of late Mr.Sudhanshu Balveer, the 1st Petitioner got her name mutated in the revenue records and the khata transferred to her name.

4. It is further averred by the Petitioners that after the demise of 1st Petitioner's husband, she started working in Noida to support the family and to raise her children, she wanted to sell the schedule property situated in Bengaluru and purchase a

residential property in Noida. Therefore, the Petitioners have entered into an agreement to sell dtd.27.12.2019 in favour of Mr.Shivalingayya Nandikol in respect of the schedule property for a sale consideration of Rs.43,00,000/- and 1st Petitioner has received an advance sale consideration amount of Rs.16,00,000/-. It is stated that 3rd Petitioner Master Avik is a minor aged about 15 years of age and after the intestate demise of his father, he also has succeeded to the schedule property as a Class I legal heir along with the 1st and 2nd Petitioners. As such, the purchaser of the suit schedule property has insisted 1st Petitioner to obtain an order of competent Court to sell the schedule property as the natural guardian of Petitioner No.3, which is a condition precedent as per Section 8(2) of

the Hindu Minority and Guardianship Act, 1956 and Section 29 of the Guardians and Wards Act, 1890.

5. It is averred by the Petitioner that Petitioners have also entered into an agreement to sell dtd.23.3.2019 for the purchase of residential flat bearing No.F-303, Aims Max Gardenia Developers Pvt.Ltd., Noida approximately measuring 1150 sq. feet in the joint names of all the Petitioners, thereby securing the interest of the 3rd Petitioner. The Petitioners have agreed to pay a sale consideration of Rs.51,46,916/- and have paid a sum of Rs.3,00,000/- to the Sellers. The 1st Petitioner will get the sale deed executed in accordance with the agreement to sell dated 23.3.2019 in favour of all 3 petitioners.

6. The cause of action for the suit arose on 4.6.2017 when late Mr.Subhanshu Balveer demised

intestate leaving behind Petitioners as his Class I legal heirs and subsequently when the Petitioners entered into Agreement to sell dtd.27.12.2019 to sell the schedule property to the purchaser and when purchaser requested the 1st Petitioner to obtain permission from a competent Court for sale of the minor 3rd Petitioner's right and suit is within the jurisdiction of this Court. The Court fee of Rs.200/- is paid. Accordingly, Petitioners pray permission of the Court to sell the suit schedule property on behalf of minor Petitioner No.3. Hence, petitioners pray to allow the petition.

7. After filing the petition, the petitioner has taken paper publication in Indian Express, English daily news paper dtd. 4-11-2021. In spite of the same, none of the persons appeared responding to the paper publication.

8. In order to prove her case, the 1st petitioner has filed her affidavit in-lieu-of examination-in-chief and got examined herself as P.W.1 and got marked 14 documents as Ex.P.1 to P.14(a).

9. Heard the learned counsel appearing for the petitioners and perused the materials placed on record.

10. The following points that arise for my consideration are:

(1) Whether the petitioner No.1 made out sufficient grounds to sell the suit schedule property on behalf of Petitioner No.3 as his guardian?

(2) What order?

11. My answers to the above points are as under:

Point No.(1): In the Affirmative

Point No.(2): As per the final order, for the following:

REASONS

12. **Point No.1:** The Petitioner No.1 is the mother of Petitioner Nos.2 and 3 in this case. The father of Petitioner Nos.2 and 3 and the husband of Petitioner No.1 M.Sudhanshu Balveer, who died on 9.6.2017. The Petitioner Nos.1 to 3 are the Class I legal heirs of late Sudhanshu Balveer. During the life time, himself and the 1st Petitioner purchased the residential premise No.L-106, 1st floor, Block Lavender i.e. Hinduja Park, which measures 900 Sq.ft. of super built-up area under registered Sale deed dated 3.1.2012. The Petitioner No.1 mutated her name in the revenue records and got the khata transferred to her name as the 2nd and 3rd Petitioners were minor. Now Petitioner No.1 taking care of the Petitioner Nos.2 and 3. The Petitioner No.2 is already major and Petitioner No.3 is a minor, aged about 13 years.

13. According to 1st Petitioner she intends to purchase a residential premise in Noida as it would save them considerable amount i.e. rental expenses as 1st Petitioner is working at Noida and residing along with Petitioner Nos.2 and 3, who are studying in school at Noida.

14. PW1 had produced her marriage certificate with Sudhanshu Balveer which marked as Ex.P1. The Aadhar card marked as Ex.P2. Ex.P3 is Aadhar card of Petitioner No.2 and Ex.P5 is Birth certificate of the minor Petitioner No.3. Exs.P7 and 8 reflects that the Petitioner Nos.2 and 3 studying in School at Noida. Ex.P10 is copy of the family members certificate. Ex.P11 is the copy of the Sale deed. It reflects that Petitioner No.1 and her husband purchased the suit property. Ex.P12 is the Khata

certificate and Khata extract. Tax paid receipt marked as Ex.P13.

15. It is pertinent to note that in this case Petitioner No.1 is working at Noida and her 2 children, who are Petitioner Nos.2 and 3 are studying in School at Noida. Petitioner No.1 being mother and natural guardian taking care of her 2 children and providing education to them. The evidence it reflects that Petitioner No.1 is not willing to sell the property which has been purchased by her along with her husband. Now she intends to sell the same as Petitioners are residing in rental house at Noida. The agreement of sale is produced and marked as Ex.P14. The Petitioner No.1 entered into sale agreement with Shivalingayya Nandikol and agreed to sell the suit schedule property and received part of the sale consideration.

16. The evidence it reflects that property was purchased by the Petitioner No.1 along with her husband out of their savings. Now, the Petitioner No.1 intends to sell the property for best interest of the family. In my opinion, Petitioner No.1 has no adverse interest. On the other hand, she is bound to provide good education to the children and also she planning to purchase the house at Noida, where they are residing. By considering all these circumstances I am of the opinion that Petitioner No.1 has made out sufficient grounds to sell the suit schedule property on behalf of Petitioner No.3. Accordingly, point No.1 is answered in Affirmative.

17. **Point No.2:** In view of my finding on point No.1, I proceed to pass the following:-

ORDER

The petition filed by the Petitioners u/S.8(2) of The Hindu Minority and Guardianship Act, 1956 r/w. Section 29 of the Guardians and Wards Act, 1890 is allowed.

The petitioner No.1 Mrs.Anika Balveer W/o.Late Sudhanshu Balveer, aged 45 years is permitted to sell the suit schedule property on behalf of Petitioner No.3 – Avik Saxena for sale consideration of Rs.43,00,000/- and to use the sale consideration amount for purchase of the house at Noida for the favour of Petitioner Nos.2 and 3.

Schedule property

All that piece and parcel fo residential apartment bearing No.L-106, 1st floor, Block Lavender, in project called Hinduja Park approximately measuring 900 Sq.Ft. of super built-up area inclusive of proportionate share in common areas such as passages, lobbies, lifts, staircases and other areas of common use with one uncovered car parking in the ground floor and bounded on:

East by : Vacant land
 West by : Flat No.F-103
 North by : Flat No.F-105; and
 South by : Falt No.F-107

(Dictated to the Judgment-writer, transcribed and computerized by him and after corrections pronounced by me in the open court on this the 22nd day of March, 2021).

(K.G.Shanthi)

LVII Addl.City Civil & Sessions Judge,
 Mayo Hall unit, Bangalore .

ANNEXURES

List of witness examined for the petitioners:

P.W.1 - Anika Balveer

List of exhibits marked for the petitioners:

Ex.P.1	- Marriage Certificate
Ex.P.2	- Aadhar Card of Mrs.Anika Balveer
Ex.P.3	- Aadhar Card of Mr.Sanchi Saxena
Ex.P.4	- Aadhar Card of Master Avik Saxena
Ex.P.5	- Birth certificate of Ms.Sanchi Saxena
Ex.P.6	- Birth certificate of Master Avik Saxena
Ex.P.7	- Notarized copy of School ID card of Ms.Sanchi Saxena
Ex.P.8	- Notarized copy of College ID card of Master Avik Saxena
Ex.P.9	- Death certificate of Dt.9.6.2017
Ex.P.10	- Succession certificate of Dt.5.10.2018 along with translated copy.

- Ex.P.11 - Certified copy of Sale deed dt.3.1.2012
- Ex.P.12 - Original khata certificate and Khata extract
- Ex.P.13 - Latest tax paid receipt
- Ex.P.14 - Original agreement to sell dt.3-.12.2019

List of witness examined for the respondent:

- N I L -

List of exhibit marked for respondent:

- N I L -

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Mayo Hall unit, Bangalore .

Orders pronounced in open court
[vide separate orders]

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