

J. Misc No. 72/2018(R-88/2018)
J.O.Code No. WB 00615

Order No. 31 dated 28.7.2023.

Today is fixed for passing necessary order.

The petitioner files ready slip.

The case is taken up for passing order.

This is an application under Section 8 of the Hindu Minority & Guardianship Act, 1956 filed by the petitioner namely, Namita Marik @ Namita Bhunia Marik, praying for permission to sell the property measuring 4 decimals out of 25 decimals of mouza – Kalmijore, J.L.No. 65, L.R.Nos. 40 & 55, P.S. Daspur, Dist. Paschim Medinipur of her minor daughter – Moumita Marik and minor son – Somenath Marik. The date of birth of Somenath Marik is on 04.10.2013 and date of birth of Moumita Marik is on 15.9.2009.

In nutshell, the averment of the petition is that Sovan Marik, the husband of the petitioner, was the owner of the schedule mentioned property. Sovan Marik got the schedule mentioned property by a registered deed of sale being Deed No. 4457 dated 17.8.2004. Said Sovan Marik died on 19.12.2013. After death of Sovan Marik, his wife – Namita Marik, daughter – Moumita Marik and son – Somenath Marik became the legal heirs of the deceased Sovan Marik and got 1/3rd share equally of the schedule mentioned property. The schedule property is situated at a far distance from the house of the petitioner and yields nothing. It is not possible for the petitioner to look after the property mentioned in the schedule of the plaint.

Petitioner is the mother and natural guardian of the minors – Moumita Marik and Somenath Marik. The minors are residing under the care and custody of their mother. Petitioner has no source of income of her own and passing her days with the minors with grate hardship. For proper education and welfare of the minors, the petitioner has decided to sell 2/3rd share of the minors property. She undertakes that she will deposit the consideration money of the minors in fixed deposit scheme in any Nationalized Bank/Post Office for the welfare and benefit of the minors. The petitioner has no adverse interest with the minors.

It is the further assertion of the petitioner that she is fit and proper person to be appointed as guardian of the minors – Moumita Marik and Somenath Marik.

Manas Kumar Gan and Tapas Gan of village Kalmijore, P.S. Daspur are willing to purchase the property of the minors mentioned in schedule of the plaint.

So, the petitioner prayed for permission before this Court to sell the 2/3rd share of the minors property mentioned in the schedule .

The notice was published in the “Sangbad Protidin” newspaper dated 09.5.2019 but no objection has been filed by anybody. The notice was also served in the locality of the schedule property but of no result.

So, the case has been heard ex parte.

In order to prove the case, the petitioner deposed as P.W.1,

In the affidavit, P.W.1 categorically stated as follows :

- a) that her marriage was solemnized with Sovan Marik. Due to the said wedlock minors namely, Moumita Marik was born on 04.10.2013 and Somenath Marik was born on 15.9.2009;
- b) that her husband got the schedule property by a registered deed of sale being No. 4457 dated 17.8.2004. After death of Sovan Marik, the petitioner, her minor daughter and minor son became the legal heirs of the property of the deceased – Sovan Marik and they are entitled to get 1/3rd share each of the property of the deceased, Sovan Marik;
- c) that the minors are the owners of the “A” schedule property measuring 4 decimals out of 25 decimals of mouza – Kalmijore, L.R. No. 40 & 55;
- d) that petitioner is the mother and natural guardian of the minors;
- e) that the minors have been residing under the care and custody of the petitioner;
- f) that the petitioner is looking after the property of the minors;
- g) that the petitioner has no adverse interest with the minors;
- h) that the “A” schedule property is situated at a far distance from the residence of the petitioner and it is not possible for the petitioner to look after the property of the minors;
- i) that petitioner undertakes that she will deposit the sale proceed of the minors in any Nationalized Bank or Post Office in fixed deposit scheme.

One Tapas Gan has been examined as P.W.2. He stated that he is one of the intending purchasers of the property mentioned in schedule "A" of the plaint.

Following documentary evidences have been relied on by the petitioners :

1. Original death certificate of Sovan Marik - Ext. 1
2. Original Voter identity Card of Namita Marik – Ext. 2
3. Original Aadhaar Card of Namita Marik – Ext. 3.
4. Original Aadhaar Card of Moumita Marik – Ext. 4
5. Original Birth Certificate of Somnath Marik -Ext. 5
6. Original deed of sale being No. 4457 of 2004 - Ext. 6
7. Original Khazna receipt – Ext. 7
8. e-Assessment slip - Ext. 8 . The e-Assessment slip is filed by the petitioner on 12.5.2023. But the same was not marked as exhibit on that day. Subsequently, the court marked the e-Assessment slip as Ext. 8 as public document.

From Ext. 1, it is revealed that Sovan Marik, husband of the petitioner- Namita Marik @ Bhunia, died on 19.12.2013. From Ext. 2 it transpires that Namita Marik is the wife of Sovan Marik, since deceased. From Ext. 4, it is apparent that Moumita Marik is the daughter of Sovan Marik. From Ext. 5, it is apparent that Somenath Marik is the son of Sovan Marik. From Ext. 6, it is revealed that Sovan Marik purchased 25 decimals of land from Ashok Kumar Gan and Alok Kumar Gan vide sale deed being No. 4457 dated 17.8.2004. From Ext. 7 it is revealed that Namita Marik deposited 'khazna' in the name of deceased – Sovan Marik. Ext. 8 (e-Assessment Slip) speaks that the present valuation of the schedule mentioned property is Rs. 60,000/-.

From the oral as well as documentary evidence, it has been well established that the minors namely, Moumita Marik and Somenath Marik are daughter and son of the deceased -Sovan marik and they have 2/3rd share of the schedule mentioned property, which they inherited from their father - Sovan Marik, since deceased. For the up-bringing, well-being and education of the minors, the property is also required to be sold. So, the petitioner as natural guardian of the minors namely, Moumita Marik and Somenath Marik has decided to sell the "A" schedule property. So, there

is no impediment to grant permission to the petitioner to sell the property of the minors to the intending purchaser at the market price prevalent at the time of sale. The minors are in the care and custody of the petitioner. So, the petitioner is the natural guardian of the minors.

In the result, I proceed to pass

ORDER

that the J. Misc Case No. 72 of 2018 is allowed ex-parte.

The petitioner namely, Smt. Namita Marik is permitted to sell the "A" schedule property measuring 4 decimals out of 25 decimals of mouza – Kalmijore, J.L.No. 65, L.R.Nos. 40 & 55, P.S. Daspur, Dist. Paschim Medinipur, at the market price prevalent at the time of sale, within three months from the date of this order, and to submit a copy of the registered sale deed to this Court within one month of such sale and to deposit the consideration money of sale, in a fixed deposit scheme of any nationalized bank in the name of the minors - Moumita Marik and Somenath Marik and submit details of bank account, including a photocopy of the pass book/fixed deposit, in the name of the minors within one month of the sale, failing which necessary legal action will be taken against the petitioner for non-compliance of Court's order.

The petitioner shall furnish indemnity bond of Rs. 1,00,000/- (Rupees One Lakh), within 15 days from the date of this order.

This order is valid for three months from this day and in case of failure to sell the schedule property within three months from this order, the permission to sell the schedule property will be deemed as automatically withdrawn.

Petitioner is further directed not to withdraw the fixed deposit amount of the minors from the bank without the permission of the court and she is at liberty to withdraw the interest accrued from the deposited money, for the up-bringing, well-being and education of the minors.

To 16.8.2023 for compliance.

Dic. & corrt. by me.

District Judge,
Paschim Medinipur.

D.J.