

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Ms. Justice Kazi Zinat Hoque

Civil Revision No.3958 of 2024

Abdul Basit and another

.....Petitioners

-Versus-

Tahmina Akter Koli

.....Opposite Party.

Ms. Nasrin Sultana, Advocate for

Mr. Habibur Rahman, Advocate

.....For the petitioners

Mr. Sudipta Arjun with

Mr. Bidhayok Sarker, Advocates

..... For the opposite party

**Heard on : 04.12.2024, 08.12.2024 and
09.12.2024.**

And

Judgment on: 12.12.2024.

Kazi Zinat Hoque, J:

This Civil Revision is directed against judgment and order dated 16.05.2024 passed by the learned Joint District Judge, 3rd Court, Sylhet in Family Appeal No.27 of 2023 dismissing the appeal and affirming the judgment and order dated 13.03.2023 passed by the learned Family Court, Sylhet in Family Suit No. 692 of 2022 allowing the suit.

Relevant facts for disposal of the Rule are that the opposite party instituted Family Suit No. 692 of 2022 in the Family Court,

Sylhet, against the present petitioners for appointing her as guardian of her three minor daughters namely Mahi Talukder Urmi, Maisha Talukder Faiza and Fahmida Jinan Tanha. The plaintiff's case in short, is that, the owner of the scheduled land was Abdul Khalik @ Khalik, father-in-law of the plaintiff. Abdul Khalik died leaving behind four sons and three daughters and his wife. His three daughters got other land of their father and four sons got their portion from the schedule land measuring 5.8790 acres. At the time of the deed of purchase land of Abdul Khalik was in the hand of his elder son, but the plaintiff was not aware of the deeds. The plaintiff's husband got $\frac{2}{11}$ from 0.7348 acres of lands of her mother-in-law, 1.2816 acres of land from his father and also got 0.1336 acres, total 1.4102 acres of land. Thus the husband of the plaintiff became owner and possessor of 1.2387 acres of land. The plaintiff's husband, Jilur Rahman died on 13.09.2019 leaving behind his wife (the plaintiff) and their three minor daughters namely Mahi Talukder Urmi (date of birth 19.08.2013), aged about 8 years, Maisha Talukder Faiza (date of birth 07.02.2015), aged about 7 years and Fahmida Jinan Tahna (date of birth 07.02.2019) aged about 3 years. After his death his wife became the owner of $\frac{1}{8}$ share of her husband's property which is 0.1548 acres of the land and three daughters got $\frac{2}{3}$

shares in total which is 0.7266 acres of land. The plaintiff sold 0.0090 acres out of 0.15458 acres of her land. The plaintiff being mother of three minor daughters is maintaining her three minor daughters and continuing with their studies. Therefore she needs to be appointed guardian of person and property of her three minor daughters. Before filing of the suit the plaintiff filed Family (Guardian) Suit No. 132 of 2020 which was renumbered as Family Suit No.62 of 2021, but due to non-inclusion of the whole land and some formal defect regarding share of the plaintiff, she withdrew the suit with the condition to re-file the suit. As such she filed this suit for appointing her as guardian of person and property of her three minor children.

The suit was contested by the defendants by filling written statement denying all material allegations stated in the plaint. The defendants contended that they are four brothers and three sisters. Their brother Jillur Rahman died leaving behind his wife and 3 minor daughters. The suit land was never partitioned and regarding the suit land a case is pending before the Land Survey Tribunal. The plaintiff upon false statement filed the present suit and as such the suit is liable to be dismissed.

During trial the plaintiff examined one witness and defendant examined one witness and both the parties exhibited

documents. On consideration of the evidence and after hearing the parties the trial court vide judgment and order dated 13.03.2023 allowed the suit.

Being aggrieved by and dissatisfied with the judgment and order dated 13.03.2023 the defendants preferred Family Appeal No.27 of 2023 which was transferred to the court of learned Joint District Judge, 3rd Court, Sylhet for disposal. Vide judgment and decree dated 16.05.2024 the Family Court of Appeal, Sylhet dismissed the appeal and affirmed the judgment and order of the trial court. Being aggrieved by and dissatisfied with judgment and decree of the Family Court of Appeal the petitioners preferred this Civil Revision.

Ms. Nasrin Sultana, learned Advocate appearing for Mr. Md. Habibur Rahman, learned Advocate for the petitioners, submitted that the petitioners have no objection if the opposite party is appointed as guardian of person in respect of her three minor daughters. She further submitted that if the plaintiff is appointed as guardian of property of the minors there is a risk/likelihood that she may sell front side of the schedule land.

The Rule has been opposed by opposite party. Mr. Sudipta Arjun, learned Advocate appearing with Mr. Bidhayok Sarker, learned Advocate, representing the opposite party, argued that

both the courts below rightly appointed the plaintiff as guardian both in respect of person and property of her three minor daughters. He further submitted that since the plaintiff has been appointed as a guardian in respect of the property, there will be no harm because she will be subjected to the provisions of the Guardians and Wards Act, 1890. As such he prayed for discharging the Rule.

GUARDIANSHIP OF PERSON (HIZANAT):

The status of mother in Islam:

Under Muslim law the father is the legal guardian of his minor children. However, the mother is entitled to the custody of her minor child up to a certain age depending on the gender of the child in question.¹

In Islam, mother has been given high status because of her sacrifice for her children. In the case of *Mst. Beena Vs. Raj Muhammad, etc.*² the Supreme Court of Pakistan elaborately discussed it. Relevant portion of the judgment is reproduced below:

“Another of the Principles provides that Muslims must be enabled to live their lives ‘in accordance with the fundamental principles and basic concepts of Islam’ and

¹ *Imanbandi vs. Sheikh Haji Mutsaddi*, (1918) I.A. 73

² Civil Petition No.4129 of 2019

‘to promote unity and the observance of the Islamic moral standards’. The religion of Islam gives a high status to expectant ladies and mothers. When performing the Hajj and Umrah pilgrimages, Muslims run between the mounts of Safa and Marwah (Sa’ee) in the footsteps of the lady Haajar to emulate her when she desperately searched for water for her child, Ismail (peace be upon him). Haajar the esteemed mother is commemorated in perpetuity by incorporating her actions as an integral component in the performance of Hajj and Umrah of the Islamic Faith. A mother-child bond and a mother’s agony instituted a religious obligation, a rare if not the only example, in world religions. The mother of Islam’s progeny, lady Haajar is buried next to her son, the Prophet Ismail (peace be upon him), in the Hateem, the crescent shaped enclosure adjacent to one of the walls of the Holy Ka’ba, also known as Hijr Ismail, the shelter constructed by Prophet Ibrahim (peace be upon him) for his wife and child. Pilgrims from all over the world circumambulate the Holy Ka’ba, including the Hijr/Hateem.

The high status of motherhood is reflected in the naming of a chapter of the Holy Qu’ran after Maryam¹⁴ (Mary), peace be upon her, the only chapter named after a

woman. Almighty Allah recalls her qualities and bestows on her a number of titles: a purified (tahharaki) and chosen (istafaqi) one¹⁵, a sign (ayatan) of God, truthful (siddiqatun) and devoutly obedient (qanitina). The lady Maryam (peace be upon her) is mentioned 34 times in the Holy Qur'an. The mother of the Prophet Isa (peace be upon him) faced the pangs of childbirth alone. She, like the lady Haajar, overcame formidable odds to care for her child. These great ladies are acknowledged and incorporated into the Faith, enriching Islam's glorious tradition. It is for believers to ponder and reflect upon their lives, and to derive lessons from it. To be financially underprivileged, to be weighed down with a child, to give birth or to have a disability is not something to be derided. For a mother to bear the pain of childbirth, the greatest human natural pain, but then to have her child wrested away from her on the pretext that she is incapable of taking care of the child is insensitive in the extreme, and may also be characterized as hypocritical."

§352 and §353 of D. F. Mulla's "Principles of Mahomedan Law"³ deal with right of mother to custody of infant children and right to female relations in default of mother. The aforesaid provisions are reproduced below :

³ 21 Edition

“§352. Right of mother to custody of infant children-

The mother is entitled to the custody (hizanat) of her male child until he has completed the age of seven years and of her female child until she has attained puberty. The right continues though she is divorced by the father of the child, unless she marries a second husband in which case the custody belongs to his father.”

“§353 Right to female relations in default of mother-

failing the mother, the custody of a boy under the age of seven years, and of a girl who has not attained puberty, belongs to the following female relatives in the order given below:-

- (1) mother’s mother, how highsoever;
- (2) father’s mother, how highsoever;
- (3) full sister;
- (4) uterine sister;
- (5) [consanguine sister];
- (6) full sister’s daughter;
- (7) uterine sister’s daughter;
- (8) [consanguine sister’s daughter];
- (9) maternal aunt, in like order as sisters; and
- (10) paternal aunt, also in like order as sisters.”

It is admitted that the plaintiff was married to Jillur Rahman who was the brother of the defendants (the present petitioners). It is also admitted that Jillur Rahman died leaving behind his wife (the plaintiff) and three minor daughters namely Mahi Talukder Urmi, aged about 8 years, Maisha Talukder Faiza, aged about 7 years and Fahmida Jinan Tahna, aged about 3 years) and it is also admitted that Jillur Rahman died and he owned the case property before his death. The plaintiff has no disqualification as she did not re-marry. Therefore, as per Muslim law she is entitled to be appointed as guardian of person (Hizanat) of her minor daughters.

International Instruments:

The United Nations Convention on Rights of Child 1989 is an international treaty which sets out the rights of children. Bangladesh signed and ratified the convention on January 26, 1990 and 03 August, 1990 respectively. The Government of Bangladesh made reservation with regard to Article 14(1) and 21 of the Convention. Relevant provisions of the Convention are reproduced below:

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal

guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional

circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child

being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

The United Nations Convention on the Rights of the Child stipulates that in all actions involving children, whether by courts, public authorities, or private welfare institutions, the best interests of the child must be a primary consideration. A child has the right to be cared for by their parents, and in the event of separation, the child should maintain contact with both parents unless one poses harm to the child. The Convention also emphasizes that a child capable of forming their own views should be allowed to express

them, and those views should be given appropriate weight. Additionally, a child should not be separated from their family.

From the provisions of the United Nations Convention on the Rights of the Child, 1989, it is clear that a child should generally be placed under the care of their natural parents, i.e., the mother and father. In this case, since the father has passed away, it is natural that the children should be in the care of their mother. Therefore I do not find any illegality in the decision of the courts below appointing the mother as guardian of person of her three minor children.

Welfare of Children:

The courts of this sub-continent have given emphasis on the welfare of the children in deciding the issue of guardianship or custody of minor children. In the case of *Muhammad Siddique v. Lahore High Court, Lahore through Registrar and others*⁴, the Supreme Court of Pakistan held that even if the mother contracts a second marriage, she does not necessarily forfeit her right to custody. The Court emphasized that if it is in the best interest of the child, custody should be granted to the mother. The Court

⁴ [PLD 2003 SC 887

further held that the welfare of the minor should be the primary criterion in determining custody.

Similarly, in the case of *Mst. Shahista Naz v. Muhammad Naeem Ahmed*⁵, the Supreme Court of Pakistan held that while a mother's remarriage may be considered a disqualification for her to be appointed as the guardian of her minor children, it is not an absolute disqualification. The Court reiterated that, for the welfare of the minor, even after remarriage, a mother can be entitled to retain custody of her child.

In the case of *Mst. Hameed Mai vs. Irshad Hussain*⁶ the Supreme Court of Pakistan held that the welfare of the minor child is the primary consideration in custody matters. While Muslim Personal Law grants the father a right to custody, it remains subject to the child's best interests.

In the case of *Raja Muhammad Owais vs. Mst. Nazia Jabeen and others*⁷ the Supreme Court of Pakistan dealt with the custody of four children of the petitioner and respondent No.1. The petitioner, mother of four children, remarried, but considering the welfare of the children and their desire, the Court held that

⁵ 2004 SCMR 990

⁶ PLD 2002 SC 267

⁷ C.P. No.240 of 2021

even after remarriage a mother can be granted custody of her minor children.

In the case of *Aminul Bor Chowhdury Vs. Nargis Sultana*⁸ the Appellate Division of the Supreme Court of Bangladesh dealt with custody and guardianship of two Muslim minor twin sons. The marriage between the parents of the minor twin sons was solemnized as per Muslim law on 11.05.1990. On 04.09.1992 the couple was blessed with twin sons. The relationship between the plaintiff and the defendant having deteriorated the plaintiff by virtue of delegated power divorced her husband (the defendant) on 14.08.1993. It was agreed between the parties that the mother would visit the children on every Friday. She was denied such visitation. The health of the twins also deteriorated. As such she filed family suit for guardianship and custody of the minor twin sons. The defendant claimed that the mother of the children is a mentally disturbed person and she being a Government employee she does not have sufficient time to look after the children. She voluntarily waived her right of custody by writing a letter. The plaintiff claimed that the defendant remarried. The trial court granted custody of the minor twin sons to their mother i.e. the plaintiff. The court of appeal below reversed the judgment giving

⁸ 4BLC(AD)(1999)208

custody to the father. The mother filed civil revision before the High Court Division. Rule was issued and it was made absolute. The learned Single Judge of the High Court Division set aside the judgment of the court of appeal below and affirmed the judgment of the trial court. The Hon'ble Appellate Division of the Supreme Court of Bangladesh dismissed the civil petition filed by the father and affirmed the judgment of the High Court Division considering the welfare of the minor twin sons.

In this case, admittedly the plaintiff is a widow. Her husband died leaving behind his widow (the plaintiff) and their three minor daughters. The plaintiff has not remarried. Therefore the courts below rightly granted guardianship of person of the three minor daughters to their mother i.e. the plaintiff.

GUARDIANSHIP OF PROPERTY:

§359 of D. F. Mulla's "Principles of Mahomedan Law," which deals with guardianship of the property of a Muslim minor, is reproduced below :

“§359. Legal guardians of property – The following persons are entitled in the order mentioned below to be guardians of the property of a minor –

(1) the father;

(2) the executor appointed by the father's will;

(3) the fathers' father

(4) the executor appointed by the will of the father's father.”

In the present case the petitioner's husband Jillur Rahman was legal guardian in respect of property of their minor daughters during his life time. After his death as per Muslim Law his father (paternal grand-father of the three minor children) would have been the legal guardian of the property of the minors. However, it is admitted that the paternal grandfather of the children died before their father's death. In the absence of the father or paternal grandfather the court may appoint a Muslim mother as guardian of property of her minor children. Even if the parties are Muslim when a person is appointed as guardian of property of a minor he or she is subjected to provisions of the Guardian and Wards Act, 1890.

The Guardians and Wards Act 1890

The Guardians and Wards Act, 1890 was enacted to regulate the appointment of guardians and their responsibilities. Section 7 empowers the court to make orders regarding guardianship. Section 8 specifies who can apply for such an order. Section 24 deals with the duties of guardians of person and section 27 deals with duties of guardians of property. Section 28 defines

the powers of a testamentary guardian, whereas section 29 governs the powers of a guardian of property appointed or declared by the court. Section 30 makes any disposal of property in violation of this Act by such a guardian voidable. Section 33 grants the guardian the right to seek the court's opinion on management of property and section 34 imposes obligations on a guardian of property appointed or declared by the court. The aforementioned provisions are quoted below :

Power of the Court to make order as to guardianship. 7.(1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made-

(a) appointing a guardian of his person or property, or both, or

(b) declaring a person to be such a guardian, the Court may make an order accordingly⁷[:

Provided that no person, other than a citizen of Bangladesh, shall be appointed or declared to be a guardian of a minor who is a citizen of Bangladesh.]

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to

be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

Persons entitled
to apply for order

Section 8.

An order shall not be made under the last foregoing section except on the application of-

(a) the person desirous of being, or claiming to be, the guardian of the minor, or

(b) any relative or friend of the minor, or

(c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or

(d) the Collector having authority with respect to the class to which the minor belongs.

Duties of
guardian of the
person

Section 24.

A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

Duties of
guardian
of property

Section 27.

A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would

deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property.

powers of testamentary guardian of Section 28.

Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immoveable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

Limitation of powers of guardian of property appointed or declared by the Court of Section-29

Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,-

(a) mortgage or charge, or transfer by sale, gift, exchange or

otherwise, any part of the immoveable property of his ward,
or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

Voidability of transfers made in contravention of section 28 or section 29

Section-30

A disposal of immoveable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

Right of Guardian appointed or declared to apply to the Court for opinion in management of property of ward

Section 33

(1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the

petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

Obligations on guardian of property appointed or declared by the Court

Section 34.

Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, he shall,-

(a) if so required by the Court, give a bond, as nearly as may be in the prescribed form, to the Judge of the Court to ensure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

(b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court or within such other time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement and of the debts due on that date to

or from the ward;

(c) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs;

(d) if so required by the Court, pay into the Court at such time as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs; and

(e) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

Therefore the power of a guardian of property appointed by a court is not an unfettered power, it is subject to the restriction and limitations imposed by the Guardians and Wards Act, 1890. Therefore, I do not find any illegality in the judgments of the courts below in appointing the mother, widow of the father of her three minor daughters, as guardian of property of the three minor daughters because this right is not an unfettered right, it is subject to the limitations and restrictions imposed by the Guardians and

Wards Act, 1890. Therefore I find no strength in the submission of the learned counsel for the petitioners that the only objection they have with regard to appointing the mother as guardian of property of the three minor daughters that there is likelihood that the mother may sell front side of the property creating inconvenience to others.

Concurrent finding of facts:

It is settled principle of law that the revisional court cannot interfere with the concurrent findings of fact of the courts below unless there is misreading or non-reading of legally proved evidence. [Abdul Gafur Vs. Abdur Razzak 62 DLR (AD) 242].

In the case of Md. Shah Alam Vs. Musammat Farida Begum [17 BLD (AD) 145] it was held:

“Without reversing the findings of facts concurrently arrived at by the Courts below on the grounds covered by section 115 C.P.C. the High Court Division has no jurisdiction to disturb the findings of facts. It cannot super-impose itself as a third Court for fresh appreciation of the evidence on record, this being not the function of a Court of revision.”

Both the courts having concurrently held that the mother i.e. the plaintiff is the guardian of person and property of her three minor daughters, I do not find any reason to interfere with such concurrent finding of fact of the courts below.

In the result the Rule is discharged without any order as to cost.

Transmit a copy of this judgment to the concerned court below at once.

Kazi Zinat Hoque, J