



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2760 OF 2024

Pooja W/o Ganesh Popalghat,
Age; 28 years, Occ; Household,
R/o; Salegaon, Tq. Kaij, District Beed,
Now Residing at Malwadi, Punjhawale,
Pune City, Maharashtra.

...APPELLANT.

VERSUS

The State of Maharashtra

...RESPONDENT.

.....
Mr.R.J.Nirmal : Learned Advocate for Appellant
Mr. V.S. Badakh : Learned Advocate for Respondent-State
.....

CORAM : S. G. CHAPALGAONKAR, J.

Date of reservation : 10.02.2025
Date of Pronouncement : 24.02.2025

JUDGMENT :

1. Appellant impugns judgment and order dated 01.12.2023, passed by Additional District Judge, Kaij, District Beed, in Civil Misc. Application No. 30 of 2023, by which appellant's prayer under Section 8 of the Hindu Minority and Guardianship Act, 1956 to grant permission to sale land of herself and her three minor children has been declined.

2. Appellant approached Additional District Judge, Kaij under Section 8 of Hindu Minority and Guardianship Act, seeking permission to sale agriculture land bearing Gut No. 478, ad-measuring 85 R, situated at village Salegaon, Tq. Kaij, District Beed, standing jointly in her name with

minor children. It is contention of appellant that her husband committed suicide. He was owner of suit land. After his death, her name with three minor children have been mutated in record of rights over suit property. Appellant is working in Private Sector at Pune. Her minor children are taking education. Appellant was unable to meet education expenses of children. Land in question is situated at District Beed, therefore, it is difficult for her to cultivate the same from Pune. Approximate valuation of the land is Rs. 12,75,000/-. She wish to invest aforesaid amount in name of minor children and want to utilize same for their education and maintenance. Learned Additional District Judge, Kaij rejected appellant's prayer observing appellant has already deposited school fees of children and there remains no outstanding. Minor children are taking education at V.K. Mate High School, Chinchwad and Zilla Parishad High School at Jambhe, Tq. Mulshi, Pune. However, receipts placed on record are from M.S.S. High School, Shridharnagar, Chinchwad of Morya Education Institute. As such, there is variance in pleadings and evidence.

3. Heard Mr. R.J.Nirmal, learned Advocate appearing for appellant and Mr. V.S. Badakh, learned AGP appearing for Respondent-State.

4. Mr. Nirmal, submits that land in question is joint family property of appellant and her three minor children. It was originally owned by appellant's husband and upon his death, it has been jointly mutated in the names of minors and herself, therefore, for sale of property by mother being natural guardian of minor, permission under Section 8 of the Hindu Minority and Guardianship Act would not be required, however, appellant's application under Section 8 of the Act has been erroneously rejected on merit by learned District Judge.

5. Having considered submissions advanced, issue raised for consideration in this appeal is as to “Whether appellant being natural guardian and joint holder of agriculture land alongwith minors, required to seek permission under Section 8 of Act to alienate property.”

6. Perusal of record shows that late Ganesh Manik Popalghat was owner of land Gut No. 478 to the extent of 85 R. He expired on 04.07.2022, leaving behind appellant Pooja, two daughters Tanishka and Mokshada and a son Kshitij. Consequently, mutation entry No. 4672 dated 24.08.2023 has been certified, thereby names of appellant and her three minor children have been mutated. Un-disputedly, agriculture land is joint Hindu Family property with fluctuating interest of legal representatives of late Ganesh Manik Popalghat. In light of aforesaid factual background, it would be necessary to delve into scheme of Act. The Hindu Minority and Guardianship Act has been passed to amend and codify law relating to minority and Guardianship amongst the Hindus as can be observed from Section 2 of the Act. Its provisions are in-addition to and not in derogation of Guardian and Wards Act, 1890. Section 6 of Act deals with natural Guardian of Hindu minor and his property. Significantly, un-divided interest of minor in joint family property is specifically excluded from application of Section 6 of the Act. Section 12 of the Act further clarifies that a guardian need not be appointed for dealing with minors' undivided interest in joint family property, which is under management of adult member of family. Scheme of Act as discernible from Section 2, 5, 6, 9 and 12 of Act suggests undivided interest of minor in joint family property is kept outside of purview of Act and natural guardian has been left to deal with it in accordance with the customary Hindu Law. In other words, provisions of Act deals with individual and definite immovable property of minor.

7. The Section 8 of the Act¹ reads as under :

“8. Powers of natural guardian.—

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian 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 immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or by any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in the case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining permission of the Court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that Court.

¹ Sec. 8 of Hindu Minority & Guardianship Act, 1956

(6) *In this section "Court" means the city civil Court or a district Court or a Court empowered under section 4A of the Guardian and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such Court, means the court within the local limits of whose jurisdiction any portion of the property is situate."*

8. Plain reading of aforesaid Section depicts that it does not expressly exclude undivided interest of minor in joint family property. However, Section 8 cannot be read in isolation, which would have to be read along with Section 6, 9 & 12. Harmonious reading of which, in the backdrop of preamble of Act would show restrictions imposed by Section 8 cannot be applied to fluctuating interest of minors in undivided share in joint family property. Therefore, natural guardian being eldest member of joint family, in-charge of property, can exercise powers to deal with minors in joint family property keeping in mind aspect of legal necessity, interest and benefit of minor. Needless to state that no such alienation would be voidable at instance of minor if it is proved that same was made for legal necessity and for benefit of minor.

9. At this stage, reference can be given to judgment of Supreme Court of India in case of **Sri Narayan Bal and Others Vs. Shridhar Sutar and Others**,², wherein answering question as to whether Section 8 of the Hindu Minor Minority and Guardianship Act was applicable to Hindu Family property to sell or dispose of it by the "Karta" of family. Following observations are made in paragraph No. 5, which read as under :

"With regard to the undivided interest of the Hindu minor in joint family property, the provisions afore-culled are beads of the same string and need be viewed in a single glimpse, simultaneously in conjunction with each other. Each

provisions, and in particular Section 8 cannot be viewed in isolation. If read together the intent of the legislature in this beneficial legislation becomes manifest. Ordinarily the law does not envisage a natural guardian of the undivided interest

of a Hindu minor in joint family property. The natural guardian of the property of a Hindu minor, other than the undivided interest in joint family property, is alone contemplated under Section 8 where under his powers and duties are defined. Section 12 carves out an exception to the rule that should there be no adult member of the joint family in management of the joint family property, in which the minor has an undivided interest, a guardian may be appointed; but ordinarily no guardian shall be appointed for such undivided interest of the minor. The adult member of the family in the management of the Joint Hindu Family property may be a male or a female, not necessarily the Karta. The power of the High Court otherwise to appoint a guardian, in situations justifying, has been preserved. This is the legislative scheme on the subject. Under Section 8 a natural guardian of the property of the Hindu minor, before he disposes of any immovable property of the minor, must seek permission of the court. But since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under Section 6 to 12 of the Act, the previous permission of the Court under Section 8 of disposing of the undivided interest of the minor in the joint family property is not required. The joint Hindu family by itself is a legal entity capable of acting through its Karta and other adult members of the family in management of the joint Hindu family property. Thus Section 8 in view of the express terms of Section 6 and 12 would not be applicable where a joint Hindu family property is sold/disposed of by the Karta involving an undivided interest of the minor in the said joint Hindu family property. The question posed at the outset therefore is so answered."

10. Same view has been reiterated by two judgments of this Court firstly in case of **Sandhya Rajan Antapurkar and Others Vs. State of Maharashtra**³, wherein, following observations are made :

"11. Under the Hindu Law, the manager or karta of the family of the minor can alienate minor's undivided interest in the

joint family property without the permission of the Court, provided alienation is for legal necessity or for the benefit of the minor and this right is left untouched by the Hindu Minority and Guardianship Act, 1956.”

11. In yet another Judgment in case of **Shripati s/o Santu Mane Vs. Goroba s/o Nivarti Ghutukade and another**⁴, by referring Article 525 of page 524 of Mulla’s Principles of Hindu Law, Twentieth Edition, Vol-I, it is observed that

“Where father is not alive, mother is natural guardian and therefore, alienation made by her without seeking permission under Section 8 of the Act is held as valid.” Further observation is that “intention of Section 8 of the Act is not fettered customary powers of natural guardian in the matter of dealing with Hindu joint family property including minor sons’ undivided shares.”

12. Reliance was placed on observations of judgment of this Court in case of **Narayan Laxman Gilankar Vs. Udaykumar Kashinath Kaushik**⁵.

13. As rightly pointed out Mr. R.J.Nirmal learned Advocate appearing for appellant that a similar view is reiterated by Single Judge of Allahabad High Court in case of **Preeti Arora Vs. Subhash Chandra Arora Allahabad High Court**.⁶

14. In light of aforesaid exposition of law, this Court holds that appellant being natural guardian can act as manager of joint family for herself and on behalf of minors and deal with property, in interest of minors and joint family subject to legal necessity. Her powers are not

⁴ (2008) 6 Mah LJ 707

⁵ 1993, Mh.L.J. 1653

⁶ First Appeal From Order No. 272 of 2024,
decided on March 05, 2024 Allahabad High Court.

fettered by or governed by provisions of Hindu Minority and Guardianship Act, 1956.

15. In result, appeal is allowed. The impugned judgment and order dated 01.12.2023 passed by learned Additional District Judge, Kaij, District Beed, in Civil Misc. Application No. 30 of 2023, is hereby quashed and set aside.

(S. G. CHAPALGAONKAR)
JUDGE

mahajansb/