



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4450 OF 2022

District : Latur

1. Shardabai w/o Babruwan Huslure,
Age 60 years, occupation Household,
Residing presently at Sitaram Peth,
Near Prakash Talkies, Hyderabad.
2. Babruwan s/o Limbajirao Hulsure,
Age 69 years, occupation Nil,
Residing at Taadmugali,
Taluka Nilanga, District Latur,

..Petitioners
(Orig. Plaintiffs)

VERSUS

1. Kum. Mansa d/o Vinod Hulsure,
Age 13 years, Age : Minor,
Under illegal custody of
Uddhav s/o Pandurang Gambhire,
Age 60 years, Occupation Nil,
Residing at Yerol, Taluka Shirur Anantpal,
District Latur
2. Mrs. Kavita w/o Vinod Hulsure,
Died, per L.R. Respondent No. 1 above

..Respondents
(Orig. Respondents)

Mr.Hemant Surve, Advocate i/b. Mr.Kshitij Surve and Mr.Rohan Sawant,
Advocates for petitioners

Mr.Pravin G. Patil, Advocate for respondents

CORAM : AJIT B. KADETHANKAR, J.
RESERVED ON : SEPTEMBER 15,2026
PRONOUNCED ON : SEPTEMBER 23, 2026

ORDER :-

Subject-matter :

“Whether if the Trial Court is justified to appoint maternal grandfather of a minor girl, instead of appointing her father as her “Guardian” in a suit instituted by her paternal grandparents for cancellation of a registered Gift Deed executed in her favor” is the issue to be decided in this case.

Impugned order needs to be tested on the touchstone of doctrine of *parens patriae*.

Feeling aggrieved by the a common order dated 01-02-2022 passed by the learned Civil Judge Senior Division Latur on applications below Exh.29 and 33, the Petitioners/Plaintiffs are before this Court.

Facts in Brief :-

2. There was serious marital controversy between the petitioners' son - Vinod and his wife Kavita (now deceased). The couple had begotten a daughter namely Mansa. On account of marital discord between the couple, deceased Kavita moved to her

parental house together with her minor daughter Mansa somewhere in the year 2016.

3. A number of litigations including matrimonial proceedings, civil and criminal prosecution, etc., between the parties arose out of the matrimonial disputes.

4. In the meantime, the Petitioners executed a gift deed in favor of their grand-daughter - Mansa (respondent no.1) in respect of an agricultural property and a residential property. The Gift deed is registered at Sr.No.7110 of 2017 on 21-10-2017 in the office of the Sub-Registrar Class-II, Latur.

5. Contending that the gift deed got executed forcibly by Kavita's father, the Petitioners instituted Special Civil Suit No.168 of 2018 in the court of learned Civil Judge, Senior Division, Latur seeking cancellation of the gift instrument, recovery of possession and injunction. The suit was filed against the Donee and the Daughter-in-Law - Kavita. Since the defendant No.1 -Mansa (Present R.No.1) was minor, the Defendant No.2- Kavita was shown to be her guardian.

6. While the suit was pending, Mrs. Kavita died on 21-04-2021. Consequent to her death, the Petitioners filed an application

(Exh.29) to add the name of their son – Vinod as legal heir of the deceased Kavita. They contended that Kavita died leaving behind her two legal heirs i.e. the Defendant No.1- minor daughter Mansa, and husband – Vinod. Contending that Vinod happened to be husband of deceased Kavita, permission was sought to add Vinod in the suit.

7. While application Exh.29 was pending, deceased Kavita's father - Udhavrao Gambhire filed an application at Exh.33 to permit him to represent the minor grand-daughter Mansa as per Will deed executed by deceased Kavita. This application was on the backdrop of the fact that Kavita died during pendency of the suit.

8. Trial Court heard both the applications simultaneously, and decided those vide a common order dated 01-02-2022. For the reasons recorded, Trial Court rejected the application Exh.29 filed by the Petitioners, while application Exh.33 filed by Kavita's father Udhavrao Gambhire came to be allowed. Impugning the order dated 01-02-2022 passed by the Learned 4th Civil Judge, Senior Division, Latur, the Petitioners are before this Court.

Submissions :-

9. Mr. Hemant Surve, learned advocate for the Petitioners submitted his predominant objection that since marital relations

between the deceased Kavita and Vinod were in existence on the date of Kavita's death, Trial Court ought to have permitted the Plaintiffs to amend the title clause by adding Vinod as legal heir of deceased Kavita.

10. It is further contention of Petitioners' learned advocate if the biological father of the minor child was alive, the Trial Court was not justified in allowing Udhavrao's application at Exh.33. He further submits that the will deed, as could be seen from its recitals itself, is highly doubtful as regards to its execution and legality. Questioning rationality in the reasoning rendered by the Trial Court in holding Petitioners' son disqualified to represent his own daughter as her guardian, it is prayed to quash and set aside the impugned order. Consequent prayer to allow the application below Exh.29 is also averred. Learned advocate places reliance on Section 38 and 29 of the Guardianship and Wards Act, 1890, and sought to justify the prayers.

11. Per contra, learned advocate Mr.Pravin G Patil for the responding side, would advocate the reasons recorded by the Trial Court while passing the impugned order dated 01-02-2022. He would submit that considering the nature of controversy and the litigation

pending among the parties, the Trial court has rightly passed the impugned order. He thus prays to dismiss the Writ Petition.

Discussion and consideration:-

12. I heard both the sides extensively. Although prayers in both the applications look different, but they are inter-linked as could be seen further.

First, I shall deal with Petitioners' application at Exh.29.

13. In first application i.e. Exh.29, the plaintiffs seek to amend the title clause by incorporating their son's name (Vinod) as party defendant No.2, in the capacity of legal heir of deceased defendant No.2.

14. The suit is filed challenging legality and validity of a registered gift deed executed by the Plaintiffs in favor minor defendant Ms. Mansa. Deceased Kavita is not party to the instrument in any capacity. Hence for the purpose of seeking declaration as to the nullity of the gift deed, deceased Kavita is neither a necessary party nor a proper party.

15. It is contended in the plaint that the gift deed was executed at the behest of and with illegal indulgence of deceased

Kavita, and her maternal relatives. Other prayers of Possession and Injunction are the reliefs claimed against minor granddaughter Ms. Mansa and the deceased Kavita. Undisputedly, Ms. Mansa severed from Plaintiff's son Vinod since 2016 together with deceased Kavita. They were living with deceased Kavita's father - Udhavrao. Ms. Mansa is still living with her maternal grandfather- Udhavrao. The whole case is that due to marital controversy between deceased Kavita and Vinod, the gift deed has taken place. It would be an unacceptable perception that in the peculiar facts, Vinod would be succeeding deceased Kavita's possession over the 'suit-property' in any capacity.

16. Plaintiffs are absolutely under misconception of law that their Son - Vinod could be impleaded in the suit as 'Legal Heir' of deceased Kavita in the light of the averments against deceased Kavita in the suit. Deceased Kavita is alleged to be holding possession over the 'suit-property' in the capacity of Guardian of minor defendant Mansa. Hence for the Decree of Possession and consequential relief of Injunction, deceased Kavita was made party to the suit. This is not a situation where any right or liability in succession accrues in Vinod.

For the reasons recorded above, the application at Exh.29 cannot be granted. The Trial court has rightly rejected the application.

Now, I shall deal with application exh.33

17. It is evident that the marital discord between Petitioners' son Vinod and his wife deceased Kavita is the base of all the controversy. During the lifetime of deceased Kavita, various litigations among the parties took place as observed supra. The relationship among the parties is not in dispute, although there are disputes among them. It is a matter of fact that Respondent no.1 - Ms.Mansa, a minor is living with her maternal grandfather Mr. Udhavrao Gambhire, since when her mother left her matrimonial home. Proceedings for custody of the minor Mansa is still pending before the concerned family court.

18. The suit is filed by petitioners/grandparents of the minor Donee- Mansa, against her and her deceased mother. Obviously, in the light of the controversy between deceased Kavita on one hand and her husband, parents-in-laws on other hand, it would be in the interest of justice that the minor - Mansa stands represented by her maternal grandfather with whom she is residing since a long.

19. Plaintiffs' contention is that the subject-matter - gift deed was got executed from them forcibly at the instance of the deceased Kavita, her maternal relatives, father and brother. The Trial Court considered various litigations pending among the parties. The Trial court considered the provisions under Section 9 (3) of the Hindu Minority and Guardianship Act, 1956 ("Act of 1956", for brevity) and rightly observed that on the backdrop of the controversy, it would be in the interest of the minor that her maternal grandfather be appointed as her (Mansa) Guardian. It is trite law that welfare and safeguard of a minor's interest has paramount consideration in such proceedings while appointing guardian of a minor.

20. Section 9(3) of the Act of 1956 reads thus:

A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both.

21. Trial Court referred to the contents of the Will Deed executed by the deceased Kavita whereby she recorded her will that her father be entrusted to look after the properties gifted by her Parents-in-law to minor daughter - Mansa. Obviously, this includes

defending the suit too. The Petition is styled and argued as if the Petition is filed by or on behalf of Vinod. No other circumstances needed to observe that the petition seems to be a proxy petition so far it advocates appointment of Vinod as guardian of minor Mansa, and disputes the findings of the trial court to hold Vinod unfit to be so appointed. In view of these facts, the Trial court is justified in appointing Mr. Udhavrao Gambhire as Guardian of the minor Ms.Mansa in the suit taking recourse to the Section 9(3) of the Act of 1956.

22. One more aspect I need to observe. The Petitioners are *dominus litis*. In the peculiar circumstances when Kavita died, it is but obvious that the Plaintiff would pray to the Court to appoint a fit and competent person to represent the minor defendant Mansa. Even they may suggest a name or dispute a name. However, it is for the concerned court to exercise the *parens patriae* jurisdiction in such situation. In my opinion, the plaintiffs can neither insist for their Son's name nor can advocate him as to how despite such serious controversies among the parties, only he could be appointed as guardian of minor Ms.Mansa. The job is left to the concerned court to take appropriate decision in the interest of justice.

23. I have taken on record the strong objection of the petitioners to the recitals of the will deed. Mr. Surve, learned advocate for the Petitioners vehemently pointed out that the scribe of the instrument himself has signed on the instrument as one of the attesting witnesses.

24. Suffice to note, the law does not forbid a Scribe/writer of a Will to be an attesting witness. Beneficial reference can be made to the observations made by the Honorable Supreme Court in a case reported at **2006 SCC Online SC 46 (Mathew Oommen Vs. Suseela Mathew)** that such course is quite natural and normal.

25. During the course of hearing, the learned advocate for the petitioners cited a 7/12 extract wherein name of minor's maternal grandfather is recorded as her guardian. Name of Ms. Mansa is mutated on the basis of the registered gift deed. Udhavrao's name is recorded as guardian of a minor. No ownership is created nor could be created in the name of the grandfather on the basis of the will deed. Besides that, life of such mutation showing grandfather's name is only until minor girl attains majority. Such objection is absolutely irrelevant to the present controversy.

26. In so far as the petitioners' contention as regards reference to Section 38 and 39 of the Guardianship and Wards Act 1890 it shall not be of any avail to the Petitioners. Text of the Section 38 of the Act of 1890 reads thus:-

<i>38. Right of survivorship among joint guardians. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.</i>
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27. In the light of the facts of the case as are discussed above, application of the aforesaid provision and section 39 of the Act of 1890 are not at all attracted.

28. For the reasons recorded above, I do not find that the Trial Court committed any error in passing the impugned order dated 01-02-2022. In fact, I must appreciate that the Trial Court has very cautiously exercised the *parens patriae* jurisdiction. I am of the opinion that for the reasons recorded, the petition appears to be an abuse of process and is liable to be dismissed with costs. However, to avoid further bitterness among the parties, I refrain from imposing cost.

29. Considering the pending controversies, it is clarified that the observations recorded herein are to the extent of the applications exh.29 and 33 decided by the Trial Court. Hence, I pass following order:-

O R D E R

The Writ Petition stands dismissed.

[AJIT B. KADETHANKAR, J.]

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