

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**FIRST APPEAL NO.709 OF 2022**

1] Master Aryan s/o Sanjay Ghumde,  
Aged 11 years, Occupation-Nil,  
Claiming Through Natural Guardian  
Mother

2] Smt. Sadhna wd/o Sanjayrao Ghumade,  
Aged 36 years, Occupation-Household,  
R/o. Juni Wasti, Warud, Post-Sewagram,  
Tahsil and District-Wardha.

.. Appellants  
(Org. Plaintiffs)

.. Versus ..

NIL...

.. Respondent  
(Org. Defendants)

.....  
Ms. Ayushi Harish Dangre, Advocate for appellants-original plaintiffs.  
Respondent- Nil.

.....

**CORAM : SMT. M.S. JAWALKAR, J.**  
**DATED : 08.09.2022.**

**JUDGMENT :**

1] Heard the learned counsel for the appellants-original  
plaintiffs.

2] Present appeal is filed by the appellants-original  
plaintiffs being aggrieved by the judgment and order dated

01.07.2022 passed by the learned District Judge, Wardha in M.J.C. No.28/2022 below Exh.1, thereby dismissing the application for granting the permission to sell undivided half joint interest of Master Aryan/minor in field property up-to the extent of half joint share of Master Aryan and his mother.

3] Brief facts can be summarised as under :

Sanjay Bhaurao Ghumde, the father of appellant plaintiff no.1/minor expired due to rheumatic heart failure on 27.04.2015 and since then appellant-plaintiff no.1/minor child is in the custody of appellant-plaintiff no.2-mother/natural guardian, who is taking care and providing all the facilities for his wellbeing. On 20.07.2019, after the death of Sanjay Bhaurao Ghumde, the father of appellant-plaintiff no.1/minor, the legal heirs of Bhaurao Bakharam Ghumde, the grandfather of appellant no.1 executed relinquishment deed in respect of field property at Mouza-Warud, Tahsil and District-Wardha being field Survey No.195, ad-measuring 1.32 HR in favour of appellants and accordingly the said field property is mutated in the names of appellants in revenue records.

4]           The appellants moved an application on 03.02.2022 under Section 8 of the Hindu Minority and Guardianship Act, 1956 read with Section 29 of the Guardians and Wards Act, 1890 before the learned District Judge, Wardha vide M.J.C. No.28/2022 for permission to sell above referred property for the purpose of education of minor appellant no.1 as well as for general well-being and also for repayment of hand-loans incurred at the time of ailment of the father of minor. It is also submitted that the procedures of paper publication calling objections have also completed on 30.03.2022. The appellant-plaintiff no.2 mother adduced her evidence and additional evidence and proved the documents. The learned District Judge rejected the application on the ground that it is not maintainable/tenable as no provision exist for grant of permission to natural guardian to sell the undivided share in the property of the minor.

5]           I have gone through the judgment passed by the learned District Judge below Exh.1 in M.J.C. No.28/2022. It appears that there is apparent error on the part of the District Judge in applying the provisions of Section 8 of the Hindu Minority and Guardianship Act, 1956. Clause (2) (a) of the Act

makes it clear that the natural guardian shall not, without the previous permission of the Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor. The learned District Judge misconstrued the provisions that it is applicable when the minor is absolute owner of the property and not when having share in the property. Learned District Judge further relied on Section 29 of the Guardian and Wards Act, 1890. Section 29, in my considered opinion, is in respect of court appointed guardianship and not natural guardian. The learned District Judge failed to appreciate this fact that in view of Section 8 of the Act, the natural guardian shall not, without the previous permission of the Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor.

**Section 8 of the Hindu Minority and Guardianship Act, 1956** provides the powers of natural guardian which reads as follows :

(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) .....

Thus it implies that with permission of Court natural guardian can sell the property.

Section 29 of the Guardians and Wards Act, 1890 reads as follows :

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

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 immovable 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.

6]           Thus, even if the application is moved under Section 8 of the Hindu Minority and Guardianship Act, 1956 read with Section 29 of the Guardians and Wards Act, 1890, the learned District Judge ought to have considered that application filed by natural guardian under Section 8 of the Act and in view of Section 8 of the Act, the natural guardian is entitled with due permission of the Court to sell immovable property of the minor. The learned counsel for applicant submitted that applicant is having proposed purchaser to purchase the property for the value of Rs.35,00,000/-.

7]           I have also perused the application under Section 8 of the Act and also accompanied documents. The applicant placed on record all the relevant documents i.e. relinquishment deed, affidavit filed by applicant, the 7/12 extract, extract of record of rights, map, copies of Adhar Card, paper cutting of notice in daily newspaper 'Deshonnati'. After perusal of the same, I am satisfied that application was rejected on erroneous ground and it ought to have been allowed and impugned order needs to be quashed and set aside. Accordingly, I proceed to pass the following order :

**ORDER**

- (i) The appeal is allowed.
- (ii) The impugned judgment and order dated 01.07.2022 passed by the learned District Judge, Wardha in M.J.C. No.28/2022 below Exh.1 is hereby quashed and set aside.
- (iii) The permission is granted to appellant no.2 (mother of appellant no.1/minor) to sell undivided half share of appellant no.1 in the suit property field Survey No.195, ad-measuring 1.32 HR, situated a mouza Warud, Tahsil and District-Wardha, particularly described in para no.3 of the application to the extent of joint share of appellant/plaintiff no.1 minor.
- (iv) After executing the sale deed in respect of above property, the appellant no.2 is directed to deposit half of the sale proceed in the share of applicant no.1-minor in fixed deposit with any nationalized bank in the name of appellant no.1-minor i.e. Master Aryan s/o Sanjay Ghumde for the period till the appellant no.1 attains the age of majority.
- (v) The appeal is disposed of in above terms.