

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.62 OF 2023

Sandhya Anant Gharat
V/s.

... Appellant

NIL

... Respondents

Mr. Nikhil Waje with Ms. Pranali Chikne for the
appellant.

CORAM : AMIT BORKAR, J.

DATED : MARCH 2, 2023

PC.:

1. The appellant is challenging the Judgment and Order dated 3rd August, 2022 passed by District Judge-2, Panvel partly allowing application under Section 8 of the Hindu Minority and Guardianship Act, 1956 appointing applicant as natural guardian. However, by the impugned order permission for alienating undivided share of a minor has been rejected. The reason weighed with the District Judge-2 Panvel is that there is no decree for partition to crystallize minors shares in the suit property.

2. The law on the point of permission as regards undivided share of minor of Hindu Minority and Guardianship Act, 1956 is well settled in view of Apex Court in the case of **Sri Narayan Bal and others Vs. Sridhar Sutar and others** reported in (1996) 8 SCC 54 and single bench of this Hon'ble Court in the case of **Sandhya Rajan Antapurkar and others Vs. State of Maharashtra** reported in

2000(2) Mh.L.J. 158.

3. In a case of Sri Narayan Bal (supra) the Apex Court held that the ordinarily law does not envisage appointment of 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 contemplated under Section 8, where under his power and duties are defined. It has been held that in case of undivided interest in joint family property as provided in section 6 and 12 of the Act, the previous permission of the Court for disposing of the undivided interest of minor in the joint family property is not required.

4. The single judge of this Court in the case of Sandhya Rajan Antapurkar (supra) in paragraph 8 held as under :-

“8. Section 8 of the Hindu Minority and Guardianship Act, 1956 prevents natural guardian of Hindu minor to transfer by sale, gift exchange or otherwise any part of immovable property of the minor without previous permission of the Court. This restriction on the natural guardian in relation to the property of the minor applies only to the separate or absolute property of the minor. It does not include the minor's undivided share in the joint family property, as, under section 6, there cannot be a natural guardian in respect of such property which is specifically excluded”.

5. In the facts of the case, it is not in dispute that the minor has 1/3rd undivided share to the extent of 28.53 square meters. The District Judge himself has recorded a finding that the minor has undivided share in the property.

6. In that view of the matter, clause (3) of the impugned order dated 3rd August, 2022 cannot be sustained.

7. The applicant therefore, subject to protecting interest of the minors, can be permitted to sale the property by directing the applicant to invest the amount received by selling undivided share in a fixed deposit till the minor attains majority. I therefore pass, following order.

I) The applicant is permitted to sale $1/3^{\text{rd}}$ undivided share admeasuring 28.53 sq. meter, out of total 85.59 sq. meter of Plot No.281, sector-19, at mauje Ulwe, Taluka-Panvel Dist-Raigad, more particularly described in paragraph No.2 of inquiry application No.35 of 2022.

II) The applicant shall invest proportionate part of sale consideration of $1/3^{\text{rd}}$ undivided share of minor in a fixed deposit in any nationalized bank till minor attains majority.

8. The First Appeal shall stand disposed of in the above terms.
No costs.

(AMIT BORKAR, J.)