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

WRIT PETITION NO.12504 OF 2023

Abhijit Singh Jatindar Singh Gujral ... Petitioner
V/s.
Manjitekumar Jaspalsingh Chadha ... Respondent

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Mr. Suhas S. Deokar a/w Mr. Chetan A Alai a/w Ms.
Rama Somani a/w Mr. Ashutosh Kamgutkar, Mr.
Chetan A. Alai, for Petitioner.

Mr. Tushar Sonawane a/w Ms. Pooja Satpute, for
Respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 7, 2023

P.C.:

1. By the impugned order, the Trial Court before whom an application under Section 8 of the Hindu Minority and Guardianship Act, 1956 was filed by natural guardian mother has rejected petitioners application for impleadment based on Will executed by the applicant's husband.
2. From the record, it appears that husband of the applicant filed Special Civil Suit No.655 of 2010. During pendency of suit, applicant's husband died on 13 June 2020.
3. According to petitioner, he executed Will in relation to suit

properties and appointed petitioner as guardian.

4. After death of husband, the parties to the suit i.e. the wife and two children of plaintiff and other defendants settled the dispute by arriving at compromise.

5. The compromise decree was drawn on 23 December 2021. In the said compromise decree, two properties i.e. plot Nos.9 and 10 were allotted to the share of minor children of the applicant and original plaintiff (husband).

6. Based on such allotment of properties, the applicant as a natural guardian applied before the Trial Court seeking permission to sell plot Nos.9 and 10.

7. The petitioner claiming to be guardian appointed by husband in furtherance of Will, filed an application for impleadment under Order 1, Rule 10 of the Code of Civil procedure, 1908.

8. The Trial court rejected the application.

9. The petitioner has, therefore, filed present application.

10. According to learned Advocate for petitioner, under Section 31 of the Guardians and Wards Act, 1890, it is the duty of Court to implead guardian of minor as necessary party to an application under Section 8 of the Hindu Minority and Guardianship Act, 1956. According to him, since applicant's husband had filed a suit for partition and applicant and children were brought on record as legal representatives of husband, they are claiming through

husband and, therefore, Will executed by husband confers right on the petitioner.

11. On perusal of the record, it appears that by consent decree dated 23 December 2021, the plot Nos.9 and 10 are allotted to plaintiff Nos.2 and 3. The transfer of plot being in recognition of pre-existing right, such properties vest with plaintiff Nos.2 and 3 unless the effect of such compromise decree is taken away in a proceeding validly instituted by a person having locus to file such proceeding.

12. As of today, the consent decree conferring rights on minor children is in force, minors become absolute owner of the properties allotted to their share. Therefore, applicant being natural guardian, entitled to file application under Section 8 of the Hindu Minority and Guardianship Act, 1956.

13. Apprehension expressed by the petitioner that the applicant may mis-utilize the fund is baseless as the Court under Section 8 of the Hindu Minority and Guardianship Act, 1956 is expected to hold an inquiry in terms of parameters laid down in Section 8 of the said Act.

14. It is always open for the District Court to impose appropriate conditions as are permissible in law, if the Courts came into conclusion that permission under Section 8 of the said Act is necessary.

15. Since the petitioner has failed to show that his presence is necessary for complete an effectual adjudication, and without his

presence the application cannot be conclusively decided. There is no error of jurisdiction committed by the Trial Court.

16. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)