

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 895 OF 2023**

Smt. Samta Vinayak Thakur }
Age-45 years, Occupation- }
Housewife, R/at-Shivaji Nagar, Post- }
Gavhan Taluka-Panvel, Dist-Raigad- } Appellant
410 206 }

V/s.

The State of Maharashtra }
through Collector, Panvel District }
Collector Office, Hirakot Lake, Tal- }
Alibag, Dist-Raigad, Pin-402 201. } Respondent

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Mr. Vijaykumar Bhima Dighe, for the appellant.

Mr. A.R. Patil, AGP, for the State.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 5TH MARCH 2024.

PRONOUNCED ON : 5TH APRIL 2024.

JUDGMENT: (PER KISHORE C. SANT, J)

1. Heard the learned advocate for the appellant and learned AGP for the Respondent/State.

2. This appeal is by the original applicant, mother of the minor challenging the order dated 1/04/2023 passed by the District Judge, Court No. 1, Raigad-Panvel, thereby partly allowing her

application for appointment as guardian of minor child and rejecting to grant permission to sell the undivided share of minor in the joint property.

2. Facts in shorts are that, the applicant is a widow of one Vinayak Bama Thakur who died on 16/05/2020 leaving behind the appellant-mother and son Shlok who 14 years of age. The land standing in the name of late Vinayak Bama Thakur came to be acquired for CIDCO and award came to be passed. Towards compensation from CIDCO @ 12.5% of the land came to be allotted in addition to compensation and allotted the plot bearing No. 19-C, Sector 18, admeasuring 599.59 sq. mtrs. His heirship certificate is also granted showing the appellant, son Shlok and mother Tulsabai as legal heirs of the deceased by Civil Judge Senior Judge in Civil Miscellaneous Application No. 641 of 2018. Son Shlok have 3/3 share in the said plot.

3. It is the case of the appellant that there is no other source of income to her, she needs amount for maintenance of her son and for his education. There is no any other way than to sell the share of the son in the property for his education. Thus she filed the application under section 8 of the Guardian's and Wards Act, 1950.

4. The learned District Judge by way of impugned order partly allowed the application. It is observed that there is no objection received by any one in response to paper publication. It was necessary to see as to whether the sell of share in property is truly in the interest of child. The trial Court held that no particulars of expenses towards education and any other evidence in support are given. The Court held that the applicant can be appointed as a guardian. However, rejected the prayer to sell undivided share of minor.

5. Learned advocate for the appellant has vehemently argued the appeal and submitted that when the mother is appointed as guardian to take care of the interest of the minor. It falls that she is competent to deal with the property of the minor in his interest. Learned trial Judge has by way of cryptic order refused to grant permission to sell the property.

6. Learned advocate for the appellant relied upon the judgment of the Hon'ble Supreme Court in the case of ***"Sri Narayan Bal and Ors. vs Sridhar Sutar and Ors"***.¹ The Hon'ble Apex Court in the said case has dealt with the question of sale of undivided interest of Hindu minor in the joint family property. The Hon'ble Apex Court has held that the provision of Section 8 cannot be viewed in isolation. It is

1 (1996) 8 SCC 54

held that 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. It is also held that sections 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 Hon'ble Apex Court has answered the question as to whether the provision of Section 8 of the Hindu Minority And Guardianship Act, 1956 were applicable to the Joint Hindu Family property sold or disposed of by the Karta and answered the question in the above terms.

7. Thus for the reasons recorded above, this Court finds that the application ought to have been allowed in its entirety. This Court, therefore, allow the appeal. Hence the following order:

ORDER

- (i) Appeal is allowed.
- (ii) Order passed by the learned District Judge, Raigad-Panvel, is hereby modified. The Civil Miscellaneous Application No. 21 of 2023 is allowed.
- (iii) The appellant Smt. Samta Vinayak Thakur is granted

permission to sell the share of the minor in the joint family property.

8. With this, appeal stands disposed of. No order as to costs.

(KISHORE C. SANT, J)