



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

FIRST APPEAL NO. 2173 OF 2024

1. Gulabsing S/o Vijesing Tawar (Patil),
Age : 44 Years, Occ : Agri,

2. Sai Gulabsing Tawar (Patil),
Age : 13 years, Occ. Education,

(Through his Natural Guardian
Appellant No. 1 i.e. father of
appellant No. 2)

Boath R/o at Post Jalu,
Taluka Erandol, District : Jalgaon.

...APPELLANTS
(Original Applicants)

VERSUS

The State of Maharashtra

...RESPONDENT

.....
Mr. A.V.Deshmukh : Learned Advocate for Appellants
Mr.V.S.Badakh : Learned AGP for Respondent-State
.....

CORAM : S. G. CHAPALGAONKAR, J.

Date of reservation : 25.02.2025

Date of Pronouncement : 04.03.2025

JUDGMENT :

1. Appellants impugns judgment and order dated 05.07.2024 passed by learned District Judge-5, Jalgaon in Civil Misc. Application No. 196 of 2023.

2. Appellants filed proceeding under Section 8 (2) of the Hindu Minority and Guardianship Act, 1956, (Hereinafter referred to as “the Act” for brevity), seeking permission to alienate/transfer land ad-measuring

1 H 44 R from Gut No. 102/1, situated at Village Kunzar, Taluka Chalisgaon, District Jalgaon. It is case of appellants that it is ancestral property of appellants. Appellant No. 2 is minor son of appellant No. 1. Land in question allotted to them in partition. They wish to alienate land for a consideration of Rs. 4,61,000/- and want to spend amount for education of appellant No. 2 and purchase plot or land at village Jalu. Learned District Judge declined to grant permission to sell observing that proposed sale is not for benefit of minor or it would not give any advantage to him.

3. Mr. Deshmukh, learned Advocate appearing for appellants submits that land in question is ancestral property of appellants. Appellant No. 1 is guardian of appellant No. 2. Land in question is allotted in partition and mutated in their names. Due to drought situation at village Kunzar it is impossible for them to cultivate said land. Appellant No. 1 is working in ginning factory at Jalu, Taluka Yerendol, District Jalgaon for livelihood. They have received offer to purchase said land. He would further submit that although permission for sale would not be necessary in this case, an application was erroneously made before learned District Judge, who pleased to reject it on merit.

4. Having considered submissions advanced, it appears from record landed property proposed to be sold, is a joint family property of appellants. Appellant No. 1 is father of appellant No. 2. As such, he is natural guardian and Karta of family. If appellants have joint interest in ancestral land, the provisions of Hindu Minority and Guardianship Act

would not attract. It is well settled that harmonious reading of Section 8 with Sections 6, 9 and 12 of the Act, leaves no room of doubt that Section 8 has no application in case of fluctuating interests of minors in undivided share in the joint family property. The Karta, who is incharge can exercise his powers to deal with minor's interest in joint family property and to deal with it keeping in mind aspect of legal necessity, interest and benefit of minor. As such alienation would not be voidable at the instance of minor., once it is proved that same is made for legal necessity and for benefit of minor. Aforesaid legal position has been explained by Supreme Court in case of **Shri Narayan Bal and others Vs. Sridhar Sutar and others**, AIR 1996 SC 2371, in paragraph No. 5 of the judgment which reads thus :

“With regard o the undivided interest of the Hindu minor in joint family property, the provisions afore-culled are beads of the same string and need be viewed in a single glimpse, simultaneously in conjunction with each other. Each provisions, and in particular Section 8, cannot be viewed in isolation. If read together the intent of the legislative in this beneficial legislation becomes manifest. Ordinarily the law does not envisage 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 alone contemplated under Section 8 where under his powers and duties are defined. Section 12 carves out an exception to the rule that should there be no adult member of the joint family in management of the joint family property, in which the minor has an undivided interest, a guardian may be appointed; but ordinarily no guardian shall be appointed for such undivided interest of the minor. The adult member of the family in the management of the Joint Hindu Family property may be a male or a female, not necessarily the Karta. The power of the High Court otherwise to appoint a guardian, in situations justifying, has been preserved. This is the legislative scheme on the subject. Under Section 8 a natural guardian of the property of the Hindu minor, before he disposes of any immovable property of the minor, must seek permission of the court. But since there need be no

natural guardian for the minor's undivided interest in the joint family property, as provided under Sections 6 & 12 of the Act, the previous permission of the Court under Section 8 of disposing of the undivided interest of the minor in the joint family property is not required. 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. Thus Section 8 in view of the express terms of Sections 6 & 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 question posed at the outset therefore is so answered."

5. In yet another judgment same view has been reiterated in case of **Sandhya Rajan Antapurkar and Others Vs. State of Maharashtra – ¹**, wherein, following observations are made :

"11. Under the Hindu Law, the manager or karta of the family of the minor can alienate minor's undivided interest in the joint family property without the permission of the Court, provided alienation is for legal necessity or for the benefit of the minor and this right is left untouched by the Hindu Minority and Guardianship Act, 1956."

6. In the light of aforesaid exposition of law, this Court holds that appellant No. 1 being natural guardian and Karta of joint family can deal with property for himself and on behalf of minor, keeping in mind aspect of legal necessity. In that case provisions of Hindu Minority and Guardianship Act would have no application.

7. In the result impugned order is quashed and set aside and First Appeal is allowed and disposed off in aforesaid terms.

**(S. G. CHAPALGAONKAR)
JUDGE**

mahajansb/