

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 317 OF 2025.

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| 1. Smt. Deepa Datta Naik |] |
| Age : 42 years, Occupation : Household, |] |
| 2. Master Atharv Datta Naik, |] |
| Age : 9 years, Occupation : Student, |] |
| (Minor represented through his natural |] |
| guardian, His mother, Appellant no. 1 Smt. |] |
| Deepa Datta Naik) |] |
| Both residing at House No. 373, Kolhe-Kopar, |] |
| Post : Pargaon, Taluka : Panvel, District : Raigad. |] |
| | <u>...Appellants.</u> |

Versus

None	]	<u>...Respondent.</u>
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Mr. Saurabh Bhutala for Appellant.

Coram : Sharmila U. Deshmukh, J.

Reserved on : 26th February, 2025.

Pronounced on : 04th March, 2025.

Judgment :

1. The First Appeal is at the instance of original Applicants whose Civil Miscellaneous Application No. 95 of 2024 seeking permission for the sale of undivided share of Applicant No.3-minor under Section 8 of the Hindu Minority and Guardianship Act, 1956 [for short, "***Minority Act***"] came to be rejected by the impugned judgment dated 23rd

December, 2024.

2. The facts lie in the narrow compass that the Application came to be filed by Applicant, who is mother of Applicant No. 3-Atharv Datta Naik contending that property in question was owned by Applicant No. 3's grandfather, one Baban Krishna Naik, which property had been allotted to Baban Naik by City and Industrial Development Corporation Limited in lieu of acquisition of properties of Baban Naik. On 25th December, 2019, Baban Krishna Naik expired. The Applicant No. 3's father Datta Baban Naik expired on 22nd April, 2021. The Applicants are the legal heirs of Datta Baban Naik and after demise of Datta Baban Naik, the Applicants have inherited his undivided share in the plots allotted by CIDCO. Citing financial necessities, the Application came to be filed under Section 8(2) of the Minority Act for appointment of Applicant No. 1 as natural guardian of Applicant No. 3 and for permission to sale undivided share of Applicant No. 3 in subject-property.

3. The Application came to be rejected by Trial Court by taking into consideration, the provisions of Section 12 of the Minority Act, which provides that where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided share. The Trial Court held that in view of the

provisions of Sections 6 and 12 of the Minority Act, permission under Section 8 is not required for disposing minor's undivided share in the joint family property.

4. Learned counsel appearing for the Appellant would submit that minor was having an undivided share in the property, which was left behind by his father and Applicant No. 1's husband and did not constitute joint family property. Drawing attention of this Court to the provisions of Section 8 of the Hindu Succession Act, 1956, he submits that as per the rules of Succession in the case of Hindu dying intestate, the property devolves upon the heirs specified in class I of the Schedule and accordingly, Applicant No. 3-minor has acquired undivided one-third share in the property, which is now sought to be alienated after taking permission of the Court. He would further submit that though the property belonged to grandfather of Applicant No. 3, it was inherited by father of Applicant No.3. The property devolved by testamentary or intestate succession under the provisions of Section 8 of the Hindu Succession Act, 1956, and when read with Section 19 of Hindu Succession Act, 1956 the Applicants' succeeded to the property as tenants-in-common and not as joint tenants. He, therefore, submits that property does not constitutes joint family property and therefore, permission under Section 8 of Minority Act ought to have been granted. In support, he relies upon the following

decisions :-

***Sandhya Anant Gharat vs. NIL*¹**

***Uttam vs. Saubhag Singh*²**

***Commissioner of Wealth Tax, Kanpur vs. Chander Sen*³**

***Sri Narayan Bal vs. Sridhar Sutar*⁴**

***Bhanwar Singh vs. Puran*⁵**

***Vasant vs. Moreshwar*⁶**

5. The following point would arise for determination:

(i) Whether in the facts of the present case, provisions of Section 8 of the Hindu Minority and Guardianship Act, 1956 is applicable?

As to Point No. (i) :

6. The suit property was owned by Baban Krishna Naik who was grandfather of Applicant No. 3 and after his death in the year 2019, the father of Applicant No. 3, i.e. Datta Baban Naik and Applicant No. 3's uncle Rahul Baban Naik inherited the property. Upon the death of Baban Naik, the property lost the character of joint family property. Datta Baban Naik and Rahul Baban Naik inherited the properties as tenants-in-common and not as joint tenants. It will be relevant to refer to Section 6, Section 8 and Section 19 of the Hindu Succession Act,

1 First Appeal No. 62 of 2023, dtd. 2nd March, 2023.

2 (2016) 4 SCC 68.

3 (1986) 3 SCC 567.

4 (1996) 8 SCC 54.

5 (2008) 3 SCC 87.

6 2024 SCC OnLine Bom 3456.

1956, which reads as under:-

“6. Devolution of interest in coparcenary property. - (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

- (a) by birth become a coparcener in her own right the same manner as the son;
- (b) have the same rights in the coparcenary property as she would have had if she had been a son;
- (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-

- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation. -- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect -

- (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or
- (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation - For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court."

"8. General rules of succession in the case of males. -

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.”

“19. Mode of succession of two or more heirs. - If two or more heirs succeed together to the property of an intestate, they shall take the property,—

(a) save as otherwise expressly provided in this Act, *per capita* and not *per stirpes*; and

(b) as tenants-in-common and not as joint tenants.”

7. The provisions of Section 6(3) of the Hindu Succession Act, 1956 provides that where a Hindu dies after commencement of the Hindu Succession (Amendment) Act of 2005, his interest in the property of joint hindu family shall devolve by testamentary or intestate succession, and not by survivorship. After the Act of 1956 came into force, if a male inherited a property from his ancestors by reason of Section 8 of the Hindu Succession Act, 1956, the property assumed the character of self-acquired property and did not remain the joint family property. Section 19, which is also significant, provides that if two or more heirs succeed together to the property of an intestate, they shall take the property as tenants-in-common and not as joint tenants. Thus, Rahul Naik and Datta Naik inherited properties as tenants-in common and not as joint tenants upon the death of Baban Naik, in view of Section 8 of the Hindu Succession Act, 1956. The property, which was inherited by Datta devolved upon the Applicants’ as the self-acquired

property of Datta and no longer remained joint family property. The Trial Court failed to note the nature of property inherited by Datta Baban Naik, and has committed an error in holding that property is a joint family property.

8. In the case of **Bhanwar Singh** (supra) in somewhat similar facts, the Apex Court considered the provisions of Hindu Succession Act, 1956. In that case, the property belonged to one Bhima and thereafter, devolved upon his son Sant Ram and daughters'. Sant Ram alienated the property, which was sought to be contested by son of Sant Ram. The Apex Court considered the provisions of Section 8 and Section 19 of Hindu Succession Act, 1956 and held that properties ceased to be a joint family property and in the case of this nature, the joint coparcenary did not continue.

9. In case of **Uttam vs. Saubhag Singh** (supra), the Apex Court summarised the law in Paragraph No. 18 as under:-

"18. Some other judgments were cited before us for the proposition that joint family property continues as such even with a sole surviving coparcener, and if a son is born to such coparcener thereafter, the joint family property continues as such, there being no hiatus merely by virtue of the fact there is a sole surviving coparcener. *Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe* [(1988) 2 SCC 126], *Sheela Devi v. Lal Chand* [(2006) 8 SCC 581], and *Rohit Chauhan v. Surinder Singh* [(2013) 9 SCC 419], were cited for this purpose. None of these judgments would take the appellant any further in view of the fact that in none of them is there any consideration of the effect of Sections 4, 8 and 19 of the Hindu Succession Act. The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarized as follows:-

(i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.

(vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants-in-common and not as joint tenants."

(emphasis supplied)

10. In view of clear enunciation of law by Apex Court, the property in hands of Applicants was not joint family property.

11. Point No. (i) is accordingly answered in favor of Appellant No. 1.

12. As it is held that property is not a joint family property, the provisions of Section 8 of the Minority Act are applicable. The Trial Court rejected the application on ground of maintainability by considering the property to be joint family property. As the application was dismissed on ground of maintainability, the necessary inquiry as contemplated under Section 8 of Minority Act was not carried out by Trial Court.

13. Resultantly, the following order is passed:-

: O R D E R :

[i] First Appeal is allowed.

[ii] The impugned order dated 23rd December, 2024 is hereby quashed and set aside.

[iii] Civil Miscellaneous Application No. 95 of 2024 is restored to file, to be decided in light of observations made in the present order.

14. All concerned to act on authenticated copy of the order.

[Sharmila U. Deshmukh, J.]