

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 1977 of 2021**

KANTABEN JAYENDRABHAI SAVLA
Versus
NIL

Appearance:

SHIVANGI D VYAS(10117) for the Appellant(s) No. 1,2,3
for the Defendant(s) No. 1

CORAM: HONOURABLE MR. JUSTICE A.G. URAIZEE

Date : 17/08/2021

ORAL ORDER

1. In this appeal under section 47 of the Guardians and Wards Act (GNW Act for short) read with section 96 of the Code of Civil Procedure, 1908 (the Code for short), the appellants have assailed the judgment and order dated 25.02.2021 passed by the learned Additional District Judge in Civil Miscellaneous Application No.68 of 2020 whereunder the application under section 9 of the GNW Act for permission to sell the undivided share of minor is rejected.

2. Heard Ms. Shivangi Vyas, learned advocate for the appellant.

3. Ms. Vyas, learned advocate tenders revenue record in respect of the subject land reflecting the names of all the co-owners of the land and affidavits of other co-owners indicating that they have no objection if the entire parcel of land is permitted to be shown.

4. Ms. Vyas, learned advocate submits that the application preferred by the appellant under section 9 of the GNW Act was not adversarial as no objections were filed for not granting the permission to sell the undivided share of the minor son of the appellant. Relying upon the decision of this court in the case of **Sankhala (Mali) Kantaben Wd/o Bharatbhai Laljibhai v. Rabari Panchabhai Chelabhai reported in AIR 2020 Guj. 205,**

she submits that as such under section 12 of the GNW Act, no permission is required to sell the undivided share of minor. She, therefore, urges that the impugned judgment may be set aside and the appellant may be permitted to sell the undivided share of her minor son.

5. This court in the case of Sankhala (Mali) Kantaben Wd/o Bharatbhai Laljibhai v. Rabari Panchabhai Chelabhai (supra) has observed as under:-

“1. This appeal seeks to challenge the order dated 07.09.2019 rendered in Civil Misc. Application No. 32 of 2019 by the learned 2nd Additional District Judge at Deesa, District Banaskantha declining the permission to sale the property of minor under Section 12 of the Guardians and Wards Act.

2. On consideration of the submissions made by the learned Counsel for the appellant and on perusal of the impugned order, it would transpire that the appellant is the mother of the minor in absence of the father who expired on 10.01.2017. It appears that the properties sought to be sold comprises undivided interest of the minor in the joint family property. As the following discussion would show that for conveyance of such interest of minor, permission contemplated under Section 8(2) of the Hindu Minority and Guardianship Act, 1956 would not be necessary. The Court below in this regard was not properly assisted.

3. Learned Counsel for the appellant has relied upon Sections 6, 8 and 12 of the Hindu Minority and Guardianship Act, 1956, to contend that in case of an undivided share of the minor in the joint family property, no permission of the Court would be necessary.

3.1 For the ready reference, it would be beneficial to quote the Sections 6, 8 and 12 of the Hindu Minority and Guardianship Act, 1956.

“6. Natural guardians of a Hindu minor.—The natural guardian of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in case of an illegitimate boy or an illegitimate unmarried girl —the mother, and after her, the father;

(c) in the case of a married girl—the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi). Explanation.—In this section, the expression “father” and “mother” do not include a stepfather and a stepmother.

8. Powers of natural guardian.—

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor’s estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,—

(a) mortgage or charge, or transfer by sale, gift,

exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of subsection (1) or subsection (2), is voidable at the instance of the minor or by any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in subsection (2) except in the case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining permission of the court under subsection (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in subsections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in subsection (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section “court” means the city civil court or a district court or a court empowered under section 4A of the Guardian and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction

the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.”

12. Guardian not to be appointed for minor's undivided interest in joint family property.—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 interest: Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

4. Once undivided interest of the minor in the joint family property is under the management of an adult member of the family no guardian can be appointed except by the High Court and even the natural guardian would not be a guardian in respect of undivided interest of the minor in the joint family property and consequently section 8(2) which speaks about requirement of permission by natural guardian before selling the property of a minor would have no application if the property is undivided interest of the minor in the joint family property. Section 8(2) appears to be contemplating the permission by natural guardian in respect of the properties of the minor which can be dealt with by natural guardian. This cannot however be understood to say that welfare of the minor would be irrelevant in the event of sale of his undivided interest in the joint family property. His welfare will still be a predominant consideration and annulment of sale can always be sought by minor in accordance with law, if so advised.

5. The logic behind the exclusion of natural guardian being such guardian in respect of undivided interest of a minor in the joint family property appears to be

two fold (01) the manager is entitled to deal with undivided shares in the interest of the family and; (02) the undivided share is not fixed; but is variable with the change in the constitution of the family and unless the share is divided or partitioned, the interest would not be acquired by the minor so that the natural guardian can deal with the same. It appears that with the said logic, no permission inter alia to convey the undivided interest of a minor in the joint family property from the manager of such property has been contemplated under subsection(2) of Section 8.

6. Being oblivious to the aboveresferred factual and legal position, the trial Court landed itself in a serious error in rejecting the application on the ground that the interest of the welfare of the minor was not involved in the sale and the mother had alternative source to generate income. Although the Court below could not have granted the application for different reason i.e. no permission was required by Karta of the joint family property instead of entertaining the application and rejecting the case on merits.

7. In the opinion of this Court, for the aforesaid reasons, the impugned order cannot be sustained. The same is quashed and set aside and it is held that undivided interest of the minor in the joint family property can be sold by the applicant as Karta of HUF without permission from the Court.

Direct service is permitted”

6. Bhavesh Khetashibhai Savla has filed his affidavit in lieu of examination-in-chief. He has stated therein that the entire parcel of joint family property i.e. land is to be sold to tide over the financial difficulties.

7. It is thus eminently clear that no permission is required to sell the undivided share of minor in joint family property.

However, I am of the considered opinion that while giving permission to the appellant to sell the undivided share of her minor son in the joint family property, interest of the minor needs to be taken care of.

8. In view of the above, the appeal is allowed and the impugned judgment and order is hereby quashed and set aside. The appellant is permitted to sell the undivided share of her minor son in the joint family property. However, the appellant shall intimate to the trial court, the total sale consideration derived from the sale of the joint family property, and the amount falling to the share of her minor son shall be deposited in the trial court. The trial court, in turn, shall invest the same in FDR receipts in a nationalised bank for a period of five years or till the minor attains the age of majority, whichever is earlier, and the periodical interest accruing on the FDR receipts shall be disbursed in favour of the minor through his guardian i.e. the appellant.

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(A.G.URAIZEE, J)

THE HIGH COURT
OF GUJARAT

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