

AFR
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HIGH COURT OF JUDICATURE AT ALLAHABAD
FIRST APPEAL FROM ORDER No. - 2057 of 2025

Smt.Doli

.....Appellant(s)

Versus

Smt.Shakuntla Devi

.....Respondent(s)

Counsel for Appellant(s)	: Karuna Srivastava, Parth Goswami, Sanjay Goswami, Santosh Kumar Srivastava
Counsel for Respondent(s)	: Rati Bhan Singh

Court No. - 9

HON'BLE ROHIT RANJAN AGARWAL, J.

1. This First Appeal From Order has been filed under Section 47 of The Guardians and Wards Act, 1890 (*hereinafter called as 'the Act of 1890'*), assailing the judgment and order dated 17.07.2025 passed by Additional Sessions Judge, Court No. 1, Muzaffar Nagar in G.C. Petition No. 249 of 2024 filed under Section 8/10 of the Act of 1890.

2. Brief facts, leading to filing of this appeal, are that appellant who is widow of Late Amit Kumar and mother of minor girl Kumari Vanshika had filed an application before Court of Additional District and Sessions Judge, Muzaffar Nagar for declaring her guardian of minor daughter Vanshika and also prayer was made for permitting her to sell the property of the minor child mentioned in Schedule 'A' and 'B'. In the said case, grandmother of minor child, Smt. Shakuntla Devi was arrayed as respondent. It was stated in the schedule that minor was having 1/4th share in the property described in Schedule 'A' and 'B'. The respondent appeared before court below and filed her no objection stating that the appellant be declared as natural guardian and permission as sought be

granted. However, the court below after hearing the parties partly allowed the application and appointed the appellant as guardian but did not grant permission to sell the land as mentioned in Schedule 'A' and 'B'. Hence, the present appeal.

3. Learned Senior Counsel appearing for the appellant submitted that the court below was not correct to refuse the permission for selling the land recorded in the name of minor having 1/4th share in the joint family property. According to him, refusal could not be made in view of Section 12 of The Hindu Minority and Guardianship Act, 1956 (*hereinafter called as 'the Act of 1956'*). Reliance has been placed upon the decision of co-ordinate Bench rendered in **First Appeal From Order No. 272 of 2024, Smt. Preeti Arora vs. Subhash Chandra Arora and another**, decided on 05.03.2024 and also upon a decision rendered by Aurangabad Bench of Bombay High Court in **First Appeal No. 2760 of 2024, Pooja vs. The State of Maharashtra**, decided 24.02.2025.

4. Sri Rati Bhan Singh, learned counsel, has appeared on behalf of respondent and has supported the case of appellant and states that he has no objection in case the appeal is allowed.

5. I have heard respective counsel for the parties and perused the material on record.

6. Before adverting to decide the issue in hand, a cursory glance of some of provisions of the Act of 1890 and the Act of 1956 is necessary for better appreciation of the case.

7. The Act of 1890 was enacted to consolidate and amend the law relating to guardians and wards which was initially enacted in the year 1858 which was amended in the year 1864. In the said Act, Section 4(1) defines 'minor' which means a person who has not attained the age of majority under Indian Majority Act, 1875 while sub-section (2) of Section 4 defines 'guardian' meaning a person having the care of the person of a minor or of his property, or of both of his person and property.

8. Section 7 provides for power of the Court to make an order as to guardianship. Section 8 entitles a person to apply for an order for being appointed as a guardian. Section 10 prescribes the format of the application to be moved by person claiming to be appointed as a guardian of a minor.

9. Section 29 limits the power of a guardian of a property appointed or declared by the Court. Sub-section (a) restricts that without previous permission of the Court, no mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of immovable property can be made by guardian except without permission of the Court. Sub-section (b) restricts the guardian to lease out any part of the property exceeding for a term of five years or for any term exceeding more than one year beyond the date on which the ward will cease to be a minor, without permission of the Court. Section 47 provides for an appeal.

10. Post independence, the Legislature enacted the Act of 1956 regulating the appointment of guardian for Hindu minor. Section 2 provides the Act to be supplemental to the Act of 1890. Section 4(a) defines a ‘minor’ and means a person who has not completed the age of 18 years while sub-section (b) defines a ‘guardian’ which is as under:-

“(b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes—

i) a natural guardian,

(ii) a guardian appointed by the will of the minor’s father or mother,

(iii) a guardian appointed or declared by a court, and

(iv) a person empowered to act as such by or under any enactment relating to any Court of wards.”

11. Section 6 defines ‘natural guardians of a Hindu minor’, which is extracted hereasunder:-

“6. Natural guardians of a Hindu minor.—The natural guardians 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 the 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 expressions “father” and “mother” do not include a step-father and a step-mother.”

12. According to said section, natural guardian of a Hindu minor in respect of minor’s person as well as in respect of his property in case of a boy or an unmarried girl is the father and after him the mother. Provided that custody of a minor who has not completed the age of 5 years shall ordinarily be with the mother.

13. Section 8 provides for ‘powers of natural guardian’ which is extracted hereasunder:-

“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 realization, 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 sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in 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 the permission of the court under sub-section (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 sub-sections (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 sub-section (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 Guardians 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.”

14. Section 12 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 interest.

15. Thus, from the reading of provisions of the Act of 1890 and 1956, it is clear that the Act of 1890 does not define ‘natural guardian’ and only defines ‘guardian’ who is a person having the care of the person of a minor or his property or of both. Under the Act of 1890, the application was to be filed for the appointment of guardian under Section 8 read with Section 10 and the Court having been satisfied would pass order appointing a guardian of a minor or property or of both. Section 29 limited the power of guardian appointed in respect of property of a ward as far as mortgage, charge, transfer by sale, gift, exchange or otherwise was concerned and it was only after the permission of the Court that a guardian could proceed.

16. Post independence, the Act of 1956 was enacted which was applicable to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the

Brahmo, Prarthana or Arya Samaj, a Buddhist, Jaina or Sikha by religion.

17. The Act of 1956 has a slight departure from the enactment of 1890 as it places a guardian under different headings, such as, a natural guardian, a guardian appointed by Will, a guardian appointed or declared by a Court and a person empowered to act, as such, by or under any enactment. Simultaneously, the Legislature has also defined a natural guardian of a Hindu minor and in case of a boy or an unmarried girl it is the father and after him the mother.

18. Thus, the Act of 1956 has evolved a concept of natural guardian which is father and after him the mother in case of a minor boy or an unmarried minor girl. However, in case of married girl it is the husband who is the natural guardian.

19. Section 8 lays down powers of natural guardian of a Hindu minor subject to provisions of the said section. Sub-section (2) curtails certain powers of a natural guardian and provides that without previous permission of the Court no mortgage or charge can be created or property can be transferred by sale, gift, exchange or otherwise.

20. Similarly, lease of any part of property for a term exceeding five years or for a term exceeding more than a year beyond the date on which the minor will attain majority can only be done with previous permission of the Court. This provision is *pari materia* to Section 29 of the Act of 1860. Sub-section (3) further states that any disposal of immovable property by a natural guardian, in contravention to sub-section (1) and (2) is voidable at the instance of minor or any person claiming under him.

21. Sub-section (5) is of great relevance as it provides that the Act of 1890 shall apply to and in respect of an application for obtaining permission of the Court under sub-section (2) in all respects as if it were an application for obtaining the permission of Court under Section 29 of that Act, meaning thereby that in any application moved under Section

8(2) of the Act of 1956, provisions of the Act of 1890 shall apply as far as permission of the court is concerned.

22. Thus, sub-section (5) of Section 8 clarifies Section 2 of the Act of 1956 which provides the Act to be supplemental to the Act No. 8 of 1890 and harmonious interpretation has to be given between the provisions of the Act of 1890 and the Act of 1956 while dealing with applications moved either under the Act of 1890 or under the Act of 1956 in case of a Hindu minor by a natural guardian.

23. The concept of natural guardian was for the first time enunciated in the Act of 1956, while the earlier Act was silent on the said subject and only provided for appointment of guardian.

24. In the instant case, though the application has been moved under Section 8 read with Section 10 of the Act of 1890 by mother of a Hindu minor after the death of her husband being a natural guardian, in view of Section 6, the case has to be considered in light of both provisions of the Act of 1890 and the Act of 1956, both being beneficial legislation and enacted to protect the interest of a minor and his property.

25. The Act of 1956 clearly in Section 6 defines a natural guardian of a Hindu minor in case of boy or an unmarried girl to be his father and after him the mother.

26. In the instant case, it is an admitted fact that Late Amit Kumar father of the minor had died and application has been moved by mother who is a natural guardian as per the Act. The permission which has been sought is for selling the interest of a minor in a joint family property.

27. Section 12 of the Act of 1956 clearly spells that guardian not to be appointed for minor's undivided interest in joint family property as it is under the management of an adult member of the family. Here the father of the minor had already died and the mother who is the adult member is acting as a manager of joint family property. She is also the natural guardian as per Section 6 of the Act of 1956.

28. Thus, from the reading of Section 29 of the Act of 1890, Section 8(2) and Section 12 of the Act of 1956, it is clear that in case a guardian is appointed by the Court, permission has to be sought in respect of mortgaging or creating a charge on the property of minor, or transferring it by sale, gift, exchange or otherwise.

29. However, in the instant case, minor being a Hindu and having an interest in undivided joint family property is protected by management of an adult member of the family. In the instant case, it is the mother who is managing the joint family property, thus, the case of the appellant would not fall within the parameters of Section 29 of the Act of 1890 or Section 8(2) of the Act of 1956, rather the description of the property mentioned in Schedule of the application moved by appellant clearly reveals that case falls under Section 12 of the Act of 1956 for consideration.

30. The Bombay High Court in case of **Pooja (supra)** while dealing with a case under the Act of 1956, relying upon various judgments of the Apex Court, held that restriction imposed by Section 8 cannot be applied to fluctuating interest of minors in undivided share in joint family property. Relevant paragraphs are extracted hereasunder:-

“8. Plain reading of aforesaid Section depicts that it does not expressly exclude undivided interest of minor in joint family property. However, Section 8 cannot be read in isolation, which would have to be read along with Section 6, 9 & 12. Harmonious reading of which, in the backdrop of preamble of Act would show restrictions imposed by Section 8 cannot be applied to fluctuating interest of minors in undivided share in joint family property. Therefore, natural guardian being eldest member of joint family, in-charge of property, can exercise powers to deal with minors in joint family property keeping in mind aspect of legal necessity, interest and benefit of minor. Needless to state that no such alienation would be voidable at instance of minor if it is proved that same was made for legal necessity and for benefit of minor.

9. At this stage, reference can be given to judgment of Supreme Court of India in case of Sri Narayan Bal and Others Vs. Shridhar Sutar and Others,² wherein answering question as to whether Section 8 of the Hindu Minor Minority and Guardianship Act was applicable to Hindu Family property to sell or dispose of it by the "Karta" of family. Following observations are made in paragraph No. 5, which read as under:

"With regard to 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 legislature 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 Section 6 to 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 Section 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 question posed at the outset therefore is so answered."

10. *Same view has been reiterated by two judgments of this Court firstly in case of Sandhya Rajan Antapurkar and Others Vs. State of Maharashtra, 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."

11. *In yet another Judgment in case of Shripati s/o Santu Mane Vs. Goroba s/o Nivarti Ghutukade and another, by referring Article 525 of page 524 of Mulla's Principles of Hindu Law, Twentieth Edition, Vol-I, it is observed that*

"Where father is not alive, mother is natural guardian and therefore, alienation made by her without seeking permission under Section 8 of the Act is held as valid." Further observation is that "intention of Section 8 of the Act is not fettered customary powers of natural guardian in the matter of

dealing with Hindu joint family property including minor sons' undivided shares."

12. Reliance was placed on observations of judgment of this Court in case of Narayan Laxman Gilankar Vs. Udaykumar Kashinath Kaushik.

13. As rightly pointed out Mr. R.J.Nirmal learned Advocate appearing for appellant that a similar view is reiterated by Single Judge of Allahabad High Court in case of Preeti Arora Vs. Subhash Chandra Arora Allahabad High Court."

31. The Division Bench of Madras High Court in case of Dhanasekaran vs. Manoranjithammal and others, AIR 1992 Madras 214 held that in Section 12, adult member would include both male and female. Relevant paragraphs are extracted hereasunder :-

"11. A Bench of this Court held in Venkatakrishna Reddy v. Amarababu, (1971) 2 Mad LJ 466 as follows:

"Neither the father nor the mother can, as the minor's natural guardian, alienate such an undivided interest of the minor it has been consistently held that in respect of such undivided interest of a coparcener neither the natural guardian nor the guardian appointed under the Guardians and Wards Act had any power to sell that interest even for necessity or for benefit. The distinction that obtained under the general Hindu Law between the separate property of a minor and his undivided coparcenary interest is kept up also under the provisions of the Hindu Minority and Guardianship Act of 1956. S. 6 of that Act which defines a natural guardian excludes minor's undivided interest in a joint family property from the operation of that section and S. 12 imposes a prohibition against the appointment of a guardian by a Court other than the High Court in respect of an undivided interest of a minor in a joint family property when such joint family property is in the management of an adult member of the family. Therefore, it is not possible to hold that the fourth defendant as the natural guardian of the minor sons is authorised to sell the undivided interest of the minors as such in the joint family properties either under the general Hindu Law or under the provisions of this Act."

(Emphasis is ours)

The learned Judges in the said decision also observed as follows:

"On this aspect some light is thrown by the wording in S. 12 of the Hindu Minority and Guardianship Act. That section says that where a minor has an undivided interest in joint family property and the property is under management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest. The adult member of the family may be either male or female. If there is no adult member of the family in management then the prohibition contained in Section 12 will not apply. But if there is an adult member in the management of the joint family property, then the Court is prohibited from appointing a guardian for the minor's undivided interest in the joint family property. The section does not say that the adult member could only be a male member. If in case where there is no adult male member and all the members of the

family are minors, a guardian can be appointed by the Court with reference to the entire joint family property.”

(Emphasis is ours)

12. So, in S. 12, adult member would include both male and female and in this respect, with due respect, we observe that the decision of Ratnam, J. in the above referred to (1980) 2 Mad LJ 296 holding that the term “adult member” in S. 12 contemplates only the case of the male member of a family, is not correct. Further, the above said (1971) 2 Mad LJ 466 also pointed out thus:

“Cases have also held that the management of the joint family and its affairs can be taken up not only by an adult male member of the family but also by a female member of the family like the mother. When this adult mother is in actual management of the joint family properties including the undivided interest of its minor members, S. 12 prohibits a guardian being appointed in such a case as there is an adult member in management of the property. It is true a mother cannot be a coparcener in a joint family but it cannot be denied that she is a member of the joint family.”

Therefore, the management spoken of in S. 12 need not necessarily be management as kartha, but would include even the management otherwise.

13. We may also point out one other aspect. S. 12 of the Hindu Minority and Guardianship Act, as Mayne's Hindu Law (12th Edition — page 507) says, statutorily recognises the principle which was laid down consistently by several High Courts that under the Guardians and Wards Act of 1890, no guardian can be appointed, for minor's undivided interest in the joint family properties, where the property is under the management of an adult. Yet, it has been held even under the Guardians and Wards Act, a guardian can be appointed in cases where the minor is the sole surviving coparcener [vide Rakhmabai v. Sitabai, ILR (1952) Bom 455: (AIR 1952 Bomay 160)]. In Mayne's Hindu Law, 12th edition at page 508 it is stated thus:

“It is also well recognised by the courts that a guardian can be appointed in cases where the minor is the sole surviving coparcener.”

Therefore, the case of the interest of the sole surviving coparcener in the joint family property is treated as if it were a separate property. Therefore, we think that S. 8 of the Hindu Minority and Guardianship Act would also cover the case of such an interest.”

32. Thus, in view of above, it is clear that in case a minor has an interest in joint family property, it is the adult member who is either male or female, would take care of the property and there is no need for appointment of any guardian.

33. Section 8 and 12 of the Act of 1956 cannot be read in isolation. Moreso, if an application has been made under the Act of 1890 under Section 8 read with Section 10 in respect of a Hindu minor, provisions as contained in the Act of 1956 has to be considered while a guardian is

being appointed as Section 2 and Section 8(5) clearly spells out that Act of 1890 is supplemental to the Act of 1956.

34. As it is an undisputed fact that minor girl Vanshika is a Hindu, provisions of the Act of 1956 would be applicable though the application has been moved under Section 8 read with Section 10 of the Act of 1890. Both the Acts being beneficial legislation, benefits extended to a minor has to be given as per provisions of the Act as welfare of a minor is paramount consideration.

35. The appellant had moved the application seeking permission to sell the 1/4th share of undivided joint family property for higher education of the minor girl Vanshika who at present has appeared in Class XII examination and wants to pursue her career further for which substantial amount of money is needed and appellant being the natural guardian under Section 6 of the Act of 1956 can act as a manager being the adult member of joint family property and sell the share of the minor girl for her welfare.

36. Considering the facts and circumstances of the case, I find that the judgment and order dated 17.07.2025 passed by Additional Sessions Judge, Court No. 1, Muzaffar Nagar in G.C. Petition No. 249 of 2024 is unsustainable in the eyes of law and the same stands set aside.

37. The appeal stands allowed and the prayer made is granted.

(Rohit Ranjan Agarwal,J.)

March 23, 2026
V.S. SINGH