



In the Court of Additional District Judge, Devbhoomi Dwarka @ Dwarka.

Civil Misc. Application No. 35 of 2025.

APPLICANTS :-~

Valiben Dadubhai Ambaliya.

Age about : 42 years, Occupation : House-wife & Agriculture, as natural guardian, mother and next friend of her Minor Children :

- (1) Sejalben Dadubhai Ambaliya,
Age about : 17 years, Occupation : Study,
 - (2) Abhaybhai Dadubhai Ambaliya,
Age about : 15 years, Occupation : Study,
- All are residing at Dhaturiya, Taluka : Kalyanpur,
District : Devbhoomi Dwarka.

VERSUS

OPPONENTS :--

Nobody.

Application u/s.8 of the Hindu Minority and Guardianship Act, 1956 read with Sec. 29 of the Guardian and Wards Act, 1890.

.....
Appearance :--

Ld. Adv. Mr. V. H. Panchmatiya, on behalf of applicant.

Nobody on behalf of opponent
.....

~: J U D G M E N T :~

(1) The applicant Valiben Dadubhai Ambaliya has filed this application under the provisions of Section 8 of the Guardian and Wards Act, 1890 (**hereinafter referred as 'the Act'**) and prayed that she may be appointed as a guardian of the minor namely Sejalben Dadubhai Ambaliya & Abhaybhai Dadubhai Ambaliya having age of 17 years & 15 years respectively and also prayed to grant permission to sell and administer the properties having share of both the minor for the purpose of maintenance and education of them.

(2) The brief facts of the application are that :-

(A) Applicants are the legal heirs of deceased Dadubhai Ukabhai Ambaliya, who has been died on 29.06.2017. The applicant Valiben is widow of deceased Dadubhai and both minors are children of deceased Dadubhai. The deceased Dadubhai Ukabhai Ambaliya was a farmer having ancestral agricultural land and on demise of said Dadubhai and his father the applicant Valiben being widow and both the minors being children of deceased Dadubhai have become the joint co-owner of the property belongs to deceased Dadubhai. Hence, applicant Valiben and her both the minor children viz. Sejalben and Abhaybhai and Jiviben Ukabhai Ambaliya are the co-owner and having equal share in immovable properties more particularly described in Schedule "A" attached with the the petition, which is described herein below :-

SCHEDULE "A"

Description of Immovable Properties

<p>(1) All piece and parcel of agricultural land situated within the limits of Village : Dhaturiya, Taluka : Kalyanpur, District : Devbhoomi Dwarka bearing Revenue Survey No. 1041 (old Revenue Survey No. 208) of Khata No. 130 admesuring about Hecter : Are : Sq.mts. i.e. 04-58-70 Akar Rs.12-95 Ps. which is known as "Rajpar na Maragwalu" out</p>

of admesuring about Hecter : Are : Sq.mts. 01-47-71 of Revenue Survey No. 1041 paiki, which is having market price of Rs. 4,73,000/- and surrounded by

on the North :- old road facing towards Dhaturiya-Rajpara

on the South :- Agricultural land belong to Ramabhai Khimabhai Ambaliya.

on the East :- remaining land of this Survey Number.

on the West :- Agricultural land belong to Ramabhai Khimabhai Ambaliya.

(2) All piece and parcel of agricultural land situated within the limits of Village : Dhaturiya, Taluka : Kalyanpur, District : Devbhoomi Dwarka bearing Revenue Survey No. 1054 (old Revenue Survey No. 207/paiki) of Khata No. 130 admesuring about Hecter : Are : Sq.mts. i.e. 02-40-90 Akar Rs.6-5o Ps. which is known as "Vekravarlu" out of admesuring about Hecter : Are : Sq.mts. 00-64-74 of Revenue Survey No. 1054 paiki, which is having market price of Rs.1,94,500/- and surrounded by

on the North :- old road facing towards Dhaturiya-Rajpara

on the South :- Agricultural land belong to Liriben Karsanbhai.

on the East :- remaining land of this Survey Number.

on the West :- Agricultural land belong to Ramabhai Khimabhai Ambaliya.

- (B) That the said immovable properties are ancestral properties of deceased Dadubhai Ukabhai Ambaliya and his father Ukabhai Khimabhai Ambaliya and on demise of both of them now the applicant, both the minor children and Jiviben wd/o Ukabhai Khimabhai Ambaliya are became the co-owner of the said immovable properties.
- (C) That both the minor children are at present studying in and residing with her mother i.e. present applicant. That all the co-owner of the above properties have decided to sell the same for the purpose of further study, welfare and better future of the both the minors and selling the above mentioned properties is in the interest of both minors. Since, minor children Sejalben

& Abhaybhai are minors, the applicant has filed the application to appoint her as a guardian of the minor and permit her to administer and sell the undivided share of the minor in the above mentioned property as natural guardian, mother and next friend of both the minor.

(3) The public notice was issued in Devbhoomi Dwarka edition of daily news papers Divya Bhaskar but no one appeared before Court for contesting the present petition. Hence, no one has raised any objection against the prayer of the present petition. Hence the evidence produced by the applicant remains unchallenged.

(4) From the above referred submissions of the Ld. Advocate for the applicant, following points emanate for determination :~

1. Whether the applicant proves that she is entitled to get relief as prayed for ?
2. To what relief ?

(5) My findings on the aforesaid points are as under for the following reasons:~

1. In the affirmative.
2. As per final order.

~: R E A S O N S :~

Point No.1:~

(6) I have heard the Ld. Advocate for the applicant. Read the application, affidavit and the documentary evidences. I have also gone through the oral as well as the documentary evidence.

(7) Before deciding the present application, I would like to quote here the settled provision of law that when the person other than Collector

or the guardian appointed by Will or instrument has been appointed or declared by the Court to be a guardian of the property of the Ward. He shall not without previous permission of the Court mortgage or charge or transfer by sale, gift, exchange or otherwise any part of the immovable property of his Ward or lease any part of their property for a term exceeding five years or for any term exceeding more than one year, the date on which Ward will ceased to be a minor. Further, when the Father of the child was recognized as natural guardian, in the absence of mother, absolutely there is no need for him to get himself appointed as guardian by the Court for the purpose of selling the immovable property of the minor. what is required under **Section 8(2)** of the Hindu Minority and **Guardianship Act, 1956**, is only a permission from the Court to sell the immovable property of the minor. The Hon'ble High Court of Gujarat in case between **Jagrutiben Dharmeshbhai Suhagiya Vs. None, First Appeal No. 4894 of 2022, decided on 13.01.2023** has in para : 8 has observed that :-

"8. It appears from the law laid down by this Court that as far as Section 8 of the Hindu Minority & Guardianship Act, 1956 is concerned, while the same provides that the natural guardian shall not, without previous permission of the Court, alienate any immovable property of a minor, the learned Bench has differentiated between the property of a minor and the undivided interest of a minor in the joint family property. It clearly appears that the learned Coordinate Bench has laid down the law, which is still in force, as much as it was on the date of the judgement that 'the restrictions' contained in Section 8 i.e. the requirement of obtaining previous permission of the Court before alienating immovable property of a minor would not apply in respect of an undivided interest of a minor in joint family property and whereas the Manager or Karta of the joint property could alienate the property without obtaining prior permission of the Court. It is also clarified that the concept of a guardian in respect of an undivided interest of a minor in joint family property is excluded from the scope and purview of the Act and whereas the Act does not contemplate and deal with any guardians in respect of an undivided interest of a minor in a joint family property. According to the learned Coordinate Bench, Section 8

only deals with the powers and restrictions on powers of the natural guardians in respect of a minor's property, other than undivided interest in joint family property and whereas the words 'minors estate' and 'immovable property' of the minor must be construed, so as to mean, other than undivided interest of a minor in joint family property. It is also appears that gaving held as above, the learned Coordinate Bench had come to the conclusion that since the way the law does not require any permission for alenating undivided interest of a minor in joint family property, therefore, an application for such permission was misconceived."

(8) In the instant case, on filing the application by the mother, objections were called for by publication and no one has filed objection before this Court. Therefore, I am of the opinion, absolutely there is no infirmity in filing the application by the mother under **Section 8(2)** of the Hindu Minority and **Guardianship Act**, 1956, seeking permission to sell the property of the minor without obtaining orders from the Court to appoint herself as a guardian of minor. Kipping in mind the above proposition and discussions, I have to decide Point No.1.

(9) The applicant has filed her affidavit in evidence at Ex.06 and deposed on oath the facts mentioned in the application. Apart from that other co-owner Jiviben Ukabhai Ambaliya has also filed affidavit at Ex. 7 and she has also stated on oath that she has no objection if the permission as prayed for is granted.

(10) The applicant has produced the following documents in support of her case, which are as under :-

Sr. No.	Description of Documents.	Exh. No.
(1)	The abstract of Village Form No. 8-A of Khata No. 130 of Village : Dhaturiya, Taluka : Kalyanpur, District : Devbhoomi Dwarka.	09
(2)	The abstract of Village Form No. 7 of Survey No. 1041 of Village : Dhaturiya, Taluka : Kalyanpur,	10

	District : Devbhoomi Dwarka.	
(3)	The abstract of Village Form No. 12 of Survey No. 1041 of Village : Dhaturiya, Taluka : Kalyanpur, District : Devbhoomi Dwarka.	11
(4)	The abstract of Village Form No. 7 of Survey No. 1054 of Village : Dhaturiya, Taluka : Kalyanpur, District : Devbhoomi Dwarka.	12
(5)	The abstract of Village Form No. 12 of Survey No. 1054 of Village : Dhaturiya, Taluka : Kalyanpur, District : Devbhoomi Dwarka.	13
(6)	The abstract of Village Form No. 6 (Hakkpatrak) of Village : Dhaturiya, Taluka : Kalyanpur, District : Devbhoomi Dwarka.	14
(7)	The abstract of Village Form No. 6 (Hakkpatrak) of Village : Dhaturiya, Taluka : Kalyanpur, District : Devbhoomi Dwarka.	15
(8)	The attested copy of death certificate of deceased Dadu Uka	16
(9)	The attested copy of birth certificate of Sejal Dadu Ambliya.	17
(10)	The attested copy of birth certificate of Abhay Dadu Ambaliya.	18
(11)	The attested copy of Adharcard of Sejal Dadu Ambaliya.	19
(12)	The attested copy of Adharcard of Abhay Dadu Ambaliya.	20
(13)	The paper cutting of Public Notice published in News Papers.	M-5/1

(11) It becomes crystal clear from the abstract of Village Form No.7/12 and 8-A and other abstract of revenue record that the above stated properties are running in the joint names of both the minor and other co-owner and it also appears that both the Minors have very meager share in the said properties. As per Birth Certificates of minors it appears that they

both are minor and on perusal of the death certificate of their father Dadubhai, it is also established that the father of both the Minor is no more and being the natural guardian, mother and next friend of both of them their mother i.e. the present applicant Valiben is taking care for the maintenance and education of minor. The applicant has filed this application to appoint her as a guardian of both the minor and to grant permission to sell undivided share of the minors in properties described above. The entire evidence on record produced by the applicant remained unchallenged as nobody has come forward to contest the application, though notice was published in daily newspaper. The other co-owner has also not taken any objection against the relief prayed by the applicant on the contrary she has given her consent by way of filling affidavit. Thus, considering the genuineness of the financial need to the applicant for the welfare of the minors in absence of any objection from any relatives or co-owner or any other persons, I have no reason to disallow this application, hence I answer Point No.1 accordingly in the affirmative and in the interest of justice following final order is passed :--

O R D E R

1. Civil Miscellaneous Application No. 35 of 2025 is hereby allowed.
2. The applicant viz. Valiben Dadubhai Ambaliya is hereby permitted to administer and sell the share of minor Sejalben Dadubhai Ambaliya and Abhaybhai Dadubhai Ambaliya in the properties describe here-in-above.
3. However, the applicant is directed to sell the said property at the market rate. She will not sell the said property in less than the present market value and the share of the minor from the consideration

which she will receive by such sale, will be invested in the fixed deposit in any nationalized bank in the joint name of the applicant and minor till the minor attains majority and the applicant shall not take loan, advance etc. in any manner or any amount from the concerned bank without prior permission of this Court, but the applicant shall be entitled to withdraw periodical interest accrued from the said fixed deposit amount and the petitioner is strictly directed to use the said amount for the welfare of the minors.

4. The applicant is also directed to produce xerox copy of the such document showing that FDR is made, before this Court and same shall be treated as part of the record.
5. It is further directed to the applicant will submit certificate showing the present market value of the property in question.
6. Further, the applicant is directed to file undertaking or affidavit for the compliance of the above referred conditions.
7. No order as to costs.
8. Judgment pronounced today.

Date : 13/03/2026.

(Kaushikkumar Jashvantlal Modi)
Additional District Judge, Dwarka.
Code No.GJ00597

Self