

	Filed on	:	03/07/2025		
	Registered on	:	03/07/2025		
	Decided on	:	17/03/2026		
	Duration	:	Years	Months	Days
GJJN200002922025			0	8	14

**IN THE COURT OF THE 4th ADDITIONAL DISTRICT
JUDGE, VISA VADAR**

C.M.A. No.20/2025

Exh. :-.....

APPLICANT :

Samirbhai Vrajlal Tank

Age : 29 years, Occupation : Farming,
R/o. A-201, Bhumi Empiour,
Rajput Samaj Vadi, Mavdi Chokdi,
Rajkot.

VERSUS

OPPONENT:

The State

AGP, Visavadar

Court Complex, Visavadar.

Name of Ld. Advocate	Appearance for
Mr.V.K.Jethva	Ld. Advocate for the Applicant.
Mr. V.N.Madhak	Ld. A.G.P. for State.

Application under Section 29 and 31 of the Guardian and Wards Act for appointment as guardian/manager of the person and property of Shri Kalpeshbhai who is person with mental disability.

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

(1) The present application is filed by the applicant hereinabove under Sections 29 and 31 of The Guardian and Wards Act, for appointment as guardian/manager of his brother Kalpeshbhai Vrajlal Tank. It is further stated by the applicant that his family originally belongs to Visavadar Taluka of Junagadh District and is presently residing at Rajkot, applicant's father, Late Vrajlal Keshavbhai Tank, passed away on 24/09/2015 at Rajkot, the legal heirs of the deceased are his wife Manjulaben Vrajlal Tank, daughter Jalpaben Vrajlal Tank, and sons Kalpeshbhai Vrajlal Tank and Samirbhai Vrajlal Tank (the applicant). Among them, Kalpeshbhai Vrajlal Tank, aged about 28 years, is a person with mental disability and is not capable of taking care of himself or managing legal or property matters, and he resides with the applicant who looks after him. It is further stated that his family jointly owns an ancestral residential property bearing City Survey No. 2905-A admeasuring 66 sq. meters situated at Visavadar, which stands recorded in the joint names of the family members, as per the family arrangement, the legal heirs are required to execute a relinquishment deed regarding the said property; however, since Kalpeshbhai Vrajlal Tank is mentally disabled and incapable of performing legal formalities, it has become necessary to appoint a guardian/manager to act on his behalf, applicant has obtained a medical certificate from the competent authority confirming his mental disability. Therefore, under Sections 29 and 31 of the Guardian and Wards Act, the applicant has filed the present application requesting the Court to appoint him as the

guardian/manager of Kalpeshbhai Vrajlal Tank and his property so that he may complete the necessary legal and official procedures, including execution of the relinquishment deed before the Sub-Registrar, Visavadar, and other related proceedings before government or semi-government offices.

(2) Notice of the present application was duly served upon the opponent. Ld. A.G.P. appeared and filed written objections vide exh.22. As per the order passed below Exh.1, a public notice was published at the cost of the applicant in the daily newspaper “**Jaihind**” dated 16/07/2025, which is produced on record at Exh.6, inviting objections, if any, to the appointment of the applicant as guardian/manager of Kalpeshbhai Vrajlal Tank. Despite such publication, apart from the present opponent, no person has appeared to raise any objection or to controvert the case put forward by the applicant.

(3) In support of the averments made in the application, the applicant has produced the following oral as well as documentary evidence:

Oral Evidence of the Applicant

Sr. No.	Exhibit	Particulars
1.	8	Affidavit for examination in chief of applicant.

Documentary Evidence of the Applicant

Sr. No.	Exhibit	Particulars
1.	6	"Jaihind" newspaper in which Public Notice is published.
2.	11	Schedule H of the property.

3.	12	Disability Certificate.
4.	13	Certificate of appointment of Legal Guardian by Collector, Rajkot.
5.	14	Certificate of Mental Retardation for Government Benefits issued by Civil Hospital Junagadh.

(4) Thereafter, the learned advocate for the applicant filed a closing pursis at Exh.-15. On the side of the opponent, no one appeared to oppose the present application, nor any oral or documentary evidence produced on behalf of the opponent. Today an affidavit of legal guardian Manjulaben has been produced by the applicant side. The applicant has also produced Registered Agreement of Renunciation of the applicant and other family members and had also produced medical papers regarding illness of the natural guardian Manjulaben who is the mother of the ward.

(5) Considering the affidavit of the applicant, the certificate regarding mental retardation placed on record, and the other documentary evidence available on record, the following points arise for my determination:

Points of Determination

1.	Whether it is in the interest of Kalpeshbhai Vrajlal Tank to appoint applicant as guardian as prayed for ?
3.	What order ?

(6) My findings to the above points are as under:-

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

: REASONS :-

Points of Determination No.1 :

(7) I have heard the learned advocate for the applicant and Ld. A.G.P. and have also perused the averments made in the application as well as the affidavits filed on record reiterating the facts stated therein. Though on last date the Ld. Advocate for the applicant praye for time to produce new documents, today it is submitted by the Ld. Advocate that he is not intending to produce any further documents and matter be taken up for the judgment.

(8) The learned advocate for the applicant has orally argued that the present application has been filed under Sections 29 and 31 of the Guardian and Wards Act. It is further submitted that earlier an application was filed under the Mental Health Act; however, since the said Act has been repealed, the present application has been preferred. It is argued that Kalpeshbhai Vrajlal Tank, who is the real brother of the applicant, is mentally disabled and is not in a position to execute or register any document. It is further submitted that although the Collector has the power to appoint a guardian, for managing the property of a mentally disabled person, the Court is the only authority to appoint a guardian for the purpose of dealing with or transferring property. It is also submitted that as per Section 35(3)(kh) of the Registration Act, if a person is a minor or of unsound mind, he is not competent to execute or register a document. The learned advocate further submitted that the disability certificate of Kalpeshbhai has also been produced on record, a public notice was also published inviting objections. It is further submitted that

the applicant is the real brother of Kalpeshbhai and that their mother, Manjulagauri, often remains ill. The property in question is ancestral property. Hence, it is prayed that the present application be allowed.

(9) Ld. A.G.P. objected against the application. But none of the objections have any merits.

(10) It appears from the record that, in support of his case, the applicant has examined himself at Exh.8 and has reiterated the facts stated in the application. It further appears that the applicant has produced the Certificate of Mental Retardation for Government Benefits of Kalpeshbhai Vrajlal at Exh.14 and the Disability Certificate at Exh.12. Upon perusal of these documents, it reveals that Kalpeshbhai Vrajlal Tank suffers from about 50% permanent disability relating to mental retardation. However, it is also evident from the record that vide Exh.13, the Certificate of Appointment of Legal Guardian issued by the Collector, Rajkot, has been produced. As per the said certificate, Manjulagori V. Tank, the mother of Kalpeshbhai Vrajlal Tank, has already been appointed as the legal guardian of Kalpeshbhai Vrajlal Tank. Thus, the record clearly shows that a competent authority has already appointed the mother a natural guardian as guardian of the ward.

(11) In the present case, the applicant, who is the brother of the ward, has filed the present application seeking his own appointment as guardian for administration, renunciation or for necessary formalities in government and other offices as the

health of the guardian appointed by the collector is not good. For that he produced medical papers on record. Today the applicant has placed on record affidavit of consent from the already appointed guardian, namely Manjulagori V. Tank. Moreover, satisfactory explanation has been offered by the applicant as to why it has become necessary to appoint another guardian in place of, or in addition to, the natural mother who is alive and has already been duly appointed as guardian by the competent authority. There is evidence in the form of medical papers of ill healths of mother of the ward. In such circumstances, when the natural guardian mother who is alive and has already been appointed as legal guardian by the Collector, had also consented for the filing of the present application by the applicant seeking his own appointment as guardian, then this court has no reason to believe that appointment of the present application is in the interest of the ward.

(12) Further, by the order passed below Exh.1, this Court had granted an opportunity to the applicant to clarify the applicability of the provisions of the Mental Act and Section 14 of the Rights of Persons with Disabilities Act, and to explain whether the present application under Sections 29 and 31 of the Guardian and Wards Act is maintainable in view of the fact that the Collector has already appointed the mother as guardian of the ward. The applicant was also directed to clarify whether, in such circumstances, this Court has the jurisdiction to entertain and decide the present application and whether the appointment of another guardian is legally permissible. In response to the said order, today the applicant has produced List of documents vide

20. Thereby the applicant has provide clarification and legal justification on the aforesaid aspects. The applicant has also demonstrated the compelling reasons and necessities for the appointment of another guardian evenwhen a guardian has already been validly appointed by the competent authority and is alive.

(13) In view of the above discussion, this Court is of the considered opinion that the applicant has established the maintainability and necessity of the present application. The applicant has also clarify the legal basis for seeking appointment of any other person as guardian despite the existence of an already appointed guardian by the collector. Therefore, the **Points of determination no.1 is answered in the affirmative.**

Point of determination no.2 :-

(14) As discussed and decided in above issue no. 1, the following final order is passed to answer Points of determination no.2.

:- ORDER :-

1. The present Civil Miscellaneous Application No. 20/2025 is hereby **Allowed**. The present applicant **Samirbhai Vrajlal Tank**, R/o. A-201, Bhumi Empire, Rajput Samaj Vadi, Mavdi Chokdi, Rajkot is appointed as the legal guardian of Kalpeshbhai Vrajlal Tank for administration, renunciation and for all necessary steps that are required for the benefits of the ward.

2. There shall be no order as to cost.

Signed and pronounced in the open Court, today on **this**
17th day of March, 2026.

Place: Visavadar.
Date :17/03/2026

(Hetalkumar Vinodray Joshi)
4th Additional District Judge,
Visavadar,
UID No.GJ00599.