

Received on : 17/03/2026.

Registered on : 17/03/2026.

Decided on : 07/07/2026.

Duration : 0Y. 2M. 26D.

**Exh. No.20**

**IN THE COURT OF 3<sup>RD</sup> ADDITIONAL DISTRICT JUDGE,**

**AT : RAJKOT.**

**Civil Misc.Application (Guardian) No. 25 of 2026**

| <b><u>APPLICANT</u></b>                                                         | <b><u>AGE</u></b> | <b><u>OCCUPATION</u></b> |
|---------------------------------------------------------------------------------|-------------------|--------------------------|
| Tirth Jay Majethiya<br>R/o. Mu. 46, Prahalad Plot, Dhankivali<br>Sheri, Rajkot. | 38                | -                        |

**Subject :-** Application under the Provision of Sec. 8 of Hindu Minority & Guardianship Act and as per the provisions of The Guardian and Wards Act, seeking permission to sell the property of minor Minor Tirth Jay Majethiya.

**Appearance :**

**Learned Advocate for the applicant : Mr. V. P. Goda**

**::: JUDGMENT :::**

1) By filing the present application, the applicant **Neha Jay Majethiya**, who is mother & natural guardian of **Minor Tirth Jay Majethiya** has prayed to permit her to sale the property in which her **Minor son Tirth Jay Majethiya** having **25%** undivided right, share and interest.

2) By filing the present application, the applicant has stated that :

She is mother of **Minor Tirth Jay Majethiya**. She has further stated that, at present, minor residing with her. She has also stated that; by way of inheritance i.e. by virtue of C.M.A. No.1724/2024, dtd. 21/09/2024 minor having 25% undivided right, share and interest in a House Property admeasuring 75-94 Sq. Mtrs. of City Survey Ward No.5, City Survey No.800 of Rajkot. She has further stated that, for the educational, due to financial necessity of family and as the property is unproductive / difficulty to maintain, it become necessary and beneficial for the welfare of minor to sell the above mentioned property. Further, she has stated that, the property will be sold at the prevailing market value Rs.52,60,000/- to (1) Kalyan Madanbhai Adhikari (2) Mamoni Kalyan Adhikari and the sale proceeds will be used strictly for the welfare and benefit of the minor and deposited Rs.13,15,000/- or as directed by this Hon'ble Court. Thus, on the above mentioned facts, the applicant has filed the present application sought relief to grant permission to sell the property belonging to minor **(25% share of her inheritance property)** described above and to pass such other and further orders at this Hon'ble Court may deem fit and proper in the interest of justice.

3) After filing this application, a public notice was issued by the Court in the daily news paper - **"Akila"**, inviting objections if any (copy of which is produced vide **Exh.18**), however, no objections were offered in response to the said public notice.

4) Then-after applicant has submitted oral as well as documentary evidence in support of the application, which are as under :

| <i>Sr. No.</i>                   | <i>Exh.</i> | <i>Particulars.</i>                                                               |
|----------------------------------|-------------|-----------------------------------------------------------------------------------|
| <i>// Oral evidence of //</i>    |             |                                                                                   |
| 1                                | 5           | Examination-in-Chief in form of Affidavit of applicant <b>Neha Jay Majethiya.</b> |
| <i>/ Documentary evidence //</i> |             |                                                                                   |
| 3                                | 8           | Copy of Birth Certificate of Minor Tirth Jay Majethiya.                           |
| 4                                | 9           | Copy of Adhar Card of Minor Trith Jay Majethiya.                                  |
| 5                                | 10          | Copy of Pan Card of Minor Tirth Jay Majethiya.                                    |
| 6                                | 11          | Copy of Adhar Card of applicant Neha Jay Majethiya.                               |
| 7                                | 12          | Copy of Pan Card of applicant Neha Jay Majethiya.                                 |
| 8                                | 13          | Copy of Registered Partition Deed No.1597, dtd. 19/04/1969.                       |
| 9                                | 14          | Copy of Heirship Certificate issued in C.M.A. No.613                              |
| 10                               | 16          | Copy of Agreement to Sale                                                         |
| 11                               | 17          | Copy of Death Certificate of Majethia Jay Girishbhai.                             |
| 12                               | 18          | Copy of Public Notice.                                                            |
| 13.                              | 19          | Closing Purshish.                                                                 |

5) Heard Ld. Advocate for the applicant and perused the documentary evidence produced on records.

6) In view of the above mentioned facts, the following points have been arisen for the determination of this application.

**::: Points :::**

1) Whether the applicant proves that; applicant **Neha Jay Majethiya proves that;** she is natural guardian of said **minor Tirth Jay Majethiya and minor having 25% undivided share in the property mentioned in para-2 of application- Exh.1** and she is entitled to get the relief as prayed for ?

2) What order ?

7) My findings to the above points are as under, for the reasons that follow :-

- 1) As discussed.
- 2) As per final order.

**::: Reasons for Points No. 1 & 2:::**

8) As both the points are interconnected with each other, I prefer to decide them altogether with a view to avoid repetition of facts and appreciation of evidence on record.

9) The applicant – **Neha Jay Majethiya** has filed his affidavit at **Exh.5** and reiterated the facts as alleged in the application Exh.1. Over and above, her affidavit, the applicant has placed on record the documentary evidence as mentioned in para-4 herein above.

10) I have carefully gone through the oral as well

as documentary evidence produced on record by the applicant – **Neha Jay Majethiya.**

Upon perusing the documentary evidence produced on record at **Exh.8**, which Birth Certificate of minor Tirth Jay Majethiya, it appears that D.O.B. of minor is 30/08/2014 and therefore, it transpires that Tirth Jay Majethiya is the minor. Further, in the said certificate the name of present applicant is shown as mother. Therefore, there is no reason to disbelieve that; the present applicant is mother and natural guardian of minor Tirth Jay Majethiya and Tirth Jay Majethiya is minor.

Further, from the Partition Deed & Heirship Certificate Exh.13 to 15 it appears that; Jayantilal V. Majethiya (Fore Grand Father of Minor Tirth) had obtained the subject property by virtue of the partition and after the death of Jayantilal, grand father of minor Tirth, namely Girishbhai Jayantilal Majithiya had obtained the above property by virtue of Heirship Certificate issued in C.M.A. No.613/2010. Thereafter, after the death of Girishbhai Jaynatilal Majethiya, i.e. grand father of minor Tirth, Minor Tirth, the present applicant and her brother-in-law Ajay Girishbhai Majethiya had jointly obtained Heirship Certificate by filing C.M.A. No.1724/2024 (**Minor & present applicant has been joined as Jay Girishbhai Majethiya, father of Minor Tirth & Husband of Nehaben expired**) and by virtue of that Heirship Certificate, minor Tirth Jay Majethiya having 25% undivided right, share and

interest in the subject property.

11) Now, so far as relief sought by the applicant that she should be appointed as guardian and sought permission to sell undivided 25% share of minor in an immovable property as stated above is concerned. Recently, **Hon'ble The High Court of Gujarat, Ahmedabad in R/FIRST APPEAL NO. 4894 of 2022 in case of JAGRUTIBEN DHARMESHBHAI SUHAGIYA Versus NONE**, has discussed this issue at length, whether there is requirement of obtaining permission or there is requirement of being appointed as guardian to sell the undivided share of a minor in a joint family property. The relevant para of the said judgment are reproduced hereunder :

**para -9.** It also appears that the Hon'ble Apex Court in case of Narayan Lal (supra) had, though not referred to the decision of this Court referred to herein above, yet the very view had been reiterated by the Hon'ble Court at paragraph 5 of the said decision and whereas the said paragraph is reproduced herein below for benefit:-

"5. With regard o 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 legislative 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 sections 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 Sections 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."

**Para-10.** It also appears that later decisions of learned Coordinate Benches of this Court, more particularly in case of Sankhala (Mali) Kantaben Wd/o Bharatbhai Laljibhai (supra), Kailashben W/o Keshavbhai Chhaganbhai Patel (supra), Krishnakant Maganbhai (supra) and Kantaben Jayendrabhai Savla (supra), have reiterated the very same view that there is no requirement for obtaining permission of the Court under Section 8(2) of the Hindu Minority and Guardianship Act, 1956 for alienating undivided interest

of minor in joint family property. Having regard to the law laid down by this Court and further considering that the said law has been reiterated by the Hon'ble pex Court, in the considered opinion of this Court, no further discussion on this aspect is required, except for reiterating the obvious, that is to reiterate that Section 8(2) of the Act does not require or contemplate requirement of permission of a Court to be obtained in case of alienation of undivided interest of a minor in joint family property.

10.1. It is clarified that the applicant was not required to file any application for permission under Section 8(2) of the Hindu Minority and Guardianship Act, 1956 and whereas it is also clarified that since Section 8(5) of the said Act contemplates that the provisions of the Guardians and Wards Act, 1890 shall apply to and in respect of an application for obtaining permission of a Court under sub-section (2) as referred to herein above, as if it were an application for obtaining the permission of a Court under Section 29 of the Guardians and Wards Act, 1890 and whereas since the judgement and order, which is impugned in this appeal arises from application under Section 8 of Guardians and Wards Act, 1890, the observations of the learned Coordinate Benches of this Court as well as of the Hon'ble Apex Court would be squarely applicable mutatis mutandis to the facts of the present case.

12) Hence, in given set of circumstances and in view of the above discussions, and having regard to the law laid down by Hon'ble The High Court of Gujarat & law has been reiterated by the Hon'ble Apex Court, Section 8(2) of the Act, does not require or contemplate requirement of permission of a Court to be obtained in case of alienation of undivided interest of a minor in joint family property.

13) Resultantly, I answer the **Point No.1** accordingly, and in the interest of justice, pass the following final order is passed below **Point No.2**.

**::: FINAL ORDER :::**

01. In view of the above mentioned discussions and finding of this Court, this Civil Misc. Application (Guardian) **No. 25 of 2026** is hereby disposed off with the observation that; Section 8(2) of the Act, does not require or contemplate requirement of permission of a Court to be obtained in case of alienation of undivided interest of a minor in joint family property.
02. No order as to costs.

Pronounced in the open Court today on this 7<sup>th</sup> day of July, 2026.

Date :- 07/07/2026

Place:- Rajkot.

//A.M.Thakar//

**[Ikramkhan Basirkhan Pathan]**

3<sup>rd</sup> Additional District Judge,  
Rajkot. [UIC – GJ000614].