

- 5 Hamidbhai Mahammadbhai Sarkar
Aged adult, Occu. Agriculture,
- 6 Nasiraben Mahammadbhai Sarkar
Aged adult, Occu. Housework,
- 7 Sayrabanu Mustafabhai Sarkar
Aged adult, Occu. Housework,
- 8 Jasmin Mustafabhai Sarkar
Aged adult, Occu. Housework,
Resi. at - Nearby Badshahbava Dargah, Halol,
Ta-Halol, Dist-Panchmahals.
- 9 Vasim Mustafa Sarkar
Aged adult, Occu. Agriculture,
Resi. at - Limdi Faliya,
Halol, Ta.Halol, Dist.Panchmahals.
- 10 Rohina Mustafa Sarkar
Aged adult, Occu. Housework,
Resi. at - Mahammdi Street, Halol,
Ta.Halol, Dist.Panchmahals.
- 11 Karishma Mustafa Sarkar
Aged adult, Occu. Housework,
Resi. at - Kothi Faliya, Halol,
Ta.Halol, Dist.Panchmahals.
- 12 Bibiben Wd/o Ibrahim Ismail
Aged adult, Occu. Housework,
- 13 Nasim D/o Ibrahim Sarkar
Aged adult, Occu. Housework,
Resi. at - Motu Faliyu, Halol,
Ta.Halol, Dist.Panchmahal
- 14 Farida D/o Ibrahim Sarkar
Aged adult, Occu. Housework,
- 15 Mahammad Ibrahim Sarkar
Aged adult, Occu. Agriculture,
- 16 Nazir D/o Ibrahim Sarkar
Aged adult, Occu. Agriculture,

Opponent Nos.12, and 14 to 16 are Resi. at - Limdi Faliyu,
Halol, Ta.Halol, Dist.Panchmahal

Subject :- Application u/s.7 and 29 of the Guardian and Wards

Act, 1890 for obtaining certificate of guardianship.

Appearance :

Mr. K. D. Malek, Ld. Advocate for the applicants.

Mr. A. D. Parmar, Ld. Advocate for the opponents.

::: Judgment :::

1). The applicant No.1 Reshmaben Wd/o Tufelbhai Mahammadbhai Sarkar being mother of present minor applicant No.2, has preferred this application to appoint her as a guardian of her minor child i.e. present applicant No.2 u/s.7 & 29 of the Guardian and Wards Act, 1890 who is minor son of herself as father of present minor child and husband of present applicant No.1 Tufel Mahammadbhai Sarkar died on 27-09-2019.

2). The brief facts of the application are as under :-

That the present applicant No.1 Reshmaben has submitted that land bearing R. S. No.748 of A/c No.40, admeasuring 02-21-57 [Hec.-Are-Sq. mtr.], akar Rs.14.19, located at Village Halol, Ta-Halol, Dist.Panchmahal is co-ownership land of Tufelbhai Mahammadbhai Sarkar who is husband of present applicant No.1 and father of present applicant No.2. Further Tufelbhai died on 27.09.2019 and as per inheritance right applicant Nos.1 and 2 are becomes co-owners. As per order passed by the Collector,

Panchmahal from the above land, land admesuring 5500 Sqr. Mtr. and another land admeasuring 5500 Sqr. Mtr. were converted into old tenure land and entry to that effect has been made by way of mutation entries No.29949 and 29950 respectively. It is also submitted by the applicant No.1 that she is in monetary need for the maintenance, educational as well as for welfare of her said child as she will have to spend huge amount towards the maintenance and the educational purpose of her child and for development and irrigation of other agricultural land. She has specifically submitted that she is in need to sell such agricultural land bearing R. S. No.748 of A/c No.40, admeasuring 02-21-57 [Hec.-Are-Sq. mtr.], akar Rs.14.19, located at Village Halol, Ta-Halol, Dist.Panchmahal for the said purposes. That the names of present applicants are there in the revenue record being its owners and possessors after sad demise of her husband and hence, if she may be permitted to sell the said land, for above important purposes for the bright future of her minor child will be served and if she would not be permitted to sell it, the question of their maintenance and the education and welfare of her minor child would arise. Therefore, the applicant No.1 has preferred this

application and prayed to appoint her being legal and natural guardian of her minor child along with a prayer to permit her to sell the above stated agricultural land bearing R. S. No.748 of A/c No.40, admeasuring 02-21-57 [Hec.-Are-Sq. mtr.], akar Rs.14.19, located at Village Halol, Ta-Halol, Dist.Panchmahal for their maintenance, educational and welfare purpose of her minor child.

3). After filing this application, a public notice was issued by the Court in the daily news paper - "Divya Bhaskar" dated 16-10-22 at Exh.30 and thereby, all the opponents (co-owners) have submitted their common consent letter at Exh.7 declaring that they have no any objection in case of allowing present application.

4). Then after applicant No.1 has submitted oral as well as documentary evidence in support of the application; which are mentioned as under :

<i>Sr. No.</i>	<i>Exh./ Mark</i>	<i>Particulars.</i>
<i>// oral evidence of \ \</i>		
<i>1</i>	<i>9</i>	<i>An affidavit of applicant No.1.</i>
<i>// documentary evidence \ \</i>		
<i>1</i>	<i>11</i>	<i>Certified copy of village form no.7 of A/c. No.40 of R. S. No.748.</i>
<i>2</i>	<i>12</i>	<i>Certified copy of village form no.12 of A/c No.40 of R. S. No.748.</i>
<i>3</i>	<i>13</i>	<i>Certified copy of village form no.8-A of A/c. No.40 of R. S. No.748.</i>

4	14	<i>Certified copy of village form no.6 of A/c. No.40 of R. S. No.748 (mutation entry No.29949).</i>
5	15	<i>Certified copy of village form no.6 of A/c. No.40 of R. S. No.748 (mutation entry No.29950)</i>
6	16	<i>Certified copy of village form no.7 of A/c. No.41 of R. S. No.749.</i>
7	17	<i>Certified copy of village form no.12 of A/c. No.41 of R. S. No.749.</i>
8	18	<i>Certified copy of village form no.8-A of A/c. No.41 of R. S. No.749.</i>
9	19	<i>Certified copy of village form no.7 of A/c. No.234 of R. S. No.78 Paiki 1/ paiki 1.</i>
10	20	<i>Certified copy of village form no.12 of A/c. No.234 of R. S. No.78 Paiki 1/ paiki 1.</i>
11	21	<i>Certified copy of village form no.8-A of A/c. No.234 of R. S. No.78 Paiki 1/ paiki 1.</i>
12	22	<i>Birth Certificate of minor applicant No.2.</i>
13	23	<i>Death Certificate of Tufelbhai Mahhamdbhai Sarkar</i>
14	24	<i>Adhar Card of applicant No.1.</i>
15	25	<i>Adhar Card of minor applicant No.2.</i>
16	26	<i>Pedigree.</i>
17	27	<i>Original Death Certificate of Tufelbhai Mahhamdbhai Sarkar.</i>
18	28	<i>Original Birth Certificate of minor applicant No.2.</i>
19	29	<i>Original Pedigree.</i>

5). LAs for the respective parties have submitted their separate closing pursis at Exh.31 and Exh.32. Heard Ld. Advocates for the respective parties. I have also perused the documents and 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 No.1 is entitled to be appointed as guardian of her minor child ?
- 2). Whether the guardianship of her minor child to the applicant No.1 will be for the welfare of the minor child ?
- 3). What order ?

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

- 1). In affirmative.
- 2). In affirmative.
- 3). As per final order.

::: Reasons :::

Points No. 1, 2 & 3 :-

- 8). As all 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). That the present applicant No.1 – Reshmaben Wd/o Tufelbhai Mahammadbhai Sarkar has filed her affidavit at Exh.9 reiterating the facts as alleged in the application hence, they are not repeated here.
- 10). I have carefully gone through the oral as well as documentary

evidence produced by the applicant No.1 – Reshmaben Wd/o Tufelbhai Mahammadbhai Sarkar. Upon perusing the documentary evidence produced on record, it reveals that applicant No.1 – Reshmaben Wd/o Tufelbhai Mahammadbhai Sarkar is the only responsible person towards her family and for the best taking care and future of her minor child as stated above after sad demise of her husband. Looking to the original death certificate produced herein it also transpires that her husband Tufelbhai died on 27-09-19 and thereafter, the names of her minor child is entered in the revenue records through herself being legal guardian. It also appears that nobody is there except present applicant No.1 - Reshmaben Wd/o Tufelbhai Mahammadbhai Sarkar for maintenance of herself as well as her minor child and also for educational and welfare of her said minor child. Therefore, she would like to sell said agricultural land bearing R. S. No.748 of A/c No.40, admeasuring 02-21-57 [Hec.-Are-Sq. mtr.], akar Rs.14.19, located at Village Halol, Ta-Halol, Dist.Panchmahal. Moreover, it is pertinent to note that applicant No.1 is taking care and looking interest of her said

minor child whereas, all the Opponents (co-owners) have appeared and filed their common consent letter at Exh.7 declaring that they have no any objection in case of allowing present application after publishing a public notice in the daily news paper by the Court for being appointed the present applicant No.1 - Reshmaben Wd/o Tufelbhai Mahammadbhai Sarkar as a legal guardian of her minor child and to sell the said land as she has prayed for in the application for the said purpose. Therefore, the applicant No.1 - Reshmaben Wd/o Tufelbhai Mahammadbhai Sarkar deserves to be appointed being a guardian of her minor child as stated above.

Moreover, it is also pertinent to note that chapter III of the Family Court Act, 1984 regarding the jurisdiction of the Family Court, where in Section 7 clearly states that the Family Court has jurisdiction to conduct the suit or proceedings in relation to the guardianship of the person or custody of the person or accounts to each minor, so family court has powers to appoint guardian in respect of minor. Further Section 8 of the Family Court Act states that the

jurisdiction of the District Court is barred when Family Court has been established. But in the reported case authority - A.I.R. 1988, Orissa, 61 in a case of Sushikoor Nayak v/s. Jalgem Family Court Ravkela & another, wherein the Hon'ble High Court of Orissa has held that the Family Court has no jurisdiction for appointment of guardian or manager in respect of the property of minor, and hence relying upon the principles laid down in the above citation too, I am of the opinion that this court has powers to appoint the present applicant No.1 - Reshmaben Wd/o Tufelbhai Mahammadbhai Sarkar being a legal guardian of her said minor child i.e. present applicant No.2.

- 11). It also appears from the records that interest and welfare of the minor child lies in the hand of present applicant No.1 and his mother Reshmaben Wd/o Tufelbhai Mahammadbhai Sarkar only, therefore, the applicant No.1 - Reshmaben Wd/o Tufelbhai Mahammadbhai Sarkar deserves to be appointed being a legal guardian of her minor child. Thus, this court is empowered to appoint the present applicant No.1 -

Reshmaben Wd/o Tufelbhai Mahammadbhai Sarkar being a legal guardian of her said minor child under the provision of Guardian & Wards Act, 1890, in given set of circumstances and in view of the above facts and circumstances, I do not find any hindrance or any legal hitch in granting the prayer sought for issuing guardianship certificate by the applicant No.1 here-in-this case. Thus, the present application deserves to be allowed and I answer points No.1 and 2 in the affirmative accordingly and with respect to point No.3, the following order is passed in the interest of justice :-

::: Order :::

1 This Civil Misc. Application (Guardian) No.224 of 2022 is hereby granted.

2 It is hereby declared that applicant No.1 - Reshmaben Wd/o Tufelbhai Mahammadbhai Sarkar is appointed being the legal guardian of her said minor child i.e. present applicant No.2.

3 The guardian is bound by the provisions of Guardian and Wards Act and the rules made thereunder and by such order as the Court make from time to time.

4 The applicant No.1 is permitted to sell the agricultural land bearing R. S. No.748 of A/c No.40, admeasuring 02-21-57 [Hec.-Are-Sq. Mtr.], akar Rs.14.19, located at Village Halol, Ta-Halol, Dist.Panchmahal holding share of her minor child as described in the application and according to due procedure of law only.

5 All other joint holders shall be consulted before selling the land.

6 However, the applicant No.1 is directed to sell the said property at the highest rate. She will not sell the said property in less than the present market value and the share for the minor child from the consideration which she will receive by such sell, will be invested in the Fixed Deposit in any Nationalized Bank in the joint names of the applicants till the minor attains majority as per Guardian and Wards Act, 1890 and the applicant No.1 shall not take loan, advance etc. in any manner or any amount from the concerned Bank without prior permission of this Court but the applicants shall be entitled to withdraw the periodical interest accrued from the said fix deposit amount and the applicant No.1 is strictly directed to use the said amount for the welfare of the minor.

7 The applicant No.1 is directed to produce the copy of such document showing the FDR is made, before this Court and the same

shall be treated as part of the record.

8 It is further directed to the applicant No.1 that she will submit the certificate showing the present market value of the property in question.

9 The applicant No.1 is directed to produce the true copy of the sale deed of the said land in this Court.

10 The applicant No.1 is further directed to file her undertaking on affidavit for the compliance of the above referred conditions.

11 The applicant No.1 is also directed and ordered to furnish the security bond as nearly as may be in the prescribed form for Rs.10,000/- (Rupees Ten Thousand Only).

12 The Certificate of Guardianship be issued in favour of the applicant No.1 accordingly on her filing the undertaking on affidavit and bond as desired above.

13 No order as to costs.

Pronounced in the open court today on
this 31st day of January, 2023.

Place: Halol.
Date : 31-01-2023.

V.T. Desai

[Lilabhai Govindbhai Chudasama]
3rd Additional District Judge,
Panchmahals at Halol.
(Judge Code : 00559)