

MHAK010018952025



Presented on : 09.06.2025  
Registered on : 10.06.2025  
Decided on : 23.03.2026  
Duration : 00Y 09M 14D

**IN THE DISTRICT COURT AT AKOLA.**

( Presided over by Smt. Sangita R. Pahade, District Judge II )

**CIVIL M.A. NO.313/2025.**

**EXH.**

1. **Shama Kausar Majid Kha**  
Age :54 years, Occ. : Household,
2. Aleena Tahrim Majid Kha,  
Age : 15 years, Occ. : Education,  
through Natural Guardian Mother/  
applicant No. 1,  
Both R/o.Hazi Nagar, Borgaon Manju,  
Tq. Dist. Akola. ... Applicants.

- Versus -

...Nil...

... Non-applicant.

=====  
Mr.PS. Rokade, Ld. Advocate for the applicants.  
=====

**JUDGMENT**

( Delivered on this 23<sup>rd</sup> March, 2026)

- 1) This is an application under S.29 of Guardian and

Wards Act, 1956.

- 2) It is contended by the applicant that applicant No. 1 is mother of applicant No. 2. She is natural guardian of the applicant No. 2. Marriage of applicant No. 1 was solemnized with Majid Khan Nabbu Khan, he was agriculturist and doing labour work. He died on 02.08.2020.
- 3) It is further contended by the applicants that they have ancestral agricultural land, situated at Borgaon Manju, bearing Gat No. 407/2 area 81 R. After death of Majid Khan, the applicant No. 1 and applicant No. 2 filed application for succession certificate. As per order passed by the Civil Judge (Jr.Dn.), Akola, their name are mutated in 7/12 extract.
- 4) It is further contended by the applicant that after the death of Majid Khan, they are facing financial difficulty. They have no source of income. They have no other option except to sale the property. They are in need of money to repay the loan amount and for education expenditure of applicant No. 2. The applicant No. 2 is minor and her age is 15 years. On these grounds, they prayed for permission to sale the property.

- 5) Public citation was issued by order below Ex.1. The relevant newspaper is filed on record which reveals that the public notice was published in the newspaper “Dainik Darshan” dated 11.10.2025 calling objection from the public in general to the transaction of sale of the property described in the petition. It is apparent from the record that any objection is not received in pursuance of such notice. As such, the matter is not contested one.
- 6) The applicant has filed her affidavit of evidence in support of the application at Ex.10. Applicant has relied on documents filed with list Ex.3.
- 7) Heard Ld. Advocate for the applicant. Perused the record and documents. Following points arise for my determination and my findings with reasons are as follows :-

<b><u>Sr.No.</u></b>	<b><u>Points</u></b>	<b><u>Findings</u></b>
1.	Whether the applicants can be allowed to sell out the property situated at Borgaon Manju, bearing Gat No. 407/2, area 81R within the jurisdiction of Akola Municipal Corporation which includes share of applicant No.2 ?	In the Negative
2.	What order ?	As per order.

## **REASONS**

### **As to point no.1 : -**

- 8) Application is made by the mother of the minor as her natural guardian under S.29 of the Act. It is submitted that after the death of father of the applicant No.2, the applicant No. 1 and 2 are owner of the said field. They want to sale the said property for the sake of upliftment and betterment of the minor and for repayment of loan. The applicant has filed the necessary documents like 7/12 extract, Aadhar Cards.
- 9) Now it has to be seen whether applicant No. 1 Shama Kausar Majid Khan is natural guardian of applicant No. 2, subsequent to demise of her husband. In this respect, law laid down in Dadu **Nemisha Balwan Vs. Sadik Malikso Bargir and Ors.** reported in Manu/MH/0448/2020 will be useful wherein it is observed by the Hon'ble High Court relying upon Sec. 361 of the Mohammedan Law by Mulla which provide that mother, brother, uncle and all relations other than father and father's father are defacto guardian unless they are appointed executors by the Will of father or father's father. As per Mohammedan Law, the father is recognized as a natural guardian

under all the Schools prevailing under Mohammedan Law. In absence of father, father's executor can act as a legal guardian. The executor is a person who is appointed by father or grand father to act as guardian of his minor child on his behalf. In absence of father or his executor, paternal grandfather or paternal grandfather's executor can act as a legal guardian. The father may entrust the custody of his minor children to the executor appointed by his will.

- 10)** As per Mulla Principles of Mohammedan Law (21st Edition), the mother is not a de jure guardian and, therefore has no right to sell the interest of her minor children in immovable property. Such a transaction is not merely voidable but void.
- 11)** In light of the aforesaid position of law emerging, the mother can not act as a legal guardian, in absence of her status as executor or executrix. As such, the permission solicited in this regard on the basis of heirship certificate can not be granted in the given facts and circumstances of the case. Since, the mother under Mohammedan law, can not be regarded as a legal guardian of minor children. Therefore, she has no right to sell the property of minors, unless she is appointed as executrix, as per law. Consequently, relying upon aforesaid decision, the prayer in this petition can not be legally entertained. Hence, I have answered the point no. 1

accordingly and in answer to point no. 2, pass the following order-

**ORDER**

- 1] Application is hereby rejected.
- 2] Application is hereby disposed off.
- 3] No order as to costs.

Date : 23.03.2026

[ Smt. Sangita R. Pahade ]  
District Judge II, Akola

**Certificate**

I hereby certify that the contents of this PDF file are same word for word as per original order:

Name of Steno	: Shamim Sayed, Steno G-1.
Court's Name	:District Judge-2 & A.S.J., Akola
Date	: 23.03.2026
Dictated on	: 23.03.2026
Transcribed on	: 23.03.2026
Signed by P.O. on	: 24.03.2026
Uploaded on	: 24.03.2026