

MHND230002362007



**ORDER PASSED BELOW EXH. 129**

01. This application is filed on the behalf of Plaintiff No. 1 for appointing herself as guardian of minor plaintiffs No. 2-1, 2-2 namely Komal and Yogesh vide O XXXII rule 11 of the Civil Procedure Code. It is averred in the application that, original defendant namely Irabai died therefore, minor plaintiffs 2-1 and 2-2 were taken in plaint. The court was appointed their father namely Mohan Anmulwar as the guardian of minors. The father and mother of minor plaintiffs 2-1 and 2-2 have been died therefore, it is necessary to appoint the guardian for minor plaintiffs 2-1 and 2-2. The plaintiff No. 1 is '*mother's sister*' (Aunt) of minor plaintiffs 2-1 and 2-2 therefore, she is fit person for guardian.

02. This application is opposed by defendants. Deft. No. 5 contented that, this application is barred by limitation. Plaintiff No. 1 is already party to the suit. She had sufficient knowledge about the death of Mohan Anmulwar who was guardian of minor plaintiffs. Despite of sufficient knowledge, she did not filed instant application within prescribed period of limitation. There is delay of one and half year in filing this application. No application for condonation of delay filed on record, therefore application be rejected.

03. Deft. No. 2 and 7 opposed this application, contending therein that, present application is not filed within limitation. Plaintiff No. 1 can not be appointed as a guardian of minor plaintiffs No. 2-1 and 2-2 therefore application be rejected.

04. Perused the application, heard Ld. counsel for plaintiffs Shri. J. N. Wader and Ld. counsel for Deft. No. 2 and 7 Shri. H. M. Aspatwad and Ld. counsel Shri. S. S. Gopchade for Deft. No. 5. From perusal of record it appears that, Shri. Mohan Anmulwar was guardian of minor plaintiffs 2-1 and 2-2. He died on 11/04/2018. The mother of minor plaintiff namely Irbai also died. The mother of minor plaintiffs No. 2-1 and 2-2 is real sister of plaintiff No. 1 Pochabai. Plaintiff No. 1, deceased Irbai and Plaintiff No. 3 Ramabai filed this suit against defendants for the relief of partition and separate possession in their ancestral property, therefore interest of Pochabai and minor plaintiffs No. 2-1 and 2-2 is similar. There is no adverse interest of Pochabai against interest of minor plaintiffs. According to order XXXII rule 11 of the Code of Civil Procedure the court has power to appoint new guardian in case of death of guardian of the minor. There is no limitation for appointment of guardian, as it is duty of court to see who is fit person to be appointed for the representation to the minor in the suit. Therefore I do not agree with the submissions of Ld. counsel for the defendants that, this application is not filed within period of limitation. The plaintiff No. 1 is capable to protect the interest of minor as far as present suit is concerned therefore, she is fit person to proceed with the suit along with herself for the

relief sought in the suit therefore, I pass upcoming order:

**ORDER**

1. Application is hereby allowed.
2. Plaintiff No. 1 Pochabai Alure is hereby appointed guardian of plaintiffs No. 2-1 and 2-2. And she shall be authorized to proceed with the suit on the behalf of minor plaintiffs 2-1 and 2-2.
3. The plaintiff shall filed copy of amended plaint on next date.

Date :- 07/12/2019

Civil Judge J. D.  
Mukhed