(1980) 02 BOM CK 0032

Bombay High Court

Case No: Misc. Petition No. 1045 of 1975

Nandinidevi		APPELLANT
	Vs	
Shripatrao Pratinidhi and Others		RESPONDENT

Date of Decision: Feb. 28, 1980

Acts Referred:

- Guardians and Wards Act, 1890 - Section 7, 8
- Hindu Marriage Act, 1955 - Section 26
- Hindu Minority and Guardianship Act, 1956 - Section 4, 6

Hon'ble Judges: M.L. Pendse, J

Bench: Single Bench

Advocate: L.R. Chari, G.B. Limaye and Bhushan, for the Appellant; R.D. Hattangadi and A.P. Vaze, for the Respondent

Judgement

M.L. Pendse, J.
This is a petition filed u/s 8 of the Guardians and Wards Act, 1980 for appointment of the petitioner-mother as guardian of the person and property of the minor child Bhagwantrao.

2. The petitioner is the mother of minor son Bhagwantrao, while respondent No. 1 is the father. The respondent No. 2 is the mother of respondent No. 1 and respondent No. 3 is the mother of the petitioner. The petitioner Nandinidevi and respondent No. 1 Shripatrao were married according to the Hindu Vedic rites on December 28, 1969. The marriage was settled earlier and the engagement was announced some time in October 1969. Bhagwantrao was born on September 11, 1970 at Bombay. The respondent No. 1 is a resident of Aundh in Satara District and was the former Ruler of Aundh State. The parents of the petitioner live in Bombay at "Shivsagar", Bhulabhai Desai Road, Worli. After Bhagwantrao was born, the petitioner returned with the child to Aundh in December 1970. The petitioner suffered two miscarriages in the month of March 1971 and October 1971. The petitioner was ill during April

1972 and was brought down to Poona where also the respondent No. 1 had a residence. The petitioner was treated by Dr. Telang and Dr. Bharucha but the petitioner came down to Bombay on April 20, 1972. The relations between the petitioner and the respondent No. 1 till this time appear to be normal. The petitioner was under treatment in April 1972 in Dr. Purandare''s Hospital. In or about May 1972, the respondent No. 1 who is actively connected with the social and political work in Satara District was to contest the election. Till the end of May 1972, the correspondence between the parties indicates that their relations were not strained but something transpired between the parties by the end of May 1972 or early in June 1972 which had broken the marriage. Both the parties have not stated what has led to the rift in the parties.

3. While the petitioner was under treatment at Dr. Purandare''s Hospital in Bombay in April 1972, the child was at Poona in the residential premises of respondent No. 1. The respondent No. 2 was also residing at Poona at that time. The petitioner went to Poona some time late in June 1972 and visited "Aundh House", the residence of respondent No. 1, early in the morning. The respondent No. 1 was not in the house, while respondent No. 2 was resting in her bed-room. The petitioner took away the minor son with her by leaving behind a note. The petitioner also lodged a complaint with the Police Commissioner that her son was neglected and, therefore, she was required to take him away. The child remained with the petitioner from that date onwards at Bombay. After a period of over three years, on April 28, 1975, a Pauper Suit was filed in Poona Court on behalf of the child for partition and possession of the joint family estate. The petitioner''s mother acted as next friend of the child. The Pauper Petition was granted and the suit for partition is still pending.

4. Thereafter on June 16, 1975, the respondent No. 1 filed Marriage Petition No. 21 of 1975 in Satara Court against the petitioner for a relief of judicial separation on the ground that the petitioner has deserted her matrimonial home without any cause. The respondent No. 1 also sought an order for custody of the child u/s 26 of the Hindu Marriage Act. An ex parte order was passed in favour of respondent No. 1 on June 20, 1975 awarding the custody during the pendency of the petition. The petitioner moved the Satara Court for stay of the order on June 23, 1975 and after obtaining the stay of the execution filed an application for setting aside that order on July 16, 1975. The application came to be rejected by an order dated January 6, 1975. The Marriage Petition was amended and the relief of divorce was sought after the Central Government amended the provisions of the Hindu Marriage Act. The petition was decreed ex parte on December 5, 1979 and the respondent No. 1 was granted divorce.

5. Before the decree for divorce was passed by Satara Court, the petitioner filed the present proceedings in this Court on September 15, 1975. The petition was admitted on February 14, 1976 and an ex parte order of injunction was issued against respondent No. 1 restraining him from executing the order of custody given by

Satara Court in Matrimonial Petition. The ex parte order was confirmed on April 28, 1976 and the petitioner was permitted to keep the custody of the child with a right of access to respondent No. 1 on every Saturday and Sunday of the week.

6. In the present proceedings, it is the complaint of the petitioner that she should be appointed as guardian of the person and property of her minor son Bhagwantrao because respondent No. 1 has neglected to maintain the child and is also disposing of the joint family estate to the detriment of the interest of the minor. In support of the claim, various instances are mentioned in the petition, but it is not necessary to set out those in detail. The respondent No. 1 resisted the proceedings by claiming that the petition is not maintainable on the date when it was filed as there was already an existing order of a competent Court awarding custody of respondent No. 1. It is further claimed that respondent No. 1 had never neglected the child and the petitioner had deserted the matrimonial home without any reason whatsoever. It is further claimed that the present petition is filed not with a view to claim the guardianship of the person of the minor, but with a view to extract the estate from respondent No. 1. The respondent No. 1 has also denied that he has ever treated his wife cruelly or has neglected the welfare and upbringing of his minor son. In view of these rival contentions, the following points arise for my determination :

7. In support of the petitioner, the petitioner has examined herself and has claimed that the respondent No. 1 has treated her cruelly and has neglected the child. The petitioner has also alleged in her evidence that the respondent No. 1 was given to vices and is also suffering from various ailments. The respondent No. 1 has examined himself and denied various allegation levelled against him. The respondent No. 2 has also entered into the witness-box and denied that she ever treated the petitioner cruelly or disowned the paternity of the child. The respondent No. 1 has also examined Dr. Bhide, a Pethelogist, to establish that he is not suffering from any general diseases and is in good health. The parties have also produced on record by consent the correspondence prior to the petition and the proceedings in the Satara Court. This is all the oral and documentary evidence led in connection with this petition.

8. The first submission of Mr. Hattangadi, the learned Counsel appearing on behalf of respondent No. 1, is that the petition is not maintainable as there is already an existing valid of a competent Court awarding custody in favour of respondent No. 1. The learned Counsel submitted that on the date present petition was lodged in this Court, i.e. on September 15, 1975, there was already an existing order passed by Satara Court on June 20, 1975 awarding custody of the minor in favour of respondent No. 1. The learned Counsel submitted that the order was passed by Satara Court in exercise of the powers u/s 26 of the Hindu Marriage Act and as long as that order was existing, it was not proper for the petitioner to file the present proceedings. Mr. Hattanagadi submitted that it is not his claim that this Court has no jurisdiction to entertain the petition but his grievance is that the fact of filing this

petition during the subsistence of the order of the Satara Court reflects upon the conduct of the petitioner. The submission of the learned Counsel is not correct for more than one reason. In the first instance, the order passed by the Satara Court was one under the Hindu Marriage Act and such an order does not take away the jurisdiction to be exercised under the Guardians and Wards Act, 1890. Secondly, the order passed by Satara Court was an interim order was to subsist during the pendency of the marriage petition in that Court and as soon as the Marriage Petition was finally decided, the order automatically stands exhausted. Even assuming that the petition was not maintainable on the date when it was lodged, it is not in dispute that now the petition is perfectly maintainable. Realising this position. Mr. Hattangadi submitted that the maintainability of the petition should be determined as on the date of the lodging and not when it comes up to hearing. The contention need not be considered further as in my judgment, the interim order passed by Satara Court is no bar for presentation of the present proceedings. The first submission of the learned council deserves to be repelled.

9. The main controversy in this petition is in respect of the appointment of the petitioner as guardian of the person of the minor. Mr. Hattangadi submitted that u/s 6 of the Hindu Minority and Guardianship Act, 1956, the natural guardians of a Hindu minor, in respect of the minor''s person as well as in respect of the minor''s property is father and after him the mother. The learned Counsel submitted that proviso to Clause (a) of section 6 does require that the custody of the minor who has not completed the age of five years shall ordinarily be with the mother. Mr. Hattangadi submits that the provisions of this section indicate that the father is the natural guardian and has a priority over the mother after the child completes five years. Relying upon the definition of the expression "guardian" in section 4(b) of the Act, the learned Counsel submitted that the guardian is a person having the care of the person of a minor and that would establish that the custody of the minor should remain with the father in preference to that of the mother. Mr. Hattangadi submits that the provisions of this Act are in additional to and are not in derogation of the Guardiance and Ward Act, 1890. Turning to the provisions of the Guardiance and Wards Act, section 7 enables the Court to appoint the guardian to the person and property of the minor provided it is satisfied that it is for the welfare of the minor. Mr. Hattangadi submits that section 7 is controlled by section 19 of the Act which provides that nothing in Chapter II shall authorise the Court to appoint or declare a guardian of the person of a minor whose father is living and is not in the opinion of the Court unfit to be the guardian. It is urged that in view of the provisions of section 19 of the Act unless and until the Court comes to the conclusion that the father is unfit to be the guardian, the mother cannot be appointed as guardian of the person of the minor. In support of this submission, reliance is placed upon the decision of the learned Single Judge of this Court in the case of Mohammed Safi S/o Sk. Hussain v. Shamim Banoo w/o Mohammed Safi, reported in 1979 Maharashtra Law Journal 462. Mr. Chari, the learned Council appearing for the petitioner, on the

other hand, submitted that u/s 6 of the Hindu Minority and Guardianship Act, 1956, both the father and the mother are recognised as the natural guardians of the Hindu minor in respect of minor''s person as well as property. Mr. Chari submits that though it is true that preference is given to the father over the mother, still the Court is given ample powers u/s 7 of the Guardians and Wards Act to appoint any person as guardian if it is for the welfare of the minor. Mr. Chari submits that what section 19 contemplates is that in comparison between the father and the mother, if the Court finds that the father is unfit, then mother can be appointed as the guardian. The submission of Mr. Chari appears to be sound. It is not necessary for the Court to decide that the father is unfit to be appointed as guardian of the minor for all time. It is necessary to find out whether the father is unfit as a guardian in comparison with the mother who is also a natural guardian. The finding that the father is unfit is limited in a dispute between the father and the mother of a child to a comparison of their respective situation and with predominant consideration of the welfare of the minor. The reliance by Mr. Chari in this connection on the decision in the case of Po Cho v. Ma Nyein Myat and others, reported in 4, Indian Cases, 1029 is appropriate. The two decisions of this Court reported in AIR 1922 Bom 405 Bai Tara v. Mohanlal Lallubhai, and 43, Bombay Law Reporter 79 Saraswatibai Shripad Ved v. Shripad Vasanji Ved, also support the submission that the Court has to take into account all the relevant facts on record and to decide whether a father or mother should be appointed as a guardian of the person of the minor. It is well-settled that while arriving at this conclusion, the welfare of the minor is a supreme consideration.

10. With this background, it is necessary now to determine whether it is in the welfare of the child that the petitioner should be appointed as a guardian of the person of the minor. In considering this question, the first and foremost fact which has to be taken into consideration is that the child is with the mother right from June 22, 1972 onwards. The child was born on September 11, 1970 and is in the custody of the mother prior to his attaining the age of 2 years. The child has remained with the mother for last almost eight years. The petitioner has deposed that the child is living with her in a flat situated at "Shivtirth", Worli, which belongs to the petitioners parents. The petitioner is working as a Director in an Export and Import firm and is attending to her duties between 11 a.m. and 5 p.m. The child has been admitted into the Hill Grange High School and is at present reading in the 3rd Standard. The petitioner has deposed that the child is very healthy and takes keen interest in Sports, Music and Painting. The respondent No. 1 has also deposed that the child is brought up in good circumstances but his only grievance is that the progress of the child is not to his expectation. It is difficult to appreciate what exactly he desires to cannot by that statement. The child has now attained the age of about 10 years and the fact that he has remained with the mother for last eight years and has been brought up in a satisfactory way is an important factor in determining the issue as to whether the mother should be appointed as a guardian

of the person of the minor.

11. In this connection, it is also necessary to note that the conditions available in the house of the petitioner at Bombay are not claimed to be in any way detrimental to the welfare of the child. The petitioner is residing in Bombay with her parents and a female employee by name Kausalyabai is engaged to look after the child. The petitioner''s father is a businessman and has got sufficient means to lead a good life in the city. The evidence on record indicates that the child is very much attached to Kausalyabai who is in the family of the petitioner even prior to the birth of the petitioner. Mr. Hattangadi complained that the petitioner is creating prejudice in the mind of the child against his father and that fact disentitles the claim of the custody of the minor. The submission is without any merit whatsoever. There is no evidence brought on the record or the petitioner is cross-examined in this connection. On the contrary, the evidence indicates that the child has sent a Greeting Card to his father at Aundh some time in Christmas of 1977. This fact indicates that the mother has never prevented the child from writing to the father or sending any Greetings Card to him. In fact, the respondent No. 1 has stated in his evidence that he sent a Ganpati idol as a gift to his son in the year 1978 and the petitioner permitted her son to receive it. This conduct on the part of the petitioner unmistakably indicates that the petitioner has not created any prejudice in the mind of the child against his father.

12. As stated hereinabove, the petitioner has brought her minor son from Poona in June 1972. It is the contention of the petitioner that neither the respondent No. 1, nor respondent No. 2 made any enquiries about the child thereafter. The respondent No. 1 stated that though he has not written any letter to his wife or to his son after June 1972, he has sent telephone messages. I am not prepared to accept the oral testimony of respondent No. 1 that any telephone message was sent. It is difficult to appreciate why respondent No. 1 who claims to have great affection for his son did not bother to write a single letter either to his son or to his wife for last eight years. The first letter after the child was brought by the petitioner from Poona is of September 24, 1972 and it is addressed by respondent No. 2 to the petitioner. In that letter also save and except making allegation that the petitioner has kidnapped the child, there is no other reference seeking back the custody of the child. The respondent No. 1 was confronted with this attitude in his cross-examination and the only explanation offered is that he was advised not to adopt any proceedings for the custody of the son. Mr. Hattangadi submitted that as section 6 of the Hindu Minority and Guardianship Act provides that as far as possible the child should remain with the mother till it attains the age of five years, the respondent No. 1 did not adopt any proceedings. Even assuming that explanation offered is plausible, in my judgment, the grievance of Mr. Chari that no letter was written for last eight years is a telling circumstance is just.

13. Mr. Chari submitted that not only the respondent No. 1 did not make any attempt to contact his wife or son in Bombay either by letter or through any relation, but did not adopt any proceedings for the custody of the son till 1975 and that is only after the suit for partition was filed on behalf of the minor son on April 28, 1975. Mr. Chari submits that the custody of the child was sought in the matrimonial petition only as a counter-blast to the claim for partition. The submission appears to be sound on the facts and circumstances of the case. Mr. Chari in this connection also submitted that the respondent No. 1 has showed no interest whatsoever in the child right from the birth of the child. The petitioner has deposed that both respondent No. 1 and respondent No. 2 were threatening her that they will disown the paternity of the child after its birth. I am not inclined to accept this statement of the petitioner because this grievance was never made prior to the deposition in this Court. The petitioner has also deposed that after the year 1972 when she brought the child from Poona, the respondent No. 1 has shown no interest in the child whatsoever. In this connection, it is pointed out by Mr. Chari that in the present proceedings an order was passed on April 28, 1976 giving a right of access to the child on every Saturday and Sunday of the week but respondent No. 1 has not availed of that right except on three of four occasions. The fact that the right was exercised only on three or four occasions in the last 4 years is also admitted by respondent No. 1 in his deposition. Mr. Hattangadi submits that the right of access was not exercised because obstruction was created by the petitioner and the family members in exercise of that right. The respondent No. 1 stated that when he went to "Shivtirth" building, the petitioner and the family members created a scene and that is the reason why he did not pursue exercise of the right. It is also claimed that it is very difficult for respondent No. 1 to come down to Bombay from Aundh on every week end and more so when he is required to stay in a hotel in Bombay in absence of any residential accommodation. Mr. Chari rightly submitted that this explanation is not only incorrect but a false one. It was urged by the learned counsel that the respondent No. 1 has made no complaint whatsoever in this connection to this Court for last four years. The order giving the right of access was passed on April 28, 1976. Thereafter some time in December 1976, the respondent No. 1 applied to this Court to permit him to bring the child from Nagpur to Aundh and the order was accordingly passed on December 10, 1976. The child was at Nagpur at that time along with the petitioner. The respondent No. 1 claims that he went to Nagpur along with his mother and his Solicitor Miss Nina Kapadia to get the custody of the child. After reaching Nagpur, the respondent No. 1 sent his mother and the Solicitor to the house of the petitioner but the petitioner informed them that the child has gone on a picnic. That upset the respondent No. 1 and he made a fresh application to this Court on December 21, 1976 seeking a fresh order on the ground that the petitioner is creating obstruction in the enforcement of the order. The petitioner stated that respondent No. 2 and the Solicitor came without any notice and it was long prior decided to send the child on picnic. Whatever may be the true situation, the fact remains that save and except this complaint about the instance at

Nagpur, no complaint was made in last four years about the obstruction to the right of access. In my judgment, the respondent No. 1 has failed to establish that there was any obstruction caused by the petitioner or her family members to the enjoyment of the right. The respondent No. 1 has not cared to exercise the right and that clearly reflects upon his bona fides as regards his affliction to the minor son.

14. There is one more circumstance which has impressed me to appoint the petitioner as guardian of the minor son. The respondent No. 1 has deposed that he is a former Ruler of Aundh State and he returned to Aundh from England after the death of his father. The respondent No. 1 was away from Aundh for his education right from his tender age and after returning to Aundh started taking active part in the social and political activities in Satara District. The respondent No. 1 deposed that he is connected with a large number of institutions and is Trustee on the Boards of several Trusts. His evidence unmistakably indicates that he is leading a hectic political and social life which keeps him quite busy. The respondent No. 1 has also stated that in his house at Aundh, there is no female member except his mother. The mother of respondent No. 1 is suffering from a serious ailment of cancer and she is also quite advanced in age. Except respondent No. 1, and his mother, there are no other members of the family residing at Aundh. The sister of respondent No. 1 occasionally visits the house but she being married to Wing Commander Jathar, it is not possible for her to stay there for all the time. In these circumstances, it is difficult, in my judgment, for the petitioner to look after the welfare of the child or his day-to-day requirements. The child is of a very tender age and is brought up in a family atmosphere for last 10 years. In Bombay, the child is residing with his mother, his grand-father, grand-mother and the petitioner''s brother and his wife. The evidence suggests that the child plays with his companions in the building and takes part in several activities in the School. Such a child brought up in the family atmosphere should not be disturbed by shifting to a house where there is nobody except an old going woman suffering from cancer and the father who is leading a hectic social and political life.

15. Mr. Hattangadi submits that the atmosphere in Aundh is very artistic and the family has got a museum containing large pictures drawn by eminent artists. It is urged that the child should be brought up in such atmosphere especially when the child is taking interest in painting. It is also claimed that respondent No. 1 belongs to a princely family and has certain conceptions in his mind about the upbringing of the child and that can be achieved only by giving the custody of the child to the father. It is faintly suggested that the respondent No. 1 is hereditary Trustee of several Trusts and it is necessary to make the child familiar with its work. In my judgment, all these considerations are thoroughly insufficient to displace the child who is doing quite well in Bombay. The respondent No. 1 deposed that he would like to keep the child in a Boarding School at Panchagani and if the child disapproves, them in Day School at Poona. In my judgment, it would not be proper for the child who is brought up in a family atmosphere to be left in a Boarding School at this age.

By entering the child in a Day School at Poona; the child will not be looked after properly because there is no family member close to the child in Poona. The child would be obviously neglected in Poona and it would be detriment to his welfare. It cannot be overlooked that the child has stayed with the mother in Bombay for last eight years and displacing him after such a long period only with a view to satisfy the age of the father is neither just not fair. My disinclination to give custody of the child to the father is more because of the fact that there is no allegation that the mother is not bringing up the child properly and in absence of any allegation of any moral turpitude against the mother.

16. Mr. Hattangadi submits that the petitioner should not be appointed as guardian of the person of the minor because her allegation about the cruelty to her by responded No. 1 is not, at all, established. It is also urged that there is no averment in the petition that the child was neglected during the period of September 1970 to June 1972. The petitioner did state in her evidence that respondent No. 1 did not treat her with respect and consideration and neglected the child during his stay at Aundh. I am not much impressed by this deposition but the mere fact that the respondent No. 1 did not treat his wife cruelly or did not neglect the child is not sufficient to deprive the mother of the custody of the child. It must be remembered that in the present proceedings, I am not concerned with the issue as to whether the petitioner or the respondent No. 1 is responsible for disrupting the marriage, nor is it necessary for me to determine what happened during the period when the child was at Aundh. Those facts only have some relevance while determining whether the petitioner or respondent No. 1 is a fit person to look after the welfare of the child. I am considering the question about the custody of the child from a broader aspect and from the view as to what is for the welfare of the child in the facts existing today. Normally, while passing the order u/s 7 of the Guardians and Wards Act, the Court has to determine what is for the welfare of the child on the date of the order. In this view of the matter, it is not necessary to consider the evidence in each and every detail.

17. Mr. Hattangadi submitted that the petitioner has deserted respondent No. 1 without any cause and that is established by the decree of divorce passed in Satara Court. The petitioner has adopted proceedings for setting aside that decree and, therefore, I need not proceed on the assumption that the petitioner has deserted the matrimonial home without any cause. Mr. Hattangadi made a serious grievance that the petitioner has taken away the child from Poona in most improper manner. It was also urged that the petitioner has made a wild allegation against her husband attributing all sorts of vices and has also filed the suit for partition through her mother. These acts, submits Mr. Hattangadi, indicate that the child is brought up to hate the father. I do not find any merit in the submission. It is true that the petitioner has indulged in making wild and unsupported accusations about the character of respondent No. 1 in her deposition, but that fact itself is not sufficient to conclude that she is suggesting the child to hate the father. It is true that the suit

is filed for partition on behalf of the minor by the mother or the petitioner acting as next-friend. The suit was filed against the respondent No. 1 because it was felt that the estate of the minor is in danger of being pilfered. The petitioner has stated in her deposition that she took away the child from Poona because she learnt that the child was neglected. The petitioner, while taking the child, did leave behind a note and also complained to the Police Commissioner. This fact clearly indicates that the child was not kidnapped but was brought from Poona purely out of love and affection for the child. In this connection, it cannot be overlooked that in spite of the petitioner taking the child, the respondent No. 1 did not lodge any complaint nor made any attempt to bring back the child for a period of over three years.

18. The respondent No. 1 did state that he has lodged a complaint with the Police Commissioner but was advised not to proceed with it as no charge of kidnapping could be levelled against the mother. I am not inclined to accept the submission of Mr. Hattangadi that the act of the petitioner in bringing the child from Poona is very improper and is sufficient to disentitle her from claiming guardianship of the person of the child. Mr. Hattangadi also submitted that the filing of the present petition is motivated by greed of the estate and not the welfare of the child. I am not, at all, satisfied that it is so and especially when Mr. Chari frankly stated that his client is not interested in being appointed as guardian of the estate of the minor. Mr. Hatangadi levelled some criticism about the conduct of filing the petition, conduct of the petitioner at the time of the execution of the interim order by Satara Court and about the petitioner''s failure not to substitute herself as next-friend in the suit for partition in Poona Court. In my judgment, none of the circumstances reflect upon the ability of the petitioner to be appointed as guardian of the person of the minor. The petition was filed in this Court after the application for setting aside the ex parte order for custody passed by the Satara Court was rejected. At the time of the execution of the ex parte order, respondent No. 1 claims that the petitioner deliberately removed the child from the flat in "Shivtirth" to another destination. The petitioner has defined that the child was removed and I do not find any reason to disbelieve her word. In fact, the conduct of respondent No. 1 in taking Police aid and assistance of private detectives and agents in executing the ex parte order of custody of the child who was only five years old is not very commendable and more so when the order was tried to be executed late at night. I am not satisfied that the petitioner has deliberately removed the child to an unknown destination and I accept the testimony of the petitioner that she has taken the child to a dental clinic. The suit for partition has been filed in Poona Court by the mother of the petitioner as the next-friend of the minor and I do not find why it was necessary for the petitioner to substitute herself in place of her mother.

19. Taking a over-all view of the circumstances on record and bearing in mind that the order has to be passed by this Court u/s 7 of the Guardians and Wards Act for the welfare of the minor, I am satisfied that it is in the interest of the minor and it is for the welfare of the minor that the petitioner should be appointed as guardian of

the person of the minor. Though I am appointing the petitioner as the guardian of the person of the minor, in my judgment, the father should have an access to the child during certain period of the year. After hearing the learned counsels on both the sides on this point, I find that the School is closed for Summer Vacation for 6 weeks, during Diwali for one week and in Christmas for two weeks. In my judgment, it would be fair if the respondent No. 1 is permitted to take the child to his place at Aundh or Poona or any other suitable place in the country for a period of last three weeks of the Summer Vacation and for the entire period of two weeks during Christmas Vacation. The respondent No. 1 would also be entitled to have an access to the child in Bombay on his occasional visits. The respondent No. 1 should give prior intimation before visiting the place where the child is kept.

20. The next question is about the appointment of the petitioner as the guardian of the property of the minor. Mr. Chari, during arguments, stated that the petitioner is giving up the claim for being appointed as guardian of the property of the minor. In view of this statement, the question need not detain me any longer but apart from this concession, in my judgment the petitioner is not entitled to be appointed as the guardian of the property of the minor for more than one reason. Section 6 of the Hindu Minority and Guardianship Act, 1956, specifically provides that the natural guardians of the Hindu minor are father and mother in respect of the minor''s property excluding his undivided interest in joint family property. The respondent No. 1 has inherited the joint family property and the child has interest in the said joint family property by birth. The provisions of section 6 of the Act make it crystal clear that in respect of such share in joint family property, the guardian cannot be appointed. This proposition is also supported by two decisions reported in 30, Indian Appeals 165 Gharib-Ul-Lah v. Khalak Singh and others, and ILR 19 Bom 309 Virupakshappa v. Nilgangava. The second consideration for not appointing the petitioner as guardian of the minor''s property is that there is no serious allegation against respondent No. 1 about the mismanagement of the property. Some effort was made during the cross-examination of respondent No. 1 to suggest that certain joint family properties are alienated but that effort was given up for want of material. I am satisfied that respondent No. 1 is managing the property properly and is not doing any acts detrimental to the interest of the minor. In these circumstances, apart from the fact that the petitioner has given up her claim, I would have refused to appoint the petitioner as guardian of the minor''s property.

21. In view of these conclusions, the petition is partly granted and the petitioner is appointed as the guardian of her minor son Bhagwantrao. The petitioner is entitled to the custody of the minor son but the respondent No. 1 is permitted to take the child during latter three weeks of the Summer Vacation of the School and the entire period of two weeks of the Christmas Vacation. In addition to this, the respondent No. 1 would have a right of access to the minor son on his occasional visits to Bombay but only with the prior intimation to the petitioner. In the circumstances of the case, each party shall bear its own costs.