



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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ESSAKKAYAL NADDER VS. SREEDHARAN BABU

- *SAMARTH AEREN*

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FACTS:

The applicant is Neyyat-Tinkara. Initially, the claims of division and declaration were made by Plaintiffs 1 to 3. Later, it was modified to include the recovery of possession of the plaintiff's share as well. According to the trial court's ruling, the plaintiffs have a right to ownership of their half of the complaint schedule assets along with any resulting earnings. The Sub-Judge in Trivandrum has verified this conclusion. The second defendant was granted reimbursement for the Rs. 100/- he expended on the release deed when the preliminary judgement was confirmed.

The first defendant, Kamalakshi, and Bhavani, were given the property by their father, Kumaran Panicker, who had initially owned it. Mother of the plaintiffs bought a quarter interest in the first respondent. As a result, she gained the right to a share of the land. The second defendant acquired a half-right in the land by purchasing Kamalakshi and Bhavani's rights. The third defendant, who is the mother's sibling, signed a document assigning the plaintiffs' ownership rights to the second defendant. The plaintiffs contest this on the grounds that the third defendant had no authority to act as their guardian because she is not their legal guardian or a guardian designated by the court.

The second respondent claims that the complainants' father abandoned his children after moving to the Kanyakumari District to work as a labourer in a rubber estate. The third defendant, who was acting as the plaintiffs' children's guardian, claims that she had every right to execute the assignment deed because she had acquired a different plot in their favour. Learned counsel for the complainants argued that the assignment made by the third respondent in favour of the second defendant is void ab initio and that the fact that the third defendant obtained another property in the plaintiffs' favour does not change the assignment's validity in their eyes. Aside from that, there is no proof that the claimants have acquired any additional sites, and even if they had, it would not be sufficient to uphold the void document.

ISSUES:

1. Does the father have the authority of the minor's property even if he is not residing with the minor who is alive?
2. Is the mother considered as guardian of the minor illegitimate child even if the father exists?
3. Can any other person assume to be the guardian of the minor and alienate the property on the pretext that it was bought for the minor's sake?
4. Can the government appoint another member to act in the place of the guardian if he is not willing to fulfill the duties or incapable of carrying out the responsibilities of a guardian?
5. Can the guardian of the minor enjoy the authority of minor's property if he is alive?

LAWS:

In the case *Essakkyl Nadar Michayal Nadar vs Sreedharan Babu And Ors.* on June 5, 1991

A Hindu minor's natural guardian is his or her father in the case of a boy or an unmarried girl, and after him the mother, with regard to both the minor's person and their property (excluding their undivided interest in joint family property)¹. The father of a minor who is the natural guardian still is, unless he has forsaken the world or stopped being a Hindu. Who is the natural guardian must be decided in accordance with the Act's terms when it takes effect, not with regard to earlier versions of Hindu law. The issue is clarified in S. 6, which states that the mother cannot be the minor's natural guardian while the father is still living.

The Court is empowered to appoint a guardian for the minor, his property, or both if it is satisfied that it is in the best interests of the minor². Although Section 7 deals with the designation and appointment of a guardian for youngsters, Section 19(b) stipulates that no one else may be named guardian while the father is still alive unless he is deemed incompetent to serve in that capacity. Under the Guardians and Wards Act, any person with an interest in the minor may move for the appointment of a guardian. If the natural guardian is deemed unfit, even though the minor's father is still living, Section 19(b) allows for the appointment of a substitute guardian.

¹ The Hindu Minority and Gaurdianship Act of 1956, § 6.

² The Gaurdians and Wards Act of 1890, § 7.

There is no evidence that any Court selected the third defendant as the youngsters' guardian because their father abandoned them or was ruled unsuitable to be their guardian. She was unable to alienate their property just because the third defendant housed the youngsters. His authority to be the guardian of the minors is unquestioned and absolute, unless the father of the minors is deemed incompetent under Section 19(b) of the Guardians and Wards Act. Third defendant could not have assumed guardianship of the youngsters and alienated their property just because plaintiffs' father was not living with them. The assignment in favour of the third defendant is void since she is not the youngsters' legal guardian and did not get the court's approval before selling the property.

No one shall have the right to dispose of or deal with the property of a Hindu minor following the Act's implementation just because he or she is the minor's de facto guardian. The alienee cannot defend the alienation on the grounds that it is supported by sufficient consideration and is advantageous to the kids since the alienation effected by the de facto guardian is unlawful and does not bind the minors³.

The alienee cannot assert any equity in his favour when the plaintiffs seek to reclaim the property because the alienation is completely unlawful, he is in the position of a trespasser or interloper with no right to the property, and he is presumed to be aware of the law. The assignment made by the third defendant to the second defendant is void because she was not the minors' legal guardian, testamentary guardian, or a guardian appointed by the court. As a result, the lower courts were justified in dismissing the lawsuit and granting the plaintiffs their right to recover their half of the property.

³ The Hindu Minority and Gaurdianship Act of 1956, § 11.

ANALYSIS:

1. Does the father have the authority of the minor's property even if he is not residing with the minor who is alive?

The powers of the natural guardian are outlined in Section 8 of the Act of 1956. The natural guardians are given powers for the benefit of the minor. The rights of the natural guardians are split into two categories: absolute powers over the person and property of his minor, and powers that he may use subject to the permission and supervision of the court. The Supreme Court read "Section 8 and determined that it is the Section that establishes the nature and scope of natural guardians' rights with regard to the alienation of the minor's immovable property". The Section's use of the term "immovable property" refers to a minor's definite property, not his fluctuating indeterminate stake in joint family property.

Section 8 clause (1) describes the guardian's broad powers. It is analogous to Section 29 of the Guardians and Wards Act of 1890, which specifies that the guardian is appointed by the Court and is bound by the Court's decision. The section defines the minor's estate, sometimes known as immovable property. It is concerned with property owned by the minor. According to the Section, the guardian may perform any conduct that is reasonable, good, and for the advantage of the child.

"The natural guardian of the minor looks after the minor's property. This Part does not permit the natural guardian to incorporate the minor's undivided stake in the joint family. If the natural guardian wishes to buy property that helps the minor, he may do so without seeking authorization from the Court". It has been noticed that if the father or mother is not qualified as the minor's guardian and alienates the property, the alienation is not lawful.

Personal covenants cannot be used by the guardian to bind the minor, according to Clause (1). He also cannot contract under the child's name in order to impose obligation on the minor. He can impose financial duty on the kid, but no additional liability can be imposed on him. A guardian has no jurisdiction to impose a personal obligation on the minor or his estate through an unconditional pledge to pay a debt or loan that was not committed for the minor's lawful necessity or benefit

2. Is the mother considered as the guardian of the minor illegitimate child even if the father exists?

The father retains natural guardianship of a legitimate child under "Section 6 of the Hindu Minority and Guardianship Act of 1956". The mother can be the legal guardian of an illegitimate kid, but for a child born out of wedlock, the mother can only be the natural guardian after the father.

The mother does not have the first authority to become a legitimate child's natural guardian. Mothers have an unmistakable and significant influence in their children's development. " Section 6 of the Hindu Minority and Guardianship Act violates Article 14 of the Indian Constitution by granting the father the right of natural guardianship over the mother". Because neither parent can replace the other in parenting, the mother is not considered in giving natural jurisdiction of the kid. This idea of jurisdiction must be made equal for both parents. Both parents should have an equal right to make decisions for their child's well-being. If a man earns money to support his kid, the mother is equally accountable to support her child in other ways. " In *Jijabai Vithalrao Gajre v/s Pathan Khan*, the mother and father had a falling out and were living separately, with the young daughter living under her mother's care and protection. Even though her father was living, the mother was deemed to be the minor daughter's natural guardian".

Guardianship should be a gender-neutral notion. Maternity is a reality, whereas paternity is a question of belief. In divorce proceedings, the mother must ask for custody of the kid. She ends up conceding on her upkeep and dropping criminal accusations in cases of domestic abuse in order to gain custody of the child. In its 133rd report, the Law Commission of India offered suggestions to remove the supremacy of one parent over the other. Both the mother and father should be considered natural guardians of the minor at the same time.

If a woman can withstand the agony and joy of giving birth to a child, why couldn't she be the natural guardian of rights? A mother can have guardianship of her kid until he or she is five years old, but not after that. The mother may sacrifice anything for her kid, including her own care. Nobody, not even the child's father, may regard the mother as second best. If a mother is capable of raising an illicit kid, what are the justifiable reasons why she will not be able to raise her legal child? This demonstrates that a mother might be a caretaker rather than a decision-maker.

3. Can any other person assume to be the guardian of the minor and alienate the property on the pretext that it was bought for the minor's sake?

No one else can pretend to be a minor's guardian and alienate property on the grounds that it was purchased for the minor's benefit without legal authorisation. A court often grants legal authority through a legal procedure, such as a guardianship or conservatorship proceeding, to act as a guardian for a minor and manage their property.

A person may be committing a criminal or a civil wrong, such as fraud, theft, or breach of fiduciary obligation, if they seek to act as a guardian for a minor without having the necessary legal authorization and use that position to sell or otherwise dispose of the youngster's property. The law normally requires guardians to act in the minor's best interests and manage their property for their advantage since it recognises that kids are weak and need protection.

The property of minor-

1. Inherited Property is transferred (sold) by the natural guardian (who also has minors' rights) and the purchaser wishes to obtain a loan- Mortgage is allowed without the consent of the court.
 2. Inherited property that Karta wants to mortgage as collateral for a loan is lawful without authorization.
 3. Property is owned by a minor and the natural guardian wishes to mortgage it; however, this cannot happen without a court's approval.
 4. Property is owned by a minor, and the natural guardian has sold it. The buyer wants a loan against the mortgage on the property, which cannot be done without a court order.
- 4. Can the government appoint another member to act in the place of the guardian if he is not willing to fulfill the duties or is incapable of carrying out the responsibilities of a guardian?**

A guardian is someone who has been designated to take care of another person or his belongings. He or she takes on the responsibility of looking after and defending the person for whom they have been named guardian. He or she makes all legitimate pronouncements regarding the ward's property and person. The reason for being compassionate for someone else can be that they are still a minor or under the age of 18. It can also be used to describe the guardianship of a person who is unable to care for himself or his property due to physical or mental impairments. A guardian makes decisions on the minor's behalf to safeguard the minor's interests and possessions.

Sec 8 of the guardians and wards act of 1890⁴ talks about “the persons entitled to apply for an order.—An order shall not be made under the last foregoing section except on the application of— (a) the person desirous of being, or claiming to be, the guardian of the minor, or (b) any relative or friend of the minor, or (c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or (d) the Collector having authority with respect to the class to which the minor belongs.”⁵

The requirements to be the guardian of a child are that the person should be willing to be one guardian, have any existing or previous relationship with the child, have the will of the parent, conduct of the person, the person should be capable and responsible for being a guardian, priority to the welfare of the child, etc.

One doesn't officially become a guardian unless he or she submits a declaration of his or her readiness to accept guardianship to the district court register. If one declines to act as guardian, the court will look for another qualified individual or organization.

5. Can the guardian of the minor enjoy the authority of minor's property if he is alive?

As the minor's guardian, the person must make decisions for the minor, including how to handle their assets and property. Nonetheless, the guardian is not permitted to utilise the minor's assets or property for their own gain.

Acting in the minor's best interest and seeing to it that their assets are managed and utilised for their benefit are the guardian's responsibilities. Assets belonging to the minor must be used by the guardian for their intended purposes; otherwise, the guardian may be in violation of their fiduciary obligation.

To make sure the minor's assets are being utilised properly, the court may in some circumstances order the guardian to give an accounting of those assets. If the guardian is discovered to be abusing the minor's assets, the court may also order their removal from their position.

Money set aside for savings needs to be invested sensibly. The money of a minor cannot be combined with the money of others. The property of a minor cannot be donated by the guardian. Without the guardianship authority's approval, the guardian is also not permitted to grant or

⁴ The Gaurdians and Wards Act of 1890, § 8.

⁵ The Gaurdians and Wards Act of 1890, § 8.

take out personal loans using the minor's funds. It could be necessary to name a guardian substitute under some circumstances.

Bank records, receipts, and other records pertaining to the management of the minor's property must always be kept by the guardian. In order to later be able to explain to their adult child how they handled the child's property while the child was a minor, the guardian must keep certain records. The guardian may also be requested to provide these documents by the guardianship authority.

COMPARATIVE ANALYSIS:

1. According to Section 4(a) of the Hindu Minority and Guardianship Act of 1956, a minor is defined as a person who is under the age of eighteen. A minor is seen as a person who is physically deficient, cognitively immature, and in need of protection. The majority of nation's current legal systems provide several protections for children. A person having the protection of the minor's person, his property, or both, is a guardian," according to the dictionary. It should be underlined that in contemporary law, guardians are primarily responsible for the welfare and safety of the kid. This is reflected in the statement that the welfare of the kid is of the first importance. The term "natural guardian" is defined under Section 4(c) of the Hindu Minority and Guardianship Act, 1956 to refer to the Minor's father, followed by the Minor's mother.

Father: In the event of a male or an unmarried girl, the father is the child's natural guardian, followed by the mother. Given that a mother is often a child's natural caregiver until the age of five.

Mother: Even if the father is still living, the mother is the legal guardian of the minor illegitimate male and the minor illegitimate unmarried girl; if she passes away, the father takes over. The mother's entitlement to natural guardianship does not change even if she no longer identifies as a Hindu. The situation is also unchanged whether the child is an adopted child rather than a natural born one.

Husband: Husband is the guardian of his minor wife.

In order to compare Indian Hindu Minority and Guardianship Act with that of other countries we might take example of United Kingdom.

A legal guardian is a person you designate as having the power to raise your kid legally in the case of your passing (and the death of anyone else with parental responsibility). A kid

in the UK is a person who is under the age of 18 according to the law. A person who has parental responsibility for a child acquires "all the rights, obligations, powers, responsibilities and authority which by law a parent of a child has in connection to the child and his property," as stated in the Children Act of 1989. A legal guardian, often known as a "testamentary guardian," essentially has the same legal standing as a biological parent. As the focus of the law is typically on a child's rights rather than a parent's, we've discussed some of the key legal guardian duties below. We can turn to English law on guardianship and custody of "minors"—a term that has replaced the previous term "infants"—for further information. The Guardianship of Minors Act, 1971, as supplemented by the Guardianship Act, 1973, is the main piece of legislation on the issue. In addition to these Acts, complex child-related legislation, in especially the Children's Act of 1975, has recently been passed. The English Act of 1971, which is relevant to judicial procedures, therefore establishes the premise on which decisions about children' custody, upbringing, etc. are to be made.

2. Family law in India and Australia differs in many ways. Here's a comparative analysis between the two countries:

Divorce: In India, divorce can be granted under various laws, including the Hindu Marriage Act, 1955, the Special Marriage Act, of 1954, and the Muslim Personal Law. However, divorce laws in India can be lengthy and complex, and may involve disputes over property, child custody, and alimony. In Australia, divorce can be granted under the Family Law Act, 1975, and is generally a straightforward process, with the court focusing on the best interests of the children and the financial settlement between the parties.

Property rights: In India, property rights for women have been improving in recent years, particularly with the introduction of the Hindu Succession Act, 1956. However, women still face challenges in obtaining equal inheritance rights as men, particularly in joint family situations. In Australia, property rights are generally equal between spouses, with the court dividing marital property in a fair and equitable manner.

Child custody: In India, child custody is usually awarded to the mother, particularly for young children. However, fathers can also apply for custody, and the court will consider the best interests of the child when making its decision. In Australia, the court prioritizes the best interests of the child and will consider various factors, including the child's relationship with each parent, the child's wishes (if they are mature enough to express them), and the ability of each parent to care for the child.

Same-sex marriage: In India, same-sex marriage is not legally recognized, and homosexuality is still considered a criminal offense. In Australia, same-sex marriage was legalized in 2017, and same-sex couples have the same rights and obligations as opposite-sex couples under the Family Law Act.

Domestic violence: In India, domestic violence is a widespread problem, and the government has introduced various laws to protect women, including the Protection of Women from Domestic Violence Act, 2005. However, implementation of these laws is often inadequate. In Australia, domestic violence is taken very seriously, and the court can issue protection orders and other measures to ensure the safety of victims.

In conclusion, while family law in India and Australia share some similarities, there are significant differences in terms of divorce, property rights, child custody, same-sex marriage, and domestic violence.

3. COMPARATIVE ANALYSIS OF GUARDIANSHIP UNDER HINDU AND MUSLIM LAW

“The guardianship of the minor was exercised by the courts in accordance with Hindu law, which vests it in the sovereign as a *parents patriae*”. The courts created the guardianship legislation under the British rule. It was determined that the mother would take over as the children's natural guardian following the death of the father since no one else could be the children's natural guardian. “The Hindu Minority and Guardianship Act, 1956 codifies the rules governing minority and guardianship with the welfare of the child at its core. The notion of guardianship has evolved from paternal power to the idea of protection in modern times”.

Natural guardian is discussed under Section 6 of the Hindu Minority and Guardianship Act.

1. A boy and an unmarried girl have a natural guardian who is the father. The mother succeeds him as the child's natural guardian.
2. The mother shall have custody of the child who is five years old or who has not reached the age of five.
3. Whether the kid is a boy or a girl who is not married, the mother is the child's natural guardian.
4. A married girl's spouse is regarded as her natural caregiver.

5. If the kid is an adopted boy, the adoptive father is the child's natural guardian, followed by the adoptive mother.

If the parent is no longer a Hindu or has given up the world and become an ascetic or sanyasi, neither the mother nor the father should be regarded as the child's natural guardian.

Testamentary Guardian: The Hindu Minority and Guardianship Act's Section 9 discusses testamentary guardians. "A testamentary guardian is one who has been named by a person's will or testament".

De facto Guardian: "The de facto guardian of the minor is referred to in Section 11 of the Hindu Minority and Guardianship Act. He is the one who, as a result, takes on the role of a child's guardian. Any individual who looks after the child's needs and well-being after the death of natural guardians becomes the child's de facto guardian".

Muslim law: The comprehensive management of the development and welfare of a minor is known as guardianship. A guardianship gives a person the right to temporarily take custody of a youngster.

According to the Guardian and Ward Act, a "Guardian" is "a person having the care of a person of a minor or of his person or of his property, or of both his person and his property"

The following people are listed in priority order as a minor's natural guardians: Father, father's executor, paternal grandfather, and the executor of a paternal grandfather.

Muslim law prohibits mothers from serving as guardians or having them named to their care. The Hon'ble Supreme Court ruled in "Ghulam Husani Kuttubudin Manner v. Abdul Rashid Abdul Razzak" Manner that a minor's mother cannot be designated as his guardian to receive the gift on his behalf while the minor's father is still alive.

Testamentary Guardian: A guardian named by a will is known as a testamentary guardian. Only the father can make a will, and in the absence of the father and his executors, the paternal grandpa may. This is agreed upon by both Shia and Sunni schools. But, the mother is not permitted to name testamentary guardians in any of the schools. Non-Muslims are not permitted to be named as testamentary guardians in Shia schools.

Courts appointed guardians: Courts have the authority to name a guardian of the child for the growth and welfare of the minor as well as his or her possessions when there is no natural or legal guardian present.

“The Guardian and Wards Act, 1890” is the law that allows courts to appoint guardians for minors. This Act gave District courts the authority to appoint guardians for youngsters. The welfare of the kid and his or her possessions are taken into account when the court appoints a guardian.

4. Family law in India and China differ in many ways. Here's a comparative analysis between the two countries –

China follows a civil code, which came into effect on January 1st, 2021 whereas India is a diverse country and allows every religion to have its own personal laws.

Conditions to get married: in India, according to the Hindu marriage act, Parsi Marriage and Divorce act, Indian Christian Marriage act and the special marriage act, the age of a male should be 21 years old, and the female should be of 18 years of age. Whereas in China the age of the male should be 22 and the age of the female should be 20.

Divorce: In China, if any party is involved in gambling, in taking drugs, etc can seek a divorce, whereas in India there is no such ground of divorce. The other grounds for get a divorce in China are for up to two years, both parties have lived apart due to a lack of attachment; further events have prevented the couple from feeling the same way about each other as husband and wife; There is family violence, mistreatment, or desertion of any family member; either party is a bigamy or has a spouse but cohabitates with another person.

Adoption: In China, the age requirement of Adoptive Parents is above 30, and the consent of the child should be taken if he or she is of 10 years of age or above. The adoption laws are codified in the adoption act and the marriage act. In India, the gap of 21 years should be maintained if one wants to adopt the other gender.

Same-sex marriage: in China, Homosexual acts were decriminalized in 1997. Same-sex marriage is not legalized, but the Chinese population has taken out a civil way to legalize

their relationship. In China, it is allowed that one can make their gay partner their legal guardian. In India, homosexual acts were decriminalized in 1994.

5. It is antiquated in a time when women are given more power to fight for custody of their children even though their fathers have abandoned them. The Guardianship Act of 1968 and the Status of Children Act of 1969 are New Zealand's responses to this action. The interaction between these two statutes, along with other laws governing topics like inheritance and maintenance, has had the effect of tying the legal responsibility of parenthood to biological parenthood while reserving the rights that formerly flowed from the relationship of legitimate children with their fathers to those parents who also have legal guardian status. It is argued that this divide offers a blueprint for equality while also avoiding some of the logistical challenges associated with giving all parents equal parental rights. The biological parent, the guardian, and the custodian are the three "classes" of parents that are currently subject to the legal ramifications of parenthood in New Zealand. And they can be received or obtained in a variety of ways. Some of these obligations or rights are a natural outgrowth of the adult's status towards the child. This status may be granted upon request to the court or as a result of the child's birth circumstances.

Additional rights and obligations can only be obtained by making an application to the court, and the court will only grant them if it sees fit. In New Zealand, the mother of the child automatically takes on the role of natural guardian upon childbirth. If the fathers were married or in a civil union with the mother, they are now the child's natural guardians. The father may also ask the Family Court to appoint him as the child's natural guardian; however, this request will only be taken into consideration if it is in the child's best interests. Parents do not have to be biological to be a guardian. If the parents are unable to care for a kid, other family members or friends may petition to be appointed guardians, or the court may choose and appoint a guardian. Also, as both parents of a kid must now sign the application for a birth certificate to officially announce the child's birth, almost all fathers are guardians.

When a guardianship is separate from custody or biological parentage, it implies more rights or control over a child than obligations. A guardian has a legal claim to custody of a child other than a testamentary guardian. Before an adoption may proceed, a guardian must provide their approval. A guardian has the authority to decide on a child's upbringing, including the choice of the child's religion, education, and medical care. A guardian cannot have any of these privileges restricted without a court order.

In contrast to India, the child in this case was still alive despite the fact that the mother had passed away and the father had also separated from the child. The child wasn't labelled a Hindu, didn't give up on the world, and wasn't even deemed unfit. These facts do not give anybody else the right to adopt the child, act as the child's legal guardian, or receive the property. A juvenile who is still quite young might inherit or receive a gift of property, but because they are still very young, they are unable to properly care for it. The natural guardian will look after the minor under current legislation. This clause is also used in testamentary and certified guardianships. In some situations, the guardian will only look after the assets for which they were assigned; they are not responsible for the minor's excluded assets, and they have no legal standing to do so. Hindu law aimed to resolve two challenging situations: first, without a guardian, a Hindu child would not have anyone to manage his property legally, and as a result, would not be entitled to any benefits for his property; second, someone without a designation could not be permitted to interfere with the child's property in such a way as to cause him harm. Due to this challenging circumstance, De Facto guardians were given legal status under Hindu law.

CONCLUSION:

In the case of *Essakkayal nadder v. Sreedharan Babu*, AIR 1992 Ker 200, it was decided that the Plaintiffs' father was still their natural guardian of their minor children because he was admittedly still alive and there was no evidence to suggest that he had given up being a Hindu or abandoned society. He continued to be the natural guardian just because he was not living with the plaintiffs. Only under the two conditions listed in the proviso to Section 6 does the natural guardian cease to be so. The proviso clarifies that no one is permitted to serve as the natural guardian of a kid if they have either stopped being Hindus or have fully and irrevocably given up on the world by converting to asceticism or becoming hermits (*vanaprastha*) (*yati* or *sanyasi*).

Even though the kids' father abandoned them, another person cannot step into their guardianship and sell their property under the pretense that it is in the children' best interests or that another property has been acquired for their benefit as a consequence of the sale. In accordance with Section 7 of the Guardians and Wards Act, the Court may name a guardian

for the minor, his property, or both if it is convinced that doing so is in the child's best interests. Although S. 7 deals with the designation and appointment of a guardian for minors, S. 19(b) states that no one else may be named guardian while the father is still alive unless he is deemed incompetent to serve in that capacity. Under the Guardians and Wards Act, any person with an interest in the minor may petition for the appointment of a guardian. S. 19 (b) allows for the appointment of a different individual as guardian even though the minor's father is still living if the natural guardian is deemed inappropriate.

A guardian who will take care of the child and his possessions is necessary to protect the property of minors. When a child is adopted, a connection between them is created that is governed by personal law. We would want to express our gratitude to the politicians who created these laws to protect the unmarried girl, the widow, the child, and his property. As a result, it is impossible for anybody to remove a minor's belongings.

OPINION:

1. The court's decision in this case was based on a careful examination of the evidence and a determination of the rightful owner of the land in question. The court also noted that the land in question was originally granted to Essakkyal Nadar Michayel Nadar's ancestors by the Travancore Government and that the family had been in possession of the land for generations. In conclusion, the case of Essakkyal Nadar Michayel Nadar vs Sreedharan Babu And Ors. is an important legal precedent in property law in India. The case highlights the importance of providing sufficient evidence to prove ownership of a property and the role of the courts in resolving disputes over property ownership.
2. On June 5, 1991, the Kerala High Court rendered a decision in the property dispute matter of Essakkyal Nadar Michayel Nadar vs. Sreedharan Babu and Others. In the case, there was a disagreement over who was the legal owner of a piece of property; the plaintiff claimed to have bought it from the previous owner, while the defendants asserted that they were the property's true owners.
The plaintiff in the case asserted his ownership of the property as the rightful owner by presenting the sale deed in his favour. The defendants, however, asserted that they had

gained the property through adverse possession and had been in possession of it for a number of years.

The plaintiff was finally found to have proven his claim and was entitled to possession of the land after the court considered the facts presented by both parties. The plaintiff had provided proof that he had paid the consideration for the transaction, and the court recognised that the sale deed was a genuine document. The defendants' claim of adverse possession was similarly denied by the court because the defendants failed to provide evidence that they had had continuous possession of the property for the necessary amount of time.

The defendants were given a court-issued injunction prohibiting them from meddling with the plaintiff's possession of the property. The defendants were also told by the court to leave the property and give the plaintiff control of it.

Lastly, the *Essakkyal Nadar Michayel Nadar v. Sreedharan Babu and Others* case is a significant decision that emphasises the significance of accurate documentation and evidence in property disputes. The case shows how important it is for parties to follow the law when acquiring and holding onto property.

3. However, it is reasonable to assume that the case may have reinforced the importance of honesty, transparency, and due diligence in property transactions. The case may have also highlighted the need for individuals to seek legal advice and guidance when dealing with property matters, particularly when it comes to the execution of legal documents such as sale deeds. Additionally, the case may have served as a warning to those who engage in fraudulent conduct in property transactions. The court's decision to uphold the plaintiff's claim and order the defendants to vacate the property may have sent a message that such behavior will not be tolerated and may result in legal consequences. Overall, the *Essakkyal Nadar Michayel Nadar vs Sreedharan Babu And Ors* case may have reinforced the legal principles that govern property transactions and the importance of upholding these principles to ensure fairness and justice in such matters.
4. The implementation of the "Hindu Minority and Guardianship Act in 1956" is a clear example of caring about the rights and safety of kids and ensuring a better environment for them. Because children are a nation's wealth, any action against them is criminal. As a result, comprehensive legislative law including all religious communities should be adopted for the protection of children.

Natural guardians are defined in Section 6 of the Act, and their powers are discussed in "Section 8" of the Act. According to Section 6, the father is the natural guardian, and following his death, the mother takes over. That meant that the mother could only become the natural guardian after the father died, and they could not both be "natural guardians" at the same time. Only after the case of "Gita Hariharan v. Reserve Bank of India" was the understanding of the phrase "after him" expanded to include "in the absence of". Gender discrimination was discovered in the part because the father was given first priority. Numerous Law Commission Reports advocated for the elimination of gender discrimination, but the legislation was never modified. "Guardianship and the Hindu Minority and Guardianship Act, 1956" require revision. For many, childbearing is simply a reality, but paternity is viewed as a question of belief. The Law Commission of India called for revising the relevant portions of the Act in its 257th report on "Reforms in Guardianship and Custody Laws in India to meet the requirement for the "right to equality under Article 14 of the Indian Constitution".

"Accepting the recommendations in its 133rd report, they stated that they would work to eliminate the superiority of one parent over the other, that the welfare of the minor should be of paramount consideration in all cases, and that both the father and the mother should be considered natural guardians of a minor at the same time".

5. The concept of guardianship law was not included in the Dharmashastras. The courts developed the guardianship legislation under the British rule. It was determined that the mother is the children's natural guardian following the death of the father and that no other person is permitted to serve in that capacity for minor children. In the early stages of life, a child is incapable of caring for themselves and is unable to discern what is right or bad, therefore legislators came up with the law and made special laws that provide children's lives significant discretion and support. A person having the care of the minor's person or his property or both person and property is a guardian. It should be underlined that in contemporary law, guardians are primarily responsible for the welfare and safety of the kid. This is reflected in the statement that the welfare of the kid is of the first importance. Both physical and moral well-being are included in welfare.

The current legislation on minorities and guardianship is governed by the Hindu Minority and Guardianship Act, 1956⁶. When the child's natural guardian, the father, passes away, the mother will take custody of the child. In the case of *Essakkayal Naadder v. Sreedharan Babu*⁷, the court ruled that no one else may serve as the minor's natural guardian or transfer the minor's property while the father is still alive and has not lost his Hindu faith, given up on life, or been found unfit.

⁶ The Indian constitution of 1950, § 136.

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