

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

MFA.No. 10 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN OPGW 10/2014 of ADDL.DISTRICT COURT,
THRISSUR DATED 06-11-2014

APPELLANT(S)/PETITIONERS:

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1. MATHU AGED 81 YEARS, W/O. KUNIIYIL MATHIKUTTY,
NADUKUNNU DESOM, KODAKARA VILLAGE,
MUKUNDAPURAM TALUK.
 2. GEETHA, W/O. LATE ANANDAN, 55, KUNIIYIL HOUSE,
NADUKUNNU DESOM, KODAKARA VILLAGE,
MUKUNDAPURAM TALUK.
 3. SAJEESH, S/O. LATE ANANDAN, KUNIIYIL HOUSE,
NADUKUNNU DESOM, KODAKARA VILLAGE,
MUKUNDAPURAM TALUK, NOW RESIDING AT
CHERUVATHOOR DESOM, KODAKARA VILLAGE.
 4. SAJITH, S/O. LATE ANANDAN, KUNIIYIL HOUSE,
PERAMBRA DESOM, KODAKARA VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT,
 5. SANOOP AGED 15, S/O. LATE ANANDAN, KUNIIYIL HOUSE,
NADUKUNNU DESOM, KODAKARA VILLAGE,
MUKUNDAPURAM TALUK REPRESENTED BY MOTHER AND
GUARDIAN, GEETHA, W/O. LATE ANANDAN,
KUNIIYIL HOUSE, NADUKUNNU DESOM, KODAKARA VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.T.N.MANOJ

RESPONDENT(S)/RESPONDENTS:

NIL

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON
11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

acd

MFA NO.10/2015

APPENDIX

APPELLANTS' EXHIBITS

ANNEXURE- (a) : COPY OF THE SSLC CERTIFICATE OF 5TH PETITIONER.

ANNEXURE- (b) : NOTIFICATION EVIDENCING THE FAIR VALUE OF LAND
COMPRISED IN SY.NO.1684 OF KODAKARA DESOM
PUBLISHED BY THE DEPARTMENT OF
REGISTRATION GOVERNMENT OF KERALA.

TRUE COPY

PA TO JUDGE.

acd

V.K. MOHANAN & P.D. RAJAN, JJ.

M.F.A. No. 10 of 2015

Dated this the 11th day of February, 2015

JUDGMENT

P.D.Rajan, J.

This petition is preferred against the order in O.P.(Guardian) No.10/2014 of the Additional District Court, Thrissur. The appellants are petitioners in the above O.P. which was filed under Sections 7 and 8 of the Guardians and Wards Act for declaring the 2nd respondent as the guardian of the minor 5th appellant. The appellants contended that the plaint schedule property belongs to one Anandan, who died intestate on 31.5.2008. The 1st appellant is the mother of late Anandan, the 2nd appellant is the wife and appellants 3, 4 and 5 are the children.

2. The appellants' case is that after the death of the

father, the 2nd appellant is looking after the minor son, who is a student. Now he is studying in Plus One and some amount is necessary for his educational expenses, food and shelter. Therefore, the appellants wish to sell the plaint schedule property and they are ready and willing to deposit the share of the minor in a Nationalised Bank. They have no adverse interest against that of the minor. Hence, they approached the District Court.

3. In the trial Court, the 2nd appellant filed proof affidavit and Exts.A1 to A6 were marked in evidence. After analysing the evidence, the lower Court dismissed the petition. Aggrieved by that, the appellants approached this Court with this appeal.

4. The learned counsel for the appellants contended that proper appreciation of the evidence was

not made by the trial Court. The appellants are ready and willing to sell their share in the property for the welfare of the minor and would be deposited in his name in a Nationalised Bank as the paramount interest is the welfare of the minor. In this context, we have perused the averments put forward by the appellants in their petition filed before the District Court. It reveals that appellants are owners of 10 cents of property comprised in Survey No.1684/31 of Kodakara Village in Thrissur District. The deceased Anandan got right over the property by virtue of document No.6015/95 and 872/96 of Kallettumarakka Sub Registrar's Office. The 2nd appellant admitted that appellants 3 to 5 are the children of late Anandan and his wife Sarada. After her death, the property in her name was partitioned among the deceased

Anandan and appellants 3 to 5 by document No.6016/95.

Thereafter, the right of children was purchased by deceased Anandan by another sale deed No.872/96 and thus, Anandan became the absolute owner of ten cents.

There is no dispute with regard to the extent of the property and no respondent in this case. At present, the fair value of the property per cent was fixed at ₹60,000/- and thus total value of the property fetch nearly ₹6,00,000/-. The 3rd petitioner, who was a daughter of late Anandan, died during the pendency of the proceedings in the OP and she is being survived by the appellants to succeed to her estate and therefore, the property is to be shared into five equal share. As per the Hindu Succession Act, the appellants are entitled to succeed the estate of late Anandan. As one of the legal heir was died during the

pendency of O.P., the appellants are entitled to get 1/5th share each.

5. The learned counsel for the appellants relied on a decision reported in Sudha v. Sasikumar [2012 (1) KLT 252], in which, it is held as follows:

"8.The property of the minors that may be alienated in terms of the permission that is being granted hereby would be the property, in relation to which, the application is made, to wit, the assets that came to them by virtue of the testament of their paternal grandmother and as scheduled to the petition before the court below. For this, the petitioner and the respondent shall file separate affidavits before the court below undertaking not to utilise the funds for any purpose other than that of the minors and that the distribution of the sale proceeds to both wards will be in the proportion of their entitlement to inheritance by testamentary succession going by the Will of their grandmother. The funds generated by sale shall be deposited in separate bank accounts in the name of the minors on the basis of the shares that they have and such accounts shall be operated by the appellant subject to concurrence of the bank concerned and in terms of the banking laws, on behalf of and for the benefit of the minor concerned. The petitioner shall

execute a simple bond without sureties, to the satisfaction of the court below, following due procedure, undertaking to abide by the directions contained herein and also to take care of the person and property of the wards in question."

6. The learned counsel for the appellants produced a notification issued by the Government of Kerala with regard to the fair value of property in Mukundapuram Taluk, Kodakara Village in Thrissur District was fixed at ₹60,000/- per cent. Therefore, accepting the above fair value, it is made clear that the appellants are at liberty to sell the property as per the fair value fixed. Total sale consideration of 10 cents of land will come to ₹6,00,000/-. Accordingly, the appellants are entitled to get ₹1,20,000/- each. Therefore, the M.F.A. s disposed of with the following directions:

- 1) The 2nd appellant is appointed as the guardian of

the minor Sanoop, aged 15 years for selling the Plaint Schedule Property.

2) Before registering the sale deed, the 2nd appellant is directed to submit the draft sale deed before the lower Court for verification.

3) The 2nd appellant is permitted to sell the plaint schedule property for a total consideration of ₹6,00,000/- and the share of the minor, i.e, ₹1,20,000/-, shall be deposited in a Nationalised Bank as Fixed Deposit, until he attains majority.

4) The 2nd appellant shall produce the fixed deposit receipt before the lower Court for verification.

5) She is at liberty to withdraw the monthly interest for purchasing books and other articles for the minor.

6) If any monthly interest is received by the 2nd appellant, she shall furnish the details of the account in the lower Court.

7) The 2nd appellant shall execute a simple bond without sureties to the satisfaction of the lower Court, by an undertaking that she shall not utilise the funds for any purpose other than that of the welfare of the minor.

V.K. MOHANAN, JUDGE.

P.D. RAJAN, JUDGE.

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