

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.04.2019	Delivered on 29.04.2019
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

O.P.No.240 of 2019

U.Yashodha

... Petitioner

Prayer: Original Petition filed under Sections 3, 7 to 10 and 29 of the Guardian and Wards Act, 1890 read with Order XXI Rule 2 and 3 of Original Side Rules, praying that

- i. to appoint the petitioner as the Guardian of the person and property of the minor, viz U.Vignesh;
- ii. and to permit the petitioner to sell the (*) 5/16 share in schedule mentioned property for and on behalf of the minor child;
- iii. to permit the petitioner to invest the sale proceeds of the minor's share in to a nationalised bank or in a profitable manner in the name of the minor and permit the petitioner/guardian herein to receive the interest income for the benefit and livelihood or purchase of any immovable property of the minor child;
- iv. to pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice.

(*) Amended as per order dated 05.04.2019 in A.No.2682 of 2019

For Petitioner : Mr.A.Arokiadoss

ORDER

This petition has been filed by the mother of minor U.Vignesh, seeking to appoint herself as Guardian of the person and property of the minor and permit her to sell the share of the minor in the property.

2. According to the petitioner, the property in question belonged to one C.P.Selvaraj, who died intestate on 03.06.1990, leaving behind his wife S.Gajalakshmi, his son S.Udayakumar and two daughters. The daughters namely, S.Asha and S.Priya, released their rights over the property in favour of their mother S.Gajalakshmi through registered release deed dated 23.09.2008. The said S.Gajalakshmi had executed a settlement deed in favour of her son S.Udayakumar, on 30.11.2012 settling her share in the property in favour of her son S.Udayakumar.

3. The son S.Udayakumar/father of the minor died on 16.10.2014 and his mother S.Gajalakshmi died on 16.10.2016. Consequent upon the death of the son, the property again devolved on his mother S.Gajalakshmi, the petitioner and her children including the minor son. The share of S.Gajalakshmi, on her death would again devolve on the children of S.Udayakumar and her daughters S.Asha and S.Priya. Thus, the minor

son is entitled to 5/16th share in the property.

4. It is stated that the property does not fetch any income and after the death of S. Udayakumar, the petitioner is finding difficult to maintain the family. According to the petitioner, funds are also required for education and marriage of the major daughter of S.Udayakumar.

5. In view of the same, the petitioner has sought for appointment of herself as guardian and seeks permission to sell the property and invest the share of the minor in a long term investment, so that it fetches interest which can be used for the education of the minor.

6. With these object in mind, the petitioner has entered into an agreement with one Jayaprakash for the sale of the property for Rs.28,58,000/- and has received an advance of Rs.5,00,000/-. The value reflected in the sale agreement is more or less equal to the market value prevalent in the area. The share of the minor works out to Rs.9,53,000/-.

7. The petitioner has examined herself as P.W.1. She has filed the following documents:

<i>Exhibits</i>	<i>Description of Documents</i>
Ex.P1	The photocopy of Sale Deed dated 27.11.1985
Ex.P2	The photocopy of Sale Deed dated 14.03.1986

<i>Exhibits</i>	<i>Description of Documents</i>
Ex.P3	The Computer generated death certificate of C.P.Selvaraj
Ex.P4	The photocopy of the Legal Heirship Certificate of C.P.Selvaraj
Ex.P5	The Photocopy of Release Deed dated 23.09.2008
Ex.P6	The Photocopy of Settlement Deed dated 30.11.2012
Ex.P7	The Computer generated death certificate of S.Udayakumar
Ex.P8	The Photocopy of Legal Heirship Certificate S.Udayakumar
Ex.P9	The Photocopy of birth certificate of minor son U.Vignesh
Ex.P10	The Photocopy of Aadhaar Card in respect of minor son U.Vignesh
Ex.P11	The Original Sale Agreement dated 01.03.2019

8. The purchaser has also been examined as P.W.2. From the evidence on record, I find that the proposed sale of the property will be for the benefit of the minor.

9. An application under Sections 3 and 7 to 10 of the Guardian and Wards Act is wholly unnecessary in view of the introduction of the Hindu Minority and Guardianship Act, 1956. The Section 5 of the said Act is an overriding provision, which makes the provisions of any other law which is inconsistent of the Hindu Minority and Guardianship Act, not applicable to Hindus. As per Section 6 of the Hindu Minority and Guardianship Act in the absence of the father, the mother is a natural guardian. Section 8 of the Hindu Minority and Guardianship Act places an interdict on the power of the natural guardian to alienate the property of the minor. Hence, the natural guardian will have to seek permission under

Section 8 of the Act for sale of the property. Hence, this Original Petition is treated as an Application under Section 8 of the Hindu Minority and Guardianship Act seeking permission for sale of the property of the minor, in view of the fact that the Original Petition has been entertained by this Court and evidence has also been recorded. There is no need to appoint the petitioner as guardian of the person and property of the minor, inasmuch as the petitioner is the natural guardian of the person and property of the minor, under Section 6 of the Hindu Minority and Guardianship Act.

10. Hence, this application is allowed treating it as an application under Section 8 of the Hindu Minority and Guardianship Act, seeking permission to sell the property alone and the petitioner is permitted to sell the share of the minor in the property. The share of the minor in the sale proceeds i.e. a sum of Rs.9,53,000/- shall be deposited in any of the Nationalised Bank, till the minor attains majority. The fixed deposit receipt shall be lodged with the Registrar General of this Court for safe custody. The petitioner is permitted to withdraw quarterly interest from the deposit amount for the maintenance of the minor.

29.04.2019

jv

Speaking order/Non speaking order
Internet: Yes/No

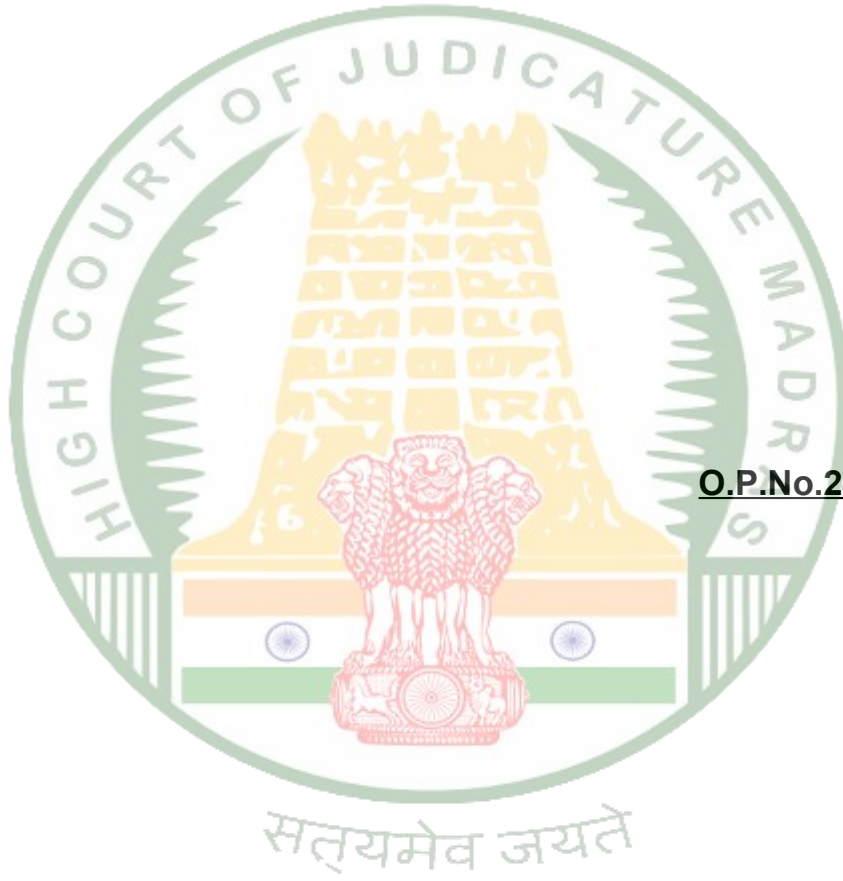
Note: Issue Order copy on 29.04.2019



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R.SUBRAMANIAN.J.,

jv



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