

O.P.No.871 of 2019

SENTHILKUMAR RAMAMOORTHY, J.

This petition is filed under Sections 3, 7 to 10 of the Guardians And Wards Act, 1890 for appointing the petitioner as the Legal Guardian of the person and property of her minor children, D.Miraclin, and D.Mathew.

2. I heard the learned counsel for the petitioner. He submitted that the petitioner is the mother and natural guardian of her minor children, namely, D.Mathew, who was born on 21.10.2001, and D.Miracline, who was born on 10.07.2006. He further submitted that the husband of the petitioner namely, Mr.S.David Rajendran, died on 19.10.2017, leaving behind the petitioner and the two children as his legal heirs. He also submitted that this petition has been filed for appointment of the petitioner as the guardian of the person and property of the children and that the property in question originally belonging to the late father of her husband.

3. He further submitted that the petitioner intends to mortgage the property described in the schedule in order to meet the educational expenses and maintenance of her children.

4. He also submitted that evidence was recorded in the matter through the petitioner, who was examined as PW1. The following documents were marked through PW1.

(i) Ex.P1 - Certified copy of the Partition Deed dated 09.06.2015 in favour of the petitioner's husband.

(ii) Ex.P2 - Computer generated copy of the death certificate of Mr.S.David Rajendran, who died on 19.10.2017.

(iii) Ex.P3 - Photocopy of the Legal Heirship Certificate dated 11.01.2018 in respect of Mr.Davi Rajendran (Marked after comparing and verifying with the original).

(iv) Ex.P4 - Photocopy of the birth certificate of her son D.Matthew, who was born on 21.10.2001.

(v) Ex.P5 - Computer generated copy of the birth certificate of her daughter D.Miracline, who was born on 20.07.2006.

(vi) Ex.P6 - Photocopy of her office Identity Card issued by the Government of Tamil Nadu (Marked after comparing and verifying with the original).

(vii) Ex.P7 - Pay slips of PW1 for the month of April - 2019, May-2019 & June 2019 (Marked after comparing and verifying with the originals).

(viii) Ex.P8 - Photocopy of her Aadhaar card bearing No.6147 1416 8904 (Marked after comparing and verifying with the original).

(ix) EX.P9 - Photocopy of the Aadhaar card of her minor son D.Mathew bearing No.3758 9811 8483 (Marked after comparing and verifying with the original).

(x) Ex.P10 - Photocopy of the Aadhaar card of her minor daughter D.Miraclin bearing No.3065 2453 7647 (Marked after comparing and verifying with the original).

(xi) Ex.P11 - Family photo of PW1 along with compact disc.

(xii) Ex.P12 - Declaration and willingness.

5. On the basis of the above, the learned counsel submitted that the petitioner is entitled to be appointed as the Guardian of the person and property of her children as sought for in this petition.

6. I considered the submissions of the learned counsel and examined the petition and the evidence.

7. On perusal of the birth certificate of D.Mathew, Ex.P4, it is clear that D.Mathew, who was born on 21.10.2001, is no longer a minor. Therefore, as regards D.Mathew, this petition is not maintainable. As regards D.Miracline, as she was born on 20.07.2006, she is a minor as on date and on examining the evidence that was recorded through the petitioner as PW1, the following facts

are evident;

(i) The petitioner's husband died on 19.10.2017 and the Legal Heir Ship Certificate (Ex.P3) discloses that the petitioner and the minor children are the surviving legal heirs of the deceased, namely, Mr.David Rajendran/husband of the petitioner.

(ii) The Partition deed dated 09.06.2015 is in favour of the petitioner's husband as regards the Schedule B property therein, as evidenced by Ex.P1.

(iii). The petitioner has adduced evidence with regard to her financial status through her salary slips marked as Ex.P7 (Series).

(iv). The petitioner has also submitted the requisite declaration of willingness to be a guardian, which is duly attested by two witnesses.

8. Based on the above, I am of the view that the petitioner has made out a case for being appointed as the Guardian of the person and property of the Minor, D.Miraclin, in respect of the schedule mentioned Property. The petitioner is the mother of the minor girl D.Miraclin, and is in the best position to ensure her welfare.

9. The petitioner has also requested for permission to mortgage the schedule mentioned property so as to augment her income and take care of the interest of her children. Such permission is granted subject to the condition that the minor would not be fastened with liability in respect of the mortgage and the mortgage cannot be enforced in respect of the minor's 1/3 rd share in the property.

10. Accordingly, this petition is disposed of as follows;

(i) The prayer for appointment of the petitioner as the guardian of the person and property of her son, D.Mathew, who was born on 21.10.2001, is rejected because he is a major as on date.

(ii) The petitioner is appointed as the guardian of the person and property of her minor daughter, D.Miraclin.

(iii) Permission is granted to the petitioner to mortgage the property mentioned in the schedule to the petition subject to the condition that no liability, in that regard, would be fastened on the minor and such mortgage shall not be enforced in respect of the minor's 1/3 rd share in the property.

05.12.2019

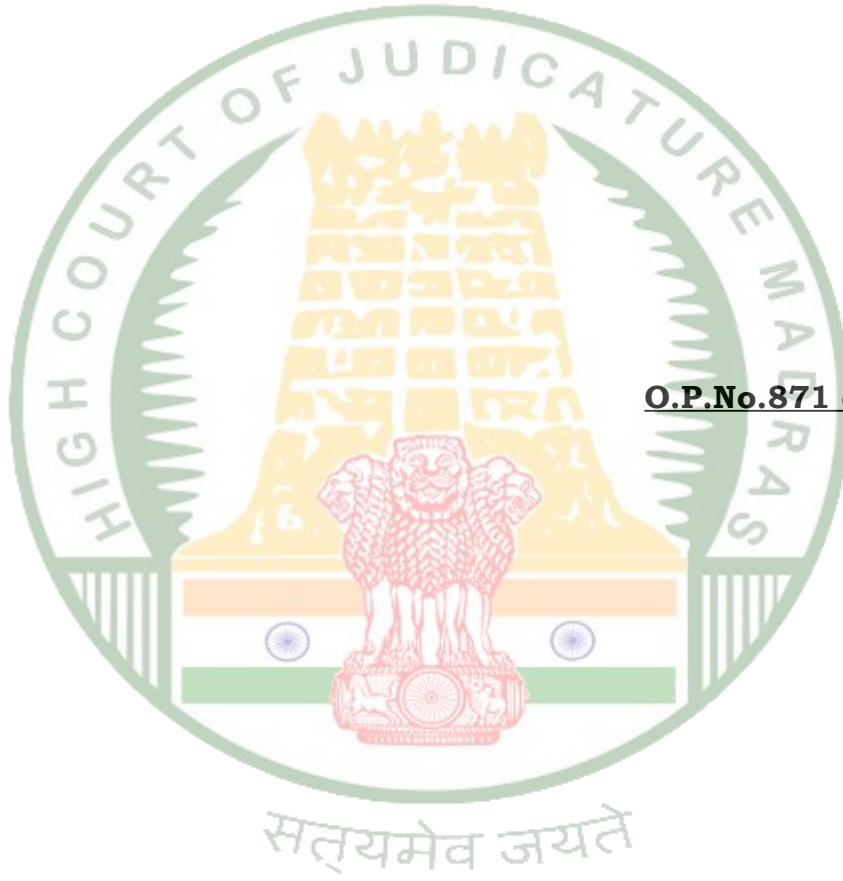
kmm

Note: Issue Order Copy on 17.12.2019.

O.P.No.871 of 2019

SENTHILKUMAR RAMAMOORTHY, J.

kmm



O.P.No.871 of 2019

WEB COPY 05.12.2019