

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

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THE HONOURABLE Mr.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

O.P.No.962 of 2019

M.Irudaya Geetha @ Geetha

... Petitioner

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

a. appoint the petitioner as guardian of the person and property of the Minor viz., Jesi Abinaya, residing at No.1A, South Jeganathan Nagar, 1st Main Road, Villivakkam, Chennai-49;

b. to permit the petitioner to sell the Minor's share in the schedule property to one Mr.H.Kamalasekaran, S/o.Late V.Harikrishnan, as per the agreement dated 26.08.2019; and

c. to permit the petitioner to deposit the said sale proceeds into a nationalised bank in the name of minor M.Jesi Abinaya, aged about 13 years and to receive the interest from the deposits, for uplift and livelihood of the child.

For Petitioner : Ms.V.Kaaviya

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ORDER

This petition is filed to appoint the petitioner as the guardian of the person and property of her minor daughter viz., Jesi Abinaya and to permit the petitioner to sell the minor's share in the property described in the schedule to the petition to Mr.H.Kamala sekaran and for consequential permission to deposit the minor's share of the sale proceeds in a nationalized bank.

2. I heard the learned counsel for the petitioner.

3. The learned counsel for the petitioner is the mother of Jesi Abinaya, who is aged about 13 years. She further submitted that the petitioner married the late Mr.V.Michael, who died on 26.09.2015. During his lifetime, the petitioner's husband had purchased the schedule mentioned property under the Sale deed dated 19.07.1999.

4. Upon his death, his legal heirs viz., the sons born through his earlier marriage, the petitioner and the minor daughter viz., Jesi Abinaya are the legal heirs. She further stated that the mother of the petitioner's husband died on 28.04.2016. In support of the petition, she pointed out that evidence was adduced by

examining the petitioner as P.W.1. During the course of the examination in chief of P.W.1, the following nine documents were exhibited as Ex.P1 to Ex.P9:-

Sl.No.	Description of the documents
1.	Ex.P1 - The certified copy of the Sale Deed dated 19.07.1999 executed in favour of V.michael.
2.	Ex.P2 - The photocopy of the death certificate of M.Jesintha Mary, who died on 16.09.2004. (Marked after comparing and verifying with the original).
3.	Ex.P3 - The computer generated death certificate of Michael, who died on 26.09.2015.
4.	Ex.P4 - The photocopy of the death certificate of Michael, who died on 26.09.2015. (Marked after comparing and verifying with the original).
5.	Ex.P5 - The photocopy of the legal heirship certificate dated 17.06.2016 in respect of Michael (Marked after comparing and verifying with the original).
6.	Ex.P6 - The original birth certificate of Jesi Abinaya, who was born on 12.05.2006.
7.	Ex.P7 - The photocopy of the Aadhaar card of Jesi Abinaya bearing No.2410 5539 9359 (Marked after comparing and verifying with the original).
8.	Ex.P8 - The online guideline value dated 29.08.2019.
9.	Ex.P8 - The declaration of willingness given by the petitioner to accept the office of the guardian of the person and property of the minor M.Jesi Abinaya.

The petitioner pointed out that these documents include the death certificate of her husband the late Mr.Michael, who died on 26.09.2015. The said document was marked as Ex.P3. The death certificate of the petitioner's mother in law was marked as Ex.P4 and this document evidences that she died on 28.04.2016. The original birth certificate of the minor, which was marked as Ex.P6, evidences that the minor was born on 12.05.2006, and a declaration of the willingness of the petitioner to be a guardian of the person and the property of the minor was marked as Ex.P9.

5. The learned counsel also submitted that the petitioner along with the two sons of the late Mr.Michael through his first wife, entered into negotiations with Mr.H.Kamala sekaran for the sale of the property described in the schedule to the petition for a total sale consideration of Rs.28 Lakhs. She contended that such sale was necessary in the interest of the minor daughter so as to provide for her education and livelihood. Based on the aforesaid, she submitted that this petition is liable to be allowed.

6. I find that the death certificate of the petitioner's husband has been filed as Ex.P7 and this document evidences that he died on 25.06.2015. The death certificate of his mother

Thuthithammal has been marked as Ex.P4 and this evidences that she died on 28.04.2016. The death certificate of the first wife viz., M.Jesindha Mary, has been marked as Ex.P2 and this document shows that she died on 16.09.2004. The sale deed of the petition schedule property is filed as Ex.P1 and this document reflects that the property was purchased by Michael, who is the husband of the petitioner. The original birth certificate of the minor girl has been marked as Ex.P6 and the birth certificate reflects that she was born on 12.05.2006. The petitioner has provided a declaration of willingness to be a guardian of the person and property of the minor, which is marked as Ex.P9.

7. In addition, the prospective purchaser was examined as P.W.2 and he filed a proof affidavit stating that he proposes to purchase the property for a sum of Rs.28 Lakhs and that he has already paid an advance amount of Rs.2 lakhs.

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8. I considered the submissions of the learned counsel for the petitioner and examined the evidence recorded in respect of the

petition.

9. Upon such consideration, I find that the petitioner has duly established that the husband of the petitioner died on 26.09.2015 and that the minor child is under her care and custody since then. It is stated in the petition that the sale of the property is necessary so as to utilise the sale proceeds for the education and other necessities of the minor child. Therefore, I am satisfied that it is just and necessary to appoint the petitioner as the guardian of the person and property of the minor girl viz., Jesi Abinaya and to grant permission to sell the property. Therefore, this petition is allowed by issuing the following directions:

i. The petitioner is appointed as the guardian of the person and property of the minor girl viz., Jesi Abinaya, aged about 13 years.

ii. The petitioner is permitted to sell the minor's share of the property described in the schedule to the petition to Mr.H. Kamala sekaran as per the agreement dated 26.08.2019.

iii. The minor's share of sale proceeds shall be deposited in a fixed deposit account in any nationalised bank in the name of the minor girl viz., Jesi Abinaya represented by her mother and guardian.

iv. The said deposit shall be for a period of three years initially to be renewed periodically until the minor attains the age of majority.

v. The principal amount shall not be appropriated or withdrawn by the petitioner, but the petitioner is permitted to receive the interest thereon on a quarterly basis.

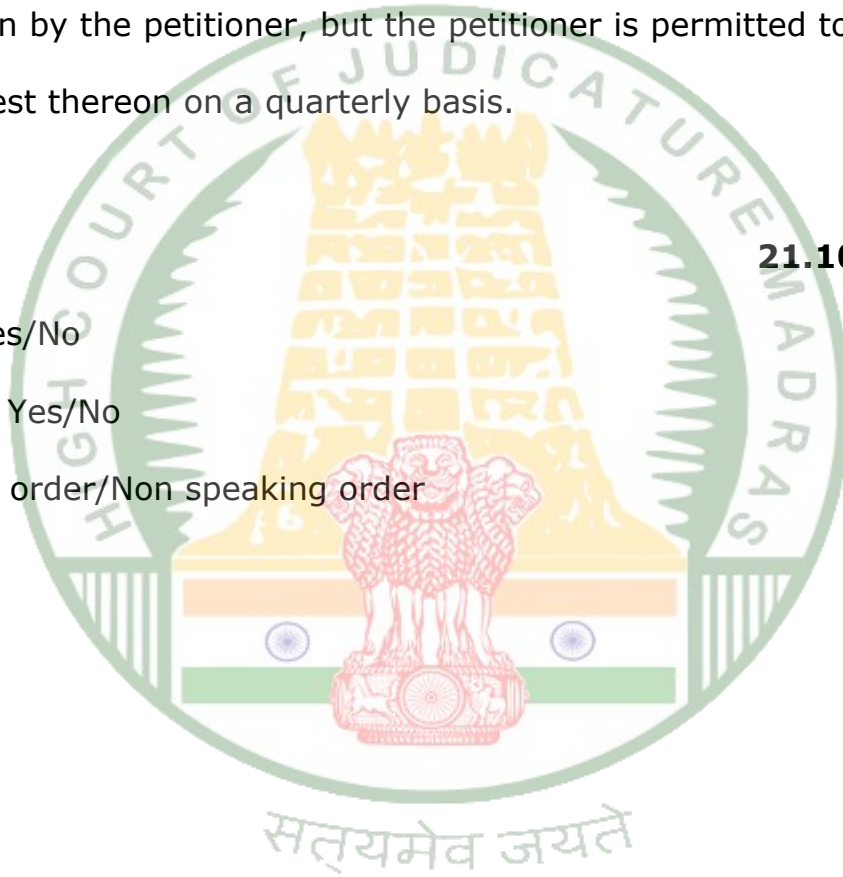
21.10.2020

Index: yes/No

Internet: Yes/No

Speaking order/Non speaking order

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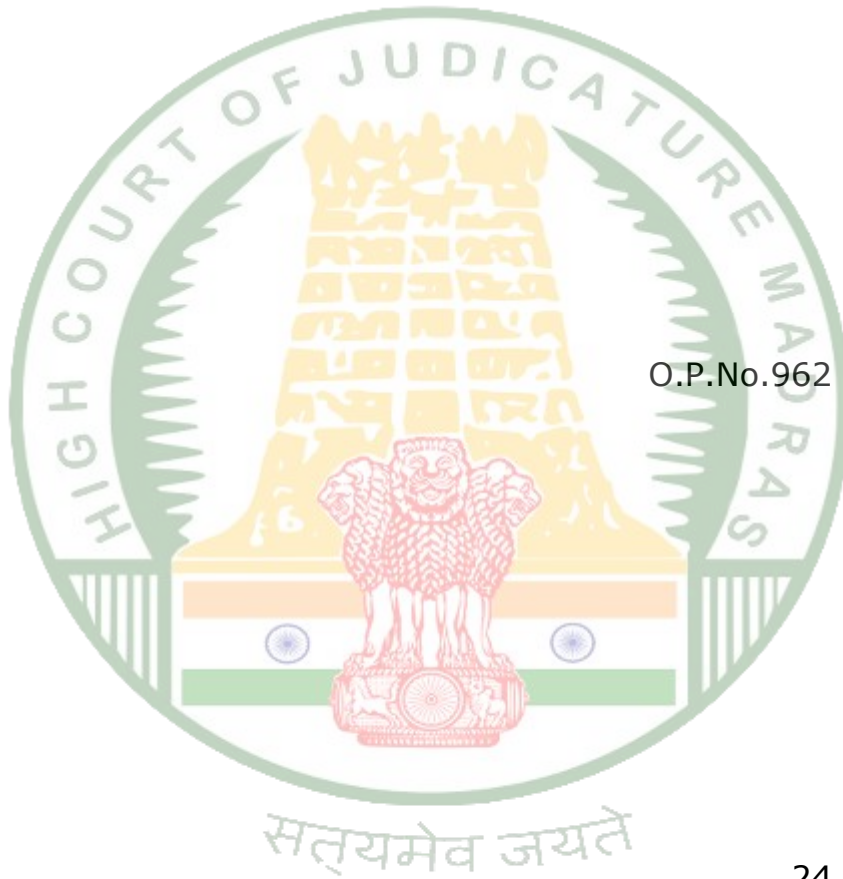


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SENTHILKUMAR RAMAMOORTHY, J

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