



OP.No.246 of 2020

WEB CO **KRISHNAN RAMASAMY, J.**

This petition has been filed under Sections 3 and 7 to 10 and 29 of the Guardians and Wards Act, 1980 read with Order XXI Rule 2 and 3 of Original Side Rules, seeking the following reliefs:

(a) to declare the petitioner herein as the guardian of the person and property of minor son A.Umar Mukthar, aged about 13 years and 7 months born on 07.07.2006;

(b) to grant permission to sell the share of the above named minor along with that of the petitioner in the property described in the schedule thereto to the persons who have entered into an agreement with the petitioner in respect thereof for the price agreed upon; and

(c) to give directions to the petitioner as to deposit the sale proceeds of her minor son's share proportionally entitled to in any Nationalized Bank situated in the City of Chennai to lie until the attainment of majority by the minor and to enable the petitioner herein to



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receive the interest accruing thereon once in three months so that the same could be utilized for bringing up of and education of the minor.

2. According to the petitioner, the petitioner's husband namely Late R.Ansar, died intestate at Chennai on 08.02.2011, leaving behind the following legal heirs:

- | | |
|-----------------------------------|--------|
| (a) Mrs.A.Shakila, the petitioner | Wife |
| (b) Minor A.Umar Mukthar | Son |
| (c) Mrs.Dowlath Bee | Mother |

The father -in-law and the mother-in-law of the petitioner also passed away. Now, the legal heirs of the deceased R.Ansar are Mrs.A.Shakila, the petitioner herein and her minor son viz., A.Umar Mukthar. In terms of Mohammedan Law, minor A.Umar Mukthar is entitled to 50% share in his father's property.

3.According to the petitioner, the value of the property would be around Rs.30 lakhs. The petitioner, who is the mother of the minor filed the present petition stating that she is the house wife and she has no



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other earnings. She is supported by her family members for leading her life and she needs money for the higher education of her son. At present, her son is aged about 16 years and he is studying 12th standard now and hence, the plaintiff needs money for the higher studies of her son. Therefore, the situation arose to sell the property. So far, no guardian has been appointed and since she being the mother, has made a plea that she is the natural guardian of her minor, son A.Umar Mukthar.

The petitioner seeks permission to sell half share of the property to which his minor is entitled to along with her share in terms of an unregistered Sale Agreement dated 24.09.2019 entered by her with the proposed buyer, wherein, the total sale consideration has been mentioned as Rs.70,00,000/- out of which, the minor A.Umar Mukthar is entitled for a sum of Rs.35,00,000/-. In this regard, the plaintiff has also filed a downloaded copy of the guideline value of the said property, which was marked as Ex.P10.



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4.The petitioner, who examined herself as P.W.1, reiterated the averments made in the petition and filed the following documents viz.,
Exs.P1 to P15:

Ex.P1 is the computer generated Birth Certificate of A.Umar Mukthar.

Ex.P2 is the computer generated Death Certificate of R.Ansar.

Ex.P3 is the photocopy of the Legal Heirship Certificate of R.Ansar(Original is not produced. Counsel for the petitioner insisted for marking of the photocopy of this document. Admissibility and evidentiary value of this document will be decided later)

Ex.P4 is the computer generated Death certificate of Dowlath Bee.

Ex.P5 is the photocopy of the registered Settlement Deed dated 10.04.2008(Compared with the original).

Ex.P6 is the affidavit given by Mr.R.Rasool.

Ex.P7 is the photocopy of the bonafide certificate dated 26.11.2019 issued by Daniel Thomas Matric Hr. Sec. School (Original is not produced. Counsel for the petitioner insisted for marking of the



photocopy of this document. Admissibility and evidentiary value of this document will be decided later).

Ex.P8 is the photocopy of the Aadhaar Card of minor A.Umar Mukthar(Compared with the original).

Ex.P9 is the original unregistered Agreement of Sale dated 24.09.2019(Counsel insisted to mark the document saying that it is for collateral purpose. Admissibility and evidentiary value of this document will be decided later).

Ex.P.10 is the downloaded copy of guideline value.

Ex.P11 is the computer generated Encumbrance Certificate dated 13.09.2019.

Ex.P12 is the photocopy of my Aadhaar Card(compared with the original).

Ex.P13 is the photocopy of my Voter Identity Card(compared with the original)

Ex.P.14 is the photocopy of my PAN Card(compared with the original)



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Ex.P15 is my declaration of willingness

5.The plaintiff has also stated that she has not filed any other petition before any other Court seeking the same relief.

6.Considering the averments made in the petition and on perusing the materials available on record, the petitioner has made out a case and this Court is of view that the petitioner is entitled for the reliefs as sought for in the petition.

7.In fine, this petition is ordered, by appointing the petitioner as the Guardian of the person and property of the minor A.Umar Mukthar. The petitioner is permitted to sell the share of the minor along with her share in the property described in the petition schedule and receive the benefits on behalf of the minor and deposit the same in any Nationalised Bank. The petitioner is also permitted to withdraw the interest accrued thereon once in three months to utilize the same towards the welfare of



the minor. The petitioner shall execute a Guardian Bond for a sum of
Rs.25,000/- in favour of Assistant Registrar O.S.(II), High Court,
Madras.

16.06.2022

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