



O.P.No.959 of 2017

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P.VELMURUGAN, J.

This Original petition has been filed under Sections 3, 7 to 10 & 29 of Guardian and Wards Act, 1890 r/w Order XXI Rule 2 and 3 of Original Side Rules, 1956 praying to (i) appoint the petitioner as guardian of both the person and property of her minor daughter B.Nivedita ; (ii) the said guardian may be at liberty to collect rent from the respondents 3 to 5 and utilize the same towards maintenance and education of the minor ; (iii) the said guardian may be at liberty to invest any balance amount of the rental income in the name of the minor after adjusting the necessity and educational expenses of the minor ; and (iv) the cost of this petition may be paid by the said guardian out of the income of the property of the said minor.

2. It is the case of the petitioner that she is the mother of the minor B.Nivedita. The respondents 1 and 2 are the father and paternal grandfather of the minor. The respondents 3 to 5 are tenants of the schedule mentioned property. The minor child was born out of the marriage between the petitioner and the first respondent. The marriage



O.P.No.959 of 2017

between the petitioner and first respondents was already dissolved in O.P.No.411 of 2014 by the learned II Additional Principal Judge, Family Court, Chennai on 03.08.2015. The petitioner filed M.C.No.2131 of 2014 before the XVI Metropolitan Magistrate, Chennai seeking interim maintenance and the same was allowed by directing the 1st respondent to pay a sum of Rs.5,000/- each per month as interim maintenance to the petitioner and the minor child. On appeal in C.A.No.171 of 2015 the XVII Additional Judge, City Civil Court, Chennai by order dated 23.11.2015 modified the said order and directed the 1st respondent to pay a sum of Rs.5,000/- per month as interim maintenance to his minor daughter. However, the 1st respondent failed to pay the maintenance, hence, the petitioner filed a direction petition in O.P.No.3015 of 2016 and this Court by order dated 29.02.2016 directed the Inspector of police, P.1 Pulianthope Police Station to execute the warrant of arrest against the 1st respondent. Thereafter, the 1st respondent had deposited Rs.40,000/- to recall the warrant, but failed to pay the subsequent maintenance amount to the minor.

3.It is further stated that the 2nd respondent had settled the schedule mentioned property in favour of the minor by way of Settlement Deed



O.P.No.959 of 2017

dated 04.10.2013, then subsequently cancelled the Settlement Deed vide Doc.No.1253/2014 dated 20.03.2014 and Re-Settlement Deed was entered vide Doc.No.1254/2014 dated 20.03.2014 by nominating the 2nd respondent as guardian of the schedule property of the minor. Challenging the same, the minor represented by her mother/petitioner herein filed O.S.No.1017 of 2016 before the V Assistant Judge, City Civil Court, Chennai seeking to declare the above documents as null and void and the same was allowed vide order dated 07.12.2016. Thereby, the minor is the absolute owner of the schedule mentioned property.

4.It is further stated that the respondents 3 to 5 have entered into a tenancy agreement with the respondents 1 and 2 without the knowledge of the minor and they are enjoying the rental income derived from the schedule property. The petitioner is unemployed and struggling to lead day-to-day life to herself and her daughter. Hence, the petitioner sent a notice dated 26.4.2017 to the respondents to pay the rent and rental arrears, but, there was no response from the respondents. Hence, the present petition has been filed seeking to appoint the petitioner as guardian of the minor and her properties.

5.Heard the learned counsel for both sides and perused the



O.P.No.959 of 2017

materials available on record.

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6. Though the 2nd respondent reported dead, so far no steps have been taken to bring on record the legal representatives of the deceased 2nd respondent. Hence, this petition is dismissed as abated as against the 2nd respondent is concerned.

7. On the earlier occasions, this Court by order dated 26.11.2018 directed the respondents 1 and 2 to make payment of future maintenance through RTGS to the petitioner, as per the calculation memo. But the first respondent has not complied with the order.

8. It is seen from the records that chief and cross examination of petitioner's side was completed, however, the first respondent has not come forward to record his evidence, despite several opportunity was provided, hence the respondents' side evidence was closed. The learned counsel for the respondents submitted that he has filed an application before the Registry to record the evidence of the first respondent, however, as on date no application is pending.

9. Before the learned Master, the petitioner examined himself as



O.P.No.959 of 2017

P.W.1 and filed proof affidavit and also marked the following documents

viz., Exs.P1 to P14 :

1. Ex.P1 is the computer generated copy of the birth certificate of N.B.Nivedita, who was born on 14.09.2010.
2. Ex.P2 is the photocopy of the Settlement Deed dated 04.10.2013 in favour of minor B.Nivedita.
3. Ex.P3 is the certified copy of the Cancellation of Settlement Deed dated 20.03.2014.
4. Ex.P4 is the photocopy certified copy of the Re Settlement Deed dated 20.03.2014.
5. Ex.P5 is the certified copy of the Interim order dated 12.12.2014 in M.B.No.2131 of 2014 in M.C.No.06 of 2014.
6. Ex.P6 is the certified copy of the divorce order dated 03.08.2015 in O.P.No.411 of 2014 passed by 2nd Additional Family Court, Chennai.
7. Ex.P7 is the certified copy of the order dated 23.11.2015 in Crml.Appeal.No.171 of 2015 XVII Additional Judge, City Civil Court, Chennai.
8. Ex.P8 is the photocopy of the school certificate of minor B.Nivedita.
9. Ex.P9 is the certified copy of the order dated 29.02.2016 in Crl.O.P.No.3015 of 2016.



O.P.No.959 of 2017

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10.Ex.P10 is the certified copy of the judgment dated 07.12.2016 passed by the V Assistant City Civil Court, Chennai.

11.Ex.P11 is the certified copy of the decree dated 07.12.2016 passed by the V Assistant City Civil Court, Chennai.

12.Ex.P12 is the certified copy of the Encumbrance certificate.

13.Ex.P13 is the photocopy of the school fees bills dated 04.06.2015 and 31.05.2017.

14.Ex.P14 is the photocopy of the front page of the Indian Overseas Bank account passbook bearing account No.0142010000063065.

10. The petitioner, who examined herself as P.W.1, reiterated the averments made in the petition and nothing has been extensively stated during her cross examination.

11. A careful perusal of the averments made in the petition and the submissions made by the learned counsel on either side, it is seen that the paternity of the child was not in dispute. There is no dispute that the minor child is living under the care and custody of his mother/petitioner herein. Further the respondents 1 and 2 have let out the schedule mentioned property to the respondents 3 to 5 and enjoying the rental income deriving from the tenancy. Now, the 2nd respondent is no more



O.P.No.959 of 2017

and the 1st respondent alone is enjoying the income derived from the schedule mentioned property. As a father, the first respondent has failed to pay maintenance to her daughter regularly and also acted against the welfare and interest of the minor.

12. Considering the relevant materials and after hearing the arguments, this Court is inclined to allow this petition. In fine, this petition is ordered as prayed for, by appointing the petitioner as the Guardian of both the person and schedule mentioned property of minor B.Nivedita. 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.

01.04.2022

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O.P.No.959 of 2017

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O.P.No.959 of 2017

01.04.2022