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O.P.No.75 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

O.P.No.75 of 2023

Shreen Bau Meera Hussain

... Petitioner

PRAYER: Original Petition filed for permission under Section 3,7 to 10 of Guardian and Wards Act, 1890 read with Order XXI Rule 2 & 3 of Original Side Rules praying for:

(a)Appoint the petitioner as guardian of the person and property of the minor,

(b)Permit the petitioner to sell the schedule mentioned property on behalf of the minor daughter namely F.Asmara Faraal born on 10.06.2020, 2 years and 7 months old.

(c)Permit the petitioner to deposit the minor's share from the sale proceeds i.e. Rs.2,42,229/- (Rupees Two Lakh, forty two thousand, two hundred, twenty nine only) into a nationalized bank for and on behalf of minor namely F.Asmara Faraal born on 10.06.2020, 2 years and 7 months old and the petitioner as a mother and natural guardian to receive the interest from the deposits for the uplift and livelihood of the minor and



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(d)Pass such other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice

For Petitioner : Ms.Shaikh Mehrunisa

ORDER

By this petition, the mother and natural guardian of the minor, F.Asmara Faraal, seeks permission to deal with the minor's 1/3rd share in the property described in the schedule to the petition.

2. The petitioner asserts that the above mentioned property was purchased by the petitioner's husband, late Farook Nafith Kaja Maideen, by way of a registered Sale Deed dated 21.09.2020. The husband of the petitioner died on 14.05.2021, leaving behind his legal heirs as such his mother Fairoze Kaja Maideen, petitioner his wife and his minor daughter F.Asmara Faraal as the successors to the immovable property. The deceased petitioner's husband had taken a loan for purchasing the above mentioned property, and after his death the petitioner was not able to continue the EMI for the loan amount, and the balance outstanding towards repayment of the bank loan obtained towards purchase of the property, as on 17.11.2022 is sum of Rs.27,73,313/- as per the letter issued by the bank.



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3. The petitioner further states that mother in-law is aged and is a housewife and the petitioner is working in a private firm on monthly salary basis of Rs.10,000/- and the salary earned by the petitioner is not sufficient to pay the loans and its accumulating interest every month. It is submitted that, the present guideline value of the property is about Rs.35,00,000/-.

4. One Mr.M.S.Naveen Kumar and Mrs.Kavitha Batchu had offered to purchase the petition mentioned property for a total sale consideration of Rs.35,00,000/- and it is equivalent to the market value prevailing in that area, the petitioner further submits that after settling the outstanding bank loan amount the remaining balance will be sum of Rs.7,26,313/- out of the said amount the minor herein is entitle to 1/3rd share i.e., Rs.2,42,229/-.

5. In order to establish entitlement to the relief claimed, the petitioner adduced evidence by examining herself as P.W.1. In course of the examination in chief of P.W.1, 13 documents listed at the foot of this order were exhibited as Exs.P1 to P13. The death certificate of the petitioner's husband (Ex.P2) discloses that he died on 14.05.2021. The legal heirship certificate in respect of her husband (Ex.P5) discloses the names of the his



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mother, petitioner, and his minor daughter as the Class-I legal heirs of the deceased. The birth certificate of the minor daughter (Ex.P1) discloses that he was born on 10.06.2020. As evidence of title of her husband to the relevant immovable asset, the registered Sale Deed dated 21.09.2020 (Ex.P12) is placed on record. The petitioner has provided the declaration of willingness to be the guardian of the person and property of minor F.Asmara Faraal (Ex.P10). I am convinced, that the value shown in the application for the property is an appropriate value.

6. Based on the evidence adduced by the petitioner, the petitioner is entitled to the relief claimed on the following terms:

(i) the petitioner is appointed as the guardian of the person and property of the minor F.Asmara Faraal.

(ii) the petitioner is permitted to deal with the 1/3rd share of her minor daughter in the property described in the schedule to the petition, subject to the condition that 1/3rd of the total sale proceeds shall be remitted into an interest bearing fixed deposit account in the name of the minor in any of the Nationalised



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bank. Such fixed deposit shall be kept renewed until the minor attains the age of majority.

(iii) After completing the aforesaid, the petitioner shall provide the fixed deposit receipt before the Assistant Registrar (Original Side-II) of this Court.

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Index :Yes/No

Speaking: Yes/ No

Neutral Citation: Yes/ No

Petitioner's witness:

P.W.1 – Mrs.Shreen Banu Meera Hussain

Documents exhibited by the petitioner:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	Computer generated birth certificate F.Asmara Faraal
Ex.P2	Computer generated death certificate of Farook Nafith
Ex.P3	Computer generated death certificate of Kaja Maideen
Ex.P4	Computer generated legal heirship certificate of Kaja Maideen
Ex.P5	Computer generated legal heirship certificate of Farook Nafith
Ex.P6	Photocopy of the Aadhaar card of Farook Nafith Kaja Maideen
Ex.P7	Photocopy of the Aadhaar card of Shreen Banu Meera Hussain
Ex.P8	Original unregistered Agreement of Sale deed 20.12.2022
Ex.P9	Photocopy of the Rental Agreement dated 03.06.2022
Ex.P10	Petitioner's declaration of willingness to accept the office of



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<i>Exhibits</i>	<i>Documents</i>
	guardian of the person and property of minor F.Asmara Faraal
Ex.P11	Consent affidavit given by the mother-in-law Fairoze Kaja Maideen
Ex.P12	Certified copy of the sale deed dated 21.09.2020 in favour of Mr.Farook Nafith K (witness states that the original deed is mortgaged with the bank This document is marked subject to its proof, admissibility and relevancy)
Ex.P13	Photocopy of the letter dated 17.11.2022 issued by State Bank of India, Bazullah road, T.Nagar Branch, Chennai stating that the petitioner is maintaining the Home Loan in Account No.39213638148

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