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O.P.No.129 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

**O.P.No.129 of 2023**

Hema

... Petitioner

**PRAYER:** Original Petition filed for permission under Section 8(2) of

Hindu Minority and Guardianship Act, 1956 read with Order XXI Rule 2 &

3 of Original Side Rules and Clause 17 of Letter Patent Act praying for

(a)to permit the petitioner herein to develop the minors shares of property by appointing M/s.Sai Sivan Foundation as their General Power of Attorney Agent and sell the minor's undivided share of land measuring an extent of 1133.2 Sq.ft out of their share measuring an extent of 1706.6Sq.ft forming part of total extent of 2560 Sq.ft the schedule property to the purchaser through the General Power of Attorney Agent.

(b)to permit the Developer to deposit the amount of Rs.25,00,000/- each in favour of the minor Selvi J.Dharshini and minor Master J.Badrinath in any Nationalized Bank;

(c)to permit the petitioner to receive the possession of the completed Flat bearing No.F-2 First Floor (middle portion)



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measuring 758 Sqft of plinth area along with one car parking on behalf of minor Selvi J.Dharshini (minor) and Flat bearing NoT-2 in the third floor (middle portion) measuring 758 Sq.ft of plinth area along with one car parking to Master J.Badrinath from the developer (minor)

(d)and pass such further or other order or orders as this Hon'ble Court may deem fit and proper in this circumstances of the case.

For Petitioner : Mr.D.Senthil Kumar

### **ORDER**

By this petition, the mother and natural guardian of the minor children namely, J.Dharshini and J.Badhrinath, seeks permission to develop and sell the minors share of property described in the schedule to the petition.

2. The petitioner asserts that after the demise of her husband namely K.Janakiraman the above mentioned minor children and the petitioner are in the joint possession, each having  $\frac{1}{3}$ <sup>rd</sup> share in the property comprised in D/No.19/8, Ramanathan 2<sup>nd</sup> Street measuring an extent of 2560 Sq Ft., Comprised in T.S.No.61, Patta No.1783, Block No.31, Ayanavaram Village



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and Taluk, Chennai. The petitioner states that her husband late K.Janakiraman was the absolute owner of the said property, which was acquired by him through a Settlement Deed executed by his mother late Saradhammal on 18.06.2007, the said Settlement Deed was registered as Doc No.2195/2007 on the file of SRO-Anna Nagar. The husband of the petitioner died on 24.08.2015. The petitioner further states that the property is in a dilapidated condition and the same is not yielding any income to the petitioner and she has no regular job or income.

3.The petitioner further states that in the interest of the minor children she has decided to demolish the existing structure and put up a new residential apartment in the said property, and for which the petitioner has entered into a Joint Venture Agreement with M/s Sai Foundation. The builder has agreed to pay a sum of Rs.30,00,000/- to the petitioner and has agreed to pay a sum of Rs.25,00,000/- to each of the minor, the builder has also agreed to handover flat bearing No.F-2 and T-2 on the first and third Floor measuring 758Sq.Ft each to both the minors. Inreturn the minors shall sell their undivided share of 1706.6Sq.ft and shall authorize the builder to sell 1133.2 sq.ft of UDS and retain 568 Sq.ft as their share.



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4.The petitioner seeks permission to appoint the builder Sai Foundation to carry on the projects and to authorize the builder to sell 1133.2 Sq.ft out of the minors share of 1706.6 Sq.ft in total land measuring 2560 Sq.Ft. The Petitioner also states that the builder has agreed to deposit the minor's sale consideration as Fixed Deposit in any of the nationalized banks.

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, 12 documents listed at the foot of this order were exhibited as Exs.P1 to P12. The death certificate of the petitioner's husband (Ex.P1) discloses that he died on 24.08.2015. The legal heirship certificate in respect of her husband (Ex.P2) discloses the names of the petitioner and their minors as the Class-I legal heirs of the deceased. The birth certificates of the minor daughter J.Dharshini (Ex.P5) discloses that she was born on 23.06.2005, and J.Badhrinath (Ex.P7) discloses that he was born on 25.10.2008. As evidence of title of the petitioner's husband to the relevant immovable asset, the registered settlement Deed dated 18.06.2007 (Ex.P4) is placed on record. The photocopy of the Joint Venture agreement has provided as Ex.P10.



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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 children;

(ii) The petitioner is permitted to develop the minors share of property by appointing M/s Sai Foundation as their General Power of Attorney agent and sell the minor's undivided share of land measuring an extent of 1133.2 Sq.ft out of their share measuring an extent of 1706.6 Sq.ft forming part of total extent of 2560 Sq.ft in the property described in the schedule to the petition, (ii) the developer is permitted to deposit the sale proceeds subject to the condition that the same shall be remitted into an interest bearing fixed deposit in name of the respective minor in a nationalized bank. It is clarified that separate fixed deposit accounts shall be opened for each minor. Such fixed deposit shall be kept renewed until the respective minor attains



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the age of majority;

(iii) The petitioner is permitted to receive the possession of the completed Flat bearing No.F-2 and T-2 both measuring to an extent of 758 Sq.ft on the first floor and the third floor respectively for selvi.J.Dharshini and J.Badhrinath;

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

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Index :Yes/No

Speaking: Yes/ No

Neutral Citation: Yes/ No

**Petitioner's witness:**

P.W.1 – Mrs.Hema

**Documents exhibited by the petitioner:**



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| <b><i>Exhibits</i></b> | <b><i>Documents</i></b>                                                                                     |
|------------------------|-------------------------------------------------------------------------------------------------------------|
| Ex.P1                  | Computer generated death certificate of Mr.K.Janakiraman                                                    |
| Ex.P2                  | Computer generated legal heir certificate of Mr.K.Janakiraman                                               |
| Ex.P3                  | Computer generated death certificate of Mrs.Saradhambal                                                     |
| Ex.P4                  | Photocopy of the Settlement Deed dated 18.06.2007 executed by Mrs.Saradhammal in favour of Mr.K.Janakiraman |
| Ex.P5                  | Photocopy of birth certificate of J.Dharshini                                                               |
| Ex.P6                  | Photocopy of the Aadhaar card of J.Dharshini                                                                |
| Ex.P7                  | Photocopy of birth certificate of J.Badhrinath                                                              |
| Ex.P8                  | Photocopy of the Aadhaar card of J.Badhrinath                                                               |
| Ex.P9                  | Photocopy of petitioner's Aadhaar card                                                                      |
| Ex.P10                 | Photocopy of agreement for joint venture dated 12.01.2023                                                   |
| Ex.P11                 | Copy of paper publication effected in one issue of English daily "The New Indian Express" dated 25.03.2023. |
| Ex.P12                 | Copy of paper publication effected in one issue of Tamil daily "Thinaboomi" dated 29.03.2023.               |

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