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O.P.No.716 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2023

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

O.P.No.716 of 2022

1.M.S.Syed Mohamed
2.M.S.Nasira
Petitioners

...

PRAYER: Original Petition filed under Sections 3, 7 to 10 and Section 29 of the Guardians and Wards Act and under Order XXI Rule 2 and 3 of Original Side Rules, prays that the petitioner be appointed as the Guardian of the person and property of the minor child S.Hamdhan and pleased to permit the petitioners to sell the 1/4th share of the minor S.Hamdhan to the prospective purchaser viz. Ms.Hasan Naina or to his nominee etc.

For Petitioners : Mr.M.J.Jaseem Mohamed



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ORDER

By this petition, the petitioners request that they be appointed as the guardians of the person and property of the minor child, S.Hamdhan, and for permission to sell the minor's 1/4th share in the property described in the schedule to the petition. The petitioners assert that the property described in the schedule to the petition originally belonged to Mrs.H.N.Mohammed Fathima. She subsequently settled the property in the name of the second petitioner, S.Nasira, S.M.Irshad Fasi and on the minor child, S.Hamdhan.

2. The petitioners state that they are in urgent need of money for the education of their children. Therefore, they entered into an agreement of sale with Ms.Hasan Naina for sale of the schedule mentioned property to her for a total sale consideration of Rs.33,00,000/-. The present petition is filed because the minor has a 1/4th share in the property.

3. The petitioners adduced evidence by examining the second



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petitioner as P.W.1. In course of the examination in chief of P.W.1, the 6 documents listed at the foot of this order were exhibited as Exs.P1 to P6.

The original birth certificate of S.Hamdhan (Ex.P2) discloses that he was born on 12.08.2009. The original unregistered sale agreement dated 01.02.2022 (Ex.P4) discloses that the purchaser, Hasan Naina, has agreed to buy the property described in the schedule to the petition for a total sale consideration of Rs.33,00,000/-. An approved valuers report (Ex.P5) has been placed on record. As per the said valuation report, the total value of the property is Rs.32,72,421/-. The petitioners have provided a declaration of willingness to be the guardians (Ex.P6).

4. Based on the evidence adduced by the petitioners, the petitioners are entitled to the relief claimed.

5. Therefore, O.P.No.716 of 2022 is allowed on the following terms:

(i) the petitioners are appointed as the guardians of the person and property of the minor child, S.Hamdhan.



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(ii) the petitioners are permitted to sell the 1/4th share of the minor, S.Hamdhan, to the prospective purchaser, Ms.Hasan Naina or her nominees, for a total sale consideration of Rs.33,00,000/-.

(iii) such sale shall be subject to the condition that the entire share of the minor be remitted into a fixed deposit account in a nationalized bank in the name of the minor. Such fixed deposit shall be kept renewed until the minor attains the age of majority.

(iv) upon completion of the aforesaid, the petitioners shall file an affidavit of compliance in the Registry. The Registry is directed to issue the order copy on or before 22.02.2023.

14.02.2023

rna

Index : Yes / No

Internet : Yes / No

Petitioner's witness:

P.W.1 - Mrs.M.S.Nasira.

Documents exhibited by the petitioners:

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<i>Exhibits</i>	<i>Documents</i>
Ex.P1	Photocopy of the Aadhaar card of minor S.Hamdhan.
Ex.P2	Original birth certificate of S.M.Hamdhan.
Ex.P3	Photocopy of the settlement deed dated 18.06.2019 (Compared with the original).
Ex.P4	Original unregistered sale agreement dated 01.02.2022.
Ex.P5	Original Engineer's Report dated 09.03.2022.
Ex.P6	Declaration of Willingness.



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