



O.P.No.88 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No.88 of 2023

R.Safna

... Petitioner

Original Petition is filed under Section 9 and 10 & 29 of the Guardians and Wards Act, 1890 read with Order XXI Rule 2 & 3 of Original Side Rules, to appoint the petitioner as guardian of the person and property of minors and to grant permission to sell the shares of the petitioners minor children (i) R.Mohammed Rafiq and R.Rehana Sherin in favour of Mrs.Shameema, daughter of Late.Usman and wife of Mr.Ali Mohammed residing at 32/19, 2nd Lane, Shastri Nagar, Adayar, Chennai-600 020 by of a Registered Sale deed to be executed at the office of the Sub-Registrar, Adyar, Chennai-600 020 for a total sale consideration of Rs.51,00,000/- (Rupees Fifty One Lakhs only) and to settle their respective 1/3rd shares of the minors in the property purchased from.

For Petitioner : Mr.J.Ashok

ORDER

This Original Petition has been filed under Section 9 and 10 & 29 of the Guardians and Wards Act, 1890 read with Order XXI Rule 2 & 3 of Original Side Rules, to appoint the petitioner as guardian of the person and property of minors and to grant permission to sell the shares of the petitioners minor



O.P.No.88 of 2023

children (i) R.Mohammed Rafiq and R.Rehana Sherin in favour of Mrs.Shameema, daughter of Late.Usman and wife of Mr.Ali Mohammed residing at 32/19, 2nd Lane, Shastri Nagar, Adayar, Chennai-600 020 by of a Registered Sale deed to be executed at the office of the Sub-Registrar, Adyar, Chennai-600 020 for a total sale consideration of Rs.51,00,000/- (Rupees Fifty One Lakhs only) and to settle their respective 1/3rd shares of the minors in the property purchased from.

2.The averments in the petition are as follows:-

The petition mentioned property was originally belonged to the husband of the petitioner by name U.Rahim who died on 09.11.2020 by leaving behind his wife and two daughters as his legal heirs. Subsequent to the death of Rahim, his wife and children are entitled to inherit his assets. The parents of Rahim also predeceased him. The petitioner who is the wife of Rahim had filed this petition seeking permission to sell the petition mentioned property which is inclusive of shares of her minor children. During the pendency of proceedings one of the minor children who is the son of the petitioner, had attained majority and now the petition remains good only in respect of the other minor daughter by name R.Rehana Sherin. Since the petitioner wishes to settle at her native place, subsequent to the death of her husband due to her family commitments



O.P.No.88 of 2023

and in the interest of her children, the petitioner seeks permission to sell the property by appointing her as the guardian of the person and property of the minor children. It is further submitted that her son has also become major.

3. The petitioner examined herself as P.W.1 and Exs.P1 to P18 were marked.

4. From Ex.P3 birth certificate of Rehana Sherin, it is seen that she was born to the petitioner and her husband Rahim. From Exs.P2 and P8 it is seen that the parents of Rahim predeceased him. The petitioner had stated that the value of the property is Rs.51,00,000/- and the sale consideration in respect of the minor's share will be deposited in a fixed deposit opened in the minor child until she becomes major. She further stated that the amount received by the proposed purchaser has been invested in constructing a house in the interest of the children.

5. It is submitted by the learned counsel for the petitioner that as per the Mohammeden Law, the wife of the deceased will be entitled to $1/6^{\text{th}}$ share if the deceased had a son or a daughter. The son of the deceased will get 2 shares and the daughter will get one share as residuaries. So the son would get $10/18^{\text{th}}$



O.P.No.88 of 2023

share and daughter would inherit 5/18 and the petitioner would inherit 3/18th share in the petition mentioned property.

6. Since the petitioner has stated acceptable reasons to sell away the petition mentioned property of her husband for the purpose of investing it in the interest of minors, I feel it is appropriate to appoint the petitioner as the guardian of the minor children and permit her to sell the shares of the minor children and to deposit the shares of the minor in a fixed bank deposit.

7. Accordingly this petition is allowed on condition that:

i) The petitioner is appointed as the guardian of the person and property of minor child Rehana Sherin.

ii) The petitioner is permitted to sell the minor's property described in the schedule.

iii) Such permission is subject to the condition that the respective share of the minor in the sale proceeds of the petition mentioned property should be deposited in a fixed deposit account established in a nationalized bank in the name of the minor R.Rehana Sherin. Such fixed deposit shall be until the minor attains the age of majority.

iv) Upon complying with the above directions, an affidavit of compliance



O.P.No.88 of 2023

shall be filed in the Registry

WEB COPY

v) The minor is granted leave to apply for release of the fixed deposit upon attaining the age of majority.

22.09.2023

bkn



O.P.No.88 of 2023

APPENDIX

Petitioner's witness:

P.W.1 – R.Safna

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
P1	Photocopy of the Sale deed dated 21.04.1997 registered as Document No.693/1997 before the Sub-Registrar, Adyar.
P2	Computer generated Death certificate of Mariam Bee
P3	Computer generated Birth certificate of R.Rehana Sherin
P4	Photocopy of the Release deed dated 25.07.2011.
P5	Photocopy of the Certificate of the Extract from the Town Survey land Register dated 11.05.2012
P6	Photocopy of the Name Transfer Certificate dated 12.12.2012.
P7	Photocopy of the Death Certificate of Usman.
P8	Photocopy of the Legal Heir Certificate of F.Usman
P9	Computer generated copy of the Certificate of the Extract from the Town Survey Land Register dated 22.03.2017.
P10	Certified copy of the Judgement in O.S.No.5025/2016 before the XVII Additional City Civil Court, Chennai.
P11	Certified copy of the Decree in O.S.No.5025/2016 before the XVII Additional City Civil Court, Chennai.
P12	Photocopy of the Release Deed dated 19.12.2019 registered as Document No.244/2020 before the Sub-Registrar, Adyar
P13	Computer generated death certificate of U.Rahim
P14	Computer generated Legal Heir Certificate of U.Rahim
P15	Photocopy of petitioner's Aadhar Card
P16	Photocopy of the Aadhar Card of R.Mohamed Rafiq
P17	Photocopy of the Aadhar card of R.Rehana Sherin
P18	Declaration of Willingness to accept the office of the guardian of the persons and property of the Minors R.Mohammed Rafiq and R.Rehana Sherin

22.09.2023

bkn

R.N.MANJULA, J.



WEB COPY



O.P.No.88 of 2023

bkn

O.P.No.88 of 2023

22.09.2023