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O.P.No.805 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2023

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

O.P.No.805 of 2022

H.Thameem Ansari

... Petitioner

PRAYER: Original Petition filed for appointment of Guardian and Estate of Mentally ill-person (under Clause XVII of the Letters Patent of 1865) prays to appoint H.Thameem Ansari S/o.V.A.Hadibasha the petitioner herein as the guardian for the person and properties of the mentally retarded person H.Shabana D/o.Mr.V.A.Hadibasha as described in the schedule annexed thereto.

For Petitioner : Mr.D.Senthil Kumaar

ORDER

This petition is presented by one of the brothers of Miss.H.Shabana, who is said to be mentally challenged and Spastic. By this petition, the petitioner seeks appointment as the guardian of the person and of the property of H.Shabana.

2. The petitioner states that his sister, H.Shabana, is mentally challenged and Spastic. The petitioner's parents had two sons namely V.H.Abdul Samath and H.Thameem Ansari (the petitioner herein). The



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petitioner states that his mother, Mrs.Asina Muthu, died on 13.05.2020. The father, brother and the wife of the petitioner has given their consent to appoint the petitioner as the guardian. It is stated that the properties described in schedule Item I and II are the immovable properties purchased by petitioner's mother late Asina Muthu from one J.Saaral Ammal, by a sale deed dated 15.11.1984. Consequently, upon her demise on 13.05.2020, right, title and interest in the said properties devolved upon her husband and three children. The petitioner attempted to mutate the patta in favour of the legal heirs of late Asina Muthu, on 16.03.2022 the Tahsildar, Aminjikai issued a letter stating that the Block number has been wrongly given as Block No.20 instead of Block number No.21 in the said sale deed dated 15.11.1984, registered as Doc No.3089 of 1984, and therefore the said sale deed has to be necessarily rectified, and for rectification the petitioner's sister H.Shabana could not execute the same due to her mental health condition. The permission of this Court is sought to appoint the petitioner as the guardian for the person and property of the mentally retarded person Miss.H.Shabana.

3. The petitioner is examined as P.W.1. He has produced the passbook with disability certificate issued by the Department for the welfare



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of the Differently Abled, Chennai in respect of H.Shabana, as Ex.P1. He has also produced the death certificate of Asina Muthu, as Ex.P5, and the legal heirship certificate of deceased Asina Muthu as Ex.P6. A perusal of Ex.P6 shows that the petitioner, his father and siblings including H.Shabana are the only surviving Class-I legal heirs of deceased Asina Muthu. The photocopy of the sale deed dated 15.11.1984 executed in favour of deceased Asina Muthu, is marked as Ex.P4, the photocopy of the letter dated 16.03.2022 issued by the Tahsildar, Aminjikarai is marked as Ex.P7, the photocopy of the school receipt payment dated 23.05.2022 in respect of H.Shabana issued by Manasa School for the Special Children, Maduravoyal, Chennai, as Ex.P8. The petitioner has filed a declaration of willingness to be the guardian of the person and property of the mentally challenged person Miss.H.Shabana, as Ex.P12.

4. The father of the petitioner V.A.Hadibasha, has been examined as P.W.2. He has deposed that he is aged about 72 years, and he is unable to take care of his daughter H.Shabana due to age related ailments, and he has no objection for appointing the petitioner as the guardian for the mentally retarded person.



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5. The assertions in the petition have been duly proved by adducing evidence. The father, brother and the wife of the petitioner have filed their consent affidavits and agreed to the appointment of the petitioner as guardian of the person and property of Ms.H.Shabana. The said consent affidavits has been marked as Exs.P9 to P11. In these circumstances, the petitioner is entitled to succeed.

6. Accordingly, O.P.No.805 of 2022 is allowed by appointing Mr.H.Thameem Ansari, as the guardian of the person and properties described in the schedule Item I and II as regards the mentally-ill person, Ms.H.Shabana. The petitioner shall file a report to this Court as to the rectification of the deed and mutation of Patta. For any other transactions the petitioner shall approach this court in respect of the petition mentioned properties.

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Index :Yes/No

Speaking : Yes/ No

Neutral Citations : Yes/ No

Petitioners side witnesses:-

P.W.1 – Mr.H.Thameem Ansari



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Documents exhibited by the petitioners:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	Photocopy of the passbook with disability certificate bearing ID card No.09394 issued by the Department for the Welfare of the Differently Abled, Chennai in respect of H.Shabana
Ex.P2	Photocopy of the Aadhaar card of H.Shabana
Ex.P3	Photocopy of my Aadhaar card
Ex.P4	Photocopy of the Sale Deed dated 15.11.1984 executed in favour of H.Asina Muthu
Ex.P5	Photocopy of the death certificate of Asina Muthu
Ex.P6	Photocopy of the Legal Heriship certificate of Asina Muthu
Ex.P7	Photocopy of the letter dated 16.03.2022 issued by the Tahsildar, Aminjikarai Taluk to the petitioner
Ex.P8	Photocopy of the school receipt payment dated 23.05.2022 in respect of Shabana issued by the Manasa School for the Special Children, Maduravoyal, Chennai
Ex.P9	Consent affidavit given by Mr.V.M.Abdul Samath
Ex.P10	Consent affidavit given by Mr.V.A.Hadibasha
Ex.P11	Consent affidavit given by Mrs.T.Ayisha Muthu
Ex.P12	The petitioner's declaration of willingness to accept the office of guardian of the person and property of H.Shabana
Ex.P.13	Photocopy of the disability certificate dated 21.01.2023 in respect of H.Shabana

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