

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

GUARDIANSHIP PETITION NO. 14 OF 2024

Minal Sachin Jain

...Petitioner

And

Ms. Dreeti Sachin Jain and
Master Dhruvansh Sachin Jain

...Minors

Mr. Siddha Pamecha a/w Mr. Darshan B. Jain for the Petitioner.

CORAM : R.I. CHAGLA J

DATE : 21 November 2024

ORDER :

1. By this Petition, the Petitioner is seeking her appointment as Guardian of the person and property of Miss Dreeti Sachin Jain and Master Dhruvansh Sachin Jain (**“the said minors”**). The Petitioner is the mother and natural guardian of the said minors.

2. The Petition had come up on 13th November 2024, when this Court had noted that the mother of the deceased husband of the Petitioner viz. Shardaben Vimalchand Jain, is surviving her deceased

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son and is one of the legal heirs of the said deceased mentioned in the tabular form in paragraph 3 of the Petition.

3. Accordingly, it was directed that the Consent Affidavit of Shardaben Vimalchand Jain shall be filed consenting to the appointment of the Petitioner as Guardian of the person and property of the said minors.

4. The learned Counsel appearing for the Petitioner states that the Consent Affidavit of Shardaben Vimalchand Jain dated 16th November 2024 has been filed and copy of which is tendered to this Court. The said Shardaben Vimalchand Jain has consented to the appointment of the Petitioner as Guardian of the person and property of the said minors. She further has no objection whatsoever in the event this Court grants permission to the Petitioner to sell the share of the said minors in the subject flat.

5. Accordingly, the Petition has been taken up for consideration.

6. The Petitioner was married to the late Sachin

Vimalchand Jain on 13th February 2007 and out of the said wedlock, the said minors were born on 23rd July 2008 and 3rd March 2016 respectively.

7. In paragraph 3 of the Petition, it is mentioned that except the legal heirs and representatives of the deceased Sachin Vimalchand Jain mentioned in the tabular form of the said paragraph, there are no other legal heirs and legal representatives of the deceased Sachin Vimalchand Jain. It is further mentioned that each of the heirs of the deceased, which includes the Petitioner; Shardaben Vimalchand Jain, the mother of the deceased Sachin Vimalchand Jain and the said minors are entitled to 25% i.e. 1/4th undivided share, right, title and interest in the property left behind by Sachin Vimalchand Jain.

8. Description of the property is provided in paragraph 4 of the Petition including mention of the Agreement dated 26th December 2020 by which the Petitioner and her husband Sachin Vimalchand Jain mentioned as Allotees had acquired and purchased the property described as Flat No. 201, admeasuring 80.61 sq.mtrs. (carpet area) situated on the Second Floor, Ek Jyot Sanman, Plot No.

23, Ek Jyot Sanman Co-op. Hsg. Soc.Ltd., Postal Colony, Chembur, Mumbai – 400 071 (“**the subject flat**”) along with one car stilt stack parking in Registration District and Sub-District of Mumbai, CTS 491, 491/1, 491/2 of Village Chembur, Taluka Kurla for valuable consideration. It is mentioned that the society till date has not issued Share Certificate to any member of the said society.

9. The Petitioner has stated that during the lifetime of the late Sachin Vimalchand Jain, he had along with Vimalchand Pukhraj Jain, Shardaben Vimalchand Jain, and the Petitioner jointly purchased Flat No. 1101, 11th Floor, Neelkanth Kingdom Mithila Co-op. Housing Soc. Ltd., admeasuring 185.68 sq.mtrs., lying and situated at land bearing CS No. 237, 237/1, 237/2, 237/3, 513, 514, 515 and 516 of Village Kirol and CTS Nos. 634, 635/4, 635/5, 636/6 of Village Kurla II, Plot No. 29/1 to 29/5, Nathani Road, Vidyavihar (West), Mumbai -400 086 (“**the new flat**”).

10. The Petitioner has stated that she has agreed to sell the subject flat as she is in financial need to pay the outstanding loan in respect of the new flat.

11. The Petitioner has stated that the subject flat was standing jointly in the name of her deceased husband and the Petitioner, as both were entitled to 50% share each in the subject flat. However, after the demise of the husband of the Petitioner, viz. Sachin Vimalchand Jain, the aforementioned legal heirs of the deceased have become entitled to 25% share each of the said 50% share of the deceased.

12. The Petitioner has stated that the subject flat be permitted to be sold for total monetary consideration of Rs. 2 Crores to Mr. Shripal Kothari and Mrs. Manisha Shripal Kothari. This is in order to repay the loan amount availed of by the purchasers of the new flat from the Federal Bank.

13. The Petitioner has further undertaken to invest the balance amount in any of the nationalised banks under orders of this Court and the interest from which would be utilised to look after studies of the said minors who are presently studying in the 11th and 3rd standard respectively.

14. The Petitioner has submitted that the said minors'

welfare is being taken care of the said Petitioner and the sale of the subject flat would benefit the said minors.

15. I have considered the averments in the Petition as well as the Consent Affidavit dated 16th November 2024 which has been filed by the surviving legal heir of the deceased husband of the Petitioner, viz. his mother Shardaben Vimalchand Jain, who has a share in the subject flat and by which Affidavit the said Shardaben Vimalchand Jain has given consent to the appointment of the Petitioner as Guardian of the person and property of the said minors as well as no objection to the sale of the subject flat. Further, the Petitioner has stated that the proceeds of the subject flat would be utilised to repay the loan from the Federal Bank for the purchase of the new flat and balance proceeds thereof also will be deposited in any of the Nationalised Banks under orders of this Court, relief sought for in the Petition, requires to be granted.

16. Accordingly, the Petition is allowed in terms of prayer clauses (a) and (b), which read as under :-

“(a) Notice under Section 11 of the said Act be dispensed with, and this Hon’ble Court be pleased to appoint the Petitioner as guardian of the person and property of the minor, viz. Ms. Dreeti Sachin Jain and Master Dhruvansh Sachin Jain being property described in Ex. G annexed hereto;

(b) This Hon’ble Court be pleased to authorized the Petitioner to sign and/or execute and/or register all deeds, documents including the Sale Deed, Rectification Deed, Agreement for sale, Cancellation Deed in respect of the said property described in prayer (a) above as well as to execute consequential documents namely Power of Attorney, Indemnity Bond etc., if so required.”

17. In addition to these prayers, which have been granted, the Petitioner shall deposit the balance sale proceeds of the subject flat upon its sale and after repaying the loan of the Federal Bank, in the State Bank of India and the interest accruing therefrom shall be utilized towards the education as well as welfare of the said minors.

18. The Guardianship Petition is accordingly, disposed of.

19. There shall be no order as to costs.

[R.I. CHAGLA J.]