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O.P.No.467 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.10.2024**

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

O.P.No.467 of 2024

A.Zainab

...

Petitioner

PRAYER: Original Petition filed under Sections 3, 7 to 10 and 29 of the Guardian and Wards Act, 1890, read with Order XXI Rule 2 of Original Side Rules, praying that the petitioner or some other fit and proper person may be appointed as the guardian of the person and property of the above named Minor Amatullah Abbas Khetty and that the said guardian may be at liberty to sell the schedule property and receive the balance of the income after setting the loans and dues sole person in which share of the Minor and the guardian may be permitted the deposit in any National Bank in the name of the minor.

For Petitioner : Dr.G.Krishnamurthy

ORDER

This Original Petition has been filed under Sections 3, 7 to 10 and 29 of the Guardian and Wards Act, 1890, read with Order XXI Rule 2 of Original Side Rules, praying that the petitioner or some other fit and proper person may be appointed as the guardian of the minor Amatullah Abbas Khetty and that



the said guardian may be at liberty to sell the schedule property and receive the balance of the income after setting the loans and dues in which share of the Minor and the guardian may be permitted to be deposited in any National Bank in the name of the minor.

2. The learned counsel for the petitioner submitted that the petitioner's husband Mr.Abbas Khetty, son of Mr. Fakhruddin, was the original owner of the property as described in the Schedule of Property. Mr.Abbas Khetty passed away on 14.08.2022, leaving behind his wife / petitioner, his elder daughter Maria Abbas Khetty and minor daughter Amatullah Abbas Khetty, who are his legal heirs entitled to succeed him. His mother, Salma, predeceased him.

2.1. The property described in the schedule was originally purchased by Mrs.Kulsumbai Mulla Jeewajee vide Doc.No. 1040/1957, dated 11.03.1957. Mrs. Kulsumbai Mulla Jeevaji settled the property in favour of Mr. Hussain Abdul Hussain vide Doc. No. 3115/1980 on 17.07.1980. Mr. Hussain Abdul Hussain executed sale deed vide Doc. No. 207/2018 on 25.07.2018 in favour of the petitioner's husband Mr. Abbas, who then took possession and enjoyed the scheduled property from that date.

2.2. The learned counsel for the petitioner further submits that the



petitioner's husband mortgaged the property to M/s. IndoStar Capital Finance Limited on 26.07.2018 by executing the mortgage deed vide document no. 210/2018 and obtained loan for a sum of Rs. 1,58,10,000. The petitioner's husband further entered into lease agreement with one Mr.Durai Babu vide lease agreement dated 28.06.2022 by receiving Rs. 20,00,000/- and allowed him to occupy the scheduled property.

2.3. The learned counsel for the petitioner further submits that Mr. Durai Babu entered into Memorandum of Understanding with Mrs. A.Zainab on 16.02.2023, to settle the outstanding loan amount owed to M/s.IndoStar Capital Finance Limited and to purchase the property for his possession and enjoyment. On 20.03.2024, Arcil Premier ARC, who is the authorised recovery agent for M/s.IndoStar Capital Finance Limited Asset Reconstruction Company accepted the proposal of Mr. Durai Babu for the full and final settlement of the outstanding loan amount, with the consent of the petitioner and Maria Abbas Khetty. The petitioner after receiving Rs. 20,00,000/- on 25.03.2024 and Rs. 10,00,000/- on 28.03.2024 from Mr. Durai Babu, the sum of Rs.1,32,00,000/- was agreed as the payable amount under the settlement by 20.04.2024. The shares of the family members are Rs.82,04167/- for the minor daughter Amatullah Abbas Khetty, Rs.44,75,000/- for the daughter



Maria Abbas Khetty, Rs.29,83,333/- share goes to mother and Rs.22,37,500/- for the wife / petitioner.

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2.4. The petitioner further submits that the proposed guardian is the petitioner / mother of the minor child. She is the nearest female relation of the minor, residing at Old Door No. 2/271 and New Door No. 120, Lingu Chetty Street, Chennai-600001. The proposed guardian is in good circumstances, possess good character and reputation and is a fit and proper person to be appointed as guardian of the person and property of the said minor.

2.5. The scheduled property is currently under attachment to the loan obtained by the petitioner's husband and father of Maria Abbas Khetty and the minor. In the best interests of the minor, the scheduled property should be sold, otherwise, it may be auctioned. Therefore, it is prayed that a guardian be appointed for the minor, with liberty to the guardian to sell the schedule property.

3. After following due procedure, the petitioner was invited to tender evidence. The petitioner, Mrs.A.Zainab, examined herself as P.W.1 and marked Exs.P1 to P11. Mr.V.Duraibabu, the proposed purchaser, was



examined as P.W.2 and marked Exs.P12 to Ex.P15. Ms.Maria Abbas Khetty, daughter of the petitioner was examined as P.W.3 and marked Ex.P16. She deposed that the entire mortgage amount has been paid by the proposed purchaser Mr.Durai Babu.

4. After perusing the documentary evidences adduced before this Court, and the evidence of P.W.3, I find that the sale of the property is only to safeguard the interest of the minor, since the mortgage amount has been discharged by the proposed purchaser Mr.V.Durai Babu.

5. Accordingly, the original petition is allowed. The petitioner / mother shall be appointed as guardian of the person and property of the above named Minor Amatullah Abbas Khetty and the petitioner / mother is at liberty to sell the schedule property. After receipt of sale consideration, the minor's share shall be deposited in the name of the minor in the Indian Bank, High Court Branch, Chennai, in fixed deposit, till the minor attains majority. Copy of Sale deed to be produced before this Court within one month from the date of registration of sale deed.

29.10.2024

Index :Yes/No
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**APPENDIX****Petitioner's witness:**

- P.W.1 – Mrs.A.Zainab
P.W.2 – Mr.V.DuraiBabu
P.W.3 – Ms.Maria Abbas Khetty

Documents marked:

<i>S.No</i>	<i>Particulars</i>	<i>Exhibits</i>
1	Photocopy of the Memorandum of Understanding dated 16.02.2023 between the petitioner and Mr.Durai Babu (Compared with the original)	P1
2	Photocopy of the medical report of the petitioner dated 14.10.2023 issued by Dr.V.Chiranjeevi Kilpauk Medical College, Kilpauk, Chennai (Compared with the original)	P2
3	Photocopy of the possession notice issued by Arcil Premier ARC dated 22.12.2023 (Witness states that the said notice was affixed in the property, this document is marked subject to proof and relevancy)	P3
4	Photocopy of the legal heirship certificate of Mr.Abbas Khetty (Compared with the original)	P4
5	Photocopy of the Aadhaar Card (P.W.1) (Compared with the original)	P5
6	Photocopy of the Aadhar Card of Maria Abbas Khetty (Compared with the original)	P6
7	Photocopy of the Aadhar Card of Amatullah Abbas Khetty (Compared with the original)	P7
8	Photocopy of the birth certificate of Ms.Maria Abbas Khetty (Compared with the original)	P8
9	Photocopy of the birth certificate of Ms.Amatullah Abbas Khetty (Compared with the original)	P9



S.No	Particulars	Exhibits
10	Photocopy of the death certificate of Mr.Abbas Khetty (Compared with the original)	P10
11	Photocopy of the valuation report dated 06.06.2018 in respect of the property mentioned in the petition (Compared with the original)	P11
12	Photocopy of the Aadhaar Card (P.W.2) (Compared with the original)	P12
13	Photocopy of the memorandum relating to deposit of title deed dated 26.07.2018 executed by Mr.F.Abbas in favour of M/s.IndoStar Capital Finance Limited (Compared with the original)	P13
14	Photocopy of the sale deed dated 23.07.2018 executed by Mr.Hussain Abdul Hussain in favour of Mr.F.Abbas (Compared with the original)	P14
15	Photocopy of the no due certificate dated 18.04.2024 issued by Asset Reconstruction Company (India) Limited in favour of S.A.Medicals (Durai Babu V and Jayanthi D) (Compared with the original)	P15
16	Photocopy of the Aadhaar Card (P.W.3) (Compared with the original)	P16

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To:

The Manager,
Indian Bank,
High Court, Madras.

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RMT.TEEKAA RAMAN, J.

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