



O.P.No.386 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.12.2024

Pronounced on:16.12.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Original Petition No.386 of 2024

Mrs.Heena Jain,
Wife of Mr.Ameet Kankariya,
residing at H - 3, Kasliwal Heritage Besides Pawan Gas Godown,
Shreyanagar,
Osmanpura,
Aurangabad - 431005,
Maharashtra.

... Petitioner

PRAYER: Original Petition has been filed under Section 8(2) of the Hindu Minority and Guardianship Act read with Order XXI Rule 2 & 3 of Original Side Rules:-

(a) Permit the petitioner to sell the minor's share and appropriate a sum of Rs.25,00,000/- towards the loan amount due and payable to bank and to Mr.Rajendra Kawadiya and further permit the petitioner to appropriate a substantial sum towards domestic, maintenance, education and other expenses for upbringing of the minor son palash as this Hon'ble court deems fit and proper and to invest the balance amount of minor Palash from and out of the sale consideration in fixed deposit in any nationalised bank till he attains majority;



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(b) To permit the petitioner to receive interest once in three months from the deposit of the minor Palash.

(c) To grant such further or other relief.

For Petitioner : Mr.Sandeep T.Jain,
for Ms.Kavitha Dangi Bohra.

ORDER

This petition has been filed under Section 8(2) of the Hindu Minority and Guardianship Act read with Order XXI Rule 2 & 3 of Original Side Rules, in the matter of Palash (minor).

2. The petitioner is the mother of the minor boy Palash, aged about 11 years (date of birth: 14/07/2013). The petitioner is married to one Amit Kumar P.Jain and the male child Palash was born to them. During his lifetime, Amit Kumar P.Jain purchased the residential flat, more fully described in the schedule of the petition, under a sale deed dated 17/07/2015. He availed a loan of Rs.70,00,000/- from Punjab National Bank by executing a mortgage of deposit of title deed dated 14/09/2015, which was registered as Document No.3123 of 2015 at the Sub Registrar Office, Royapuram, Chennai.

3. Amit Kumar P.Jain died intestate on 11/12/2016, leaving behind



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his wife (the petitioner herein) and the minor son Palash as his legal heirs. His loan in Punjab National Bank yet to be discharged. To pay the loan, the petitioner has no other source and to avoid the loan being declared as Non-Performing Asset, the petitioner has decided to sell the property and clear the debts payable to the Bank and private party. She has identified a purchaser for the property who is willing to buy the property for a sum of Rs.1,00,00,000/- and received advance of Rs.2,00,000/-. Hence, the present petition is filed to grant permission to sell the property and from the share of the minor son, pay Rs.25,00,000/- towards clearing the debt and invest the balance after appropriate a portion for the domestic maintenance and education.

4. The petitioner has filed a proof affidavit and marked 13 documents as Ex.P-1 to Ex.P-13. The prospective buyer, Ishwar Kumar Jain was examined as P.W-2. He had expressed his willingness to buy the property inclusive of the minor's share and deposit the share of the minor as directed by the Court.

5. Ex.P-1 is the sale deed copy to show that Amit Kumar P.Jain purchased the property mentioned in the schedule on 17/07/2015 from Ashok Kumar Jain and Sashikala. Amit Kumar P.Jain, his brother Rakesh Kumar



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P.Jain and his father Pukhrah T.Jain had jointly availed housing loan and cash credit loan aggregating Rs.1,10,00,000/-. As security, the title document of the scheduled property been deposited with Punjab National Bank *vide* document dated 14/09/2015, marked as Ex.P-5. The statement of account, marked as Ex.P-8 reveals the loan not yet discharged. Meanwhile, Amit Kumar P.Jain died on 11/12/2016. Ex.P-2 is the death certificate. Ex.P-3 is the legal heir certificate of Amit Kumar P. Jain. As per the legal heir certificate issued by the Tahsildar, Purasaiwalkam Taluk, the petitioner Mrs.Heena A.Jain (wife) and Palash (son) are the legal heirs. Ex.P-4 is the birth certificate of Palash (minor).

6. The petitioner, in her proof affidavit had stated that, after the death of her husband, Amit Kumar P. Jain, she and her son left to her parents house at Jalgaon. She has remarried to one Ameet Kankariaya. She is not able to clear the housing loan availed by her late husband. The property is also not yielding adequate returns. She has borrowed a sum of Rs.30,00,000/- from one Rajendra Kawadiya to repay the bank loan, but still she has to pay nearly Rs.20,00,000/- to the Bank. Totally, her debt amount is about Rs.50,00,000/-. She finds it difficult to meet out her son's education and other maintenance and hence decided to sell the property, in which she and her minor son have equal share.



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7. The petitioner further stated that, she on her behalf and on behalf of her minor son had entered into an agreement for sale on 10/02/2024 with one Ishwar Kumar Jain and received Rs.2,00,000/- as advance out of total sale consideration of Rs.1,00,00,000/-. She has given an undertaking that after clearing the loan approximately Rs.50,00,000/-, she will deposit Rs.25,00,000/- in the name of the minor son and use his balance share of Rs.25,00,000/- for his education and future maintenance.

8. The agreement for sale with Ishwar Kumar Jain is marked as Ex.P-11. The said Iswar Kumar Jain was examined as PW-2. He had deposed that he agree to buy the property Rs.1,00,00,000/-. He stated that the vendors should clear the loan with Punjab National Bank and get a discharge receipt from the Bank.

9. Taking into consideration the facts narrated above, the petition for permission to sell the minor's share in the petition schedule mentioned property is granted to the petitioner, who is the mother and natural guardian of the minor boy, Palash on the following terms:-



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(i) The purchaser, from out of the sale consideration of Rs.1,00,00,000/- (Rupees One Crore only), has to clear the loan, release the title deed from Punjab National Bank and pay the balance sale consideration to the petitioner.

(ii) Out of the balance sale consideration, the petitioner should clear the loan she availed from Rajendra Kawadiya.

(iii) A sum of Rs.30,00,000/- to be deposited in any of the Nationalised Bank in the name of the minor boy till he attains the age of 21 years.

(iv) The petitioner shall be entitled to receive the interest every quarter and spent it for the maintenance of the minor son.

(v) The certified copy of the sale deed to be submitted to the Registrar General, High Court of Madras, along with the compliance affidavit and copy of the Fixed Deposit receipt for Rs.30,00,000/- in the name of the minor boy, Palash, within 30 days from the date of the execution of the sale deed.



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10. Accordingly, this Original Petition is allowed in the above terms.

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Index :Yes/No.

Internet :Yes/No.

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Petitioner's witness:

P.W.1 – Mrs.Heena Jain

P.W.2 – Mr.Ishwar Kumar Jain

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
Ex.P.1	Certified copy of the sale deed dated 17.07.2015 executed in favour of Mr.Amit Kumar P.Jain.
Ex.P.2	Photocopy of the death certificate of Mr.Amit Kumar P.Jain.
Ex.P.3	Photocopy of the legal heir ship certificate of Mr.Amit Kumar P.Jain.
Ex.P.4	Photocopy of the birth certificate of minor Palash.
Ex.P.5	Certified copy of the Memorandum of Deposit of title deeds dated 14.09.2015 executed by Mr.Amit Kumar P.Jain to Punjab National Bank
Ex.P.6	Photocopy of my Aadhaar Card.
Ex.P.7	Photocopy of the Aadhaar Card of minor Palash Amit Kumar Jain.
Ex.P.8	Certified copy of the Bank statement of loan account bearing A/c.No.252400NC00166971 stands in the name of Mr.Amit Kumar P.Jain and Mr.Rakesh Kumar P.
Ex.P.9	Certified copy of my income tax returns for the assessment year 2021-2022
Ex.P.10	Certified copy of my Bank statement bearing A/c.No.2524000103086540 for the period 01.09.2020 to 01.09.2021 with Punjab National Bank.
Ex.P.11	Original agreement for sale dated 10.02.2024.
Ex.P.12	Certified copy of my Bank account statement bearing



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<i>Exhibits</i>	<i>Documents</i>
	A/c.No.921010007938004 for the period 01.02.2024 to 10.04.2024 with Axis Bank.
Ex.P.13	Declaration of willingness to act as guardian

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Dr.G.JAYACHANDRAN,J.

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