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O.P.No.805 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2024

CORAM

THE HON'BLE MR. JUSTICE RMT.TEEKAA RAMAN

O.P.No.805 of 2023

S.Suseela ... Petitioner

Vs.

E.Saravanan ... Respondent

PRAYER: Original Petition filed under Clause XVII of the Letters Patent Act 1865 to appoint the petitioner as the guardian of the person and manager of the property of the mentally retarded S.Hemamalini and permit the petitioner to sell the 25% share of S.Hemamalini in the property viz.“Old No.64, New No.131, Sengahaneer Pillar Koil Street Alias New Street, Mannady, Chennai – 600001” more particularly described in the schedule.

For Petitioner : Ms.S.Kalyani

For Respondent : Ms.U.R.Nandhini

ORDER



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According to the petitioner, Ms.S.Hemamalini is her 2nd daughter who is aged about 42 years. The said S.Hemamalini was born as mentally retarded person and she is a case of intellectual disability having 75% of disability. The petitioner got divorced with her husband in the year 1996 and after separation from her husband, she took care of her three female children including the said S.Hemamalini.

2. The petitioner's husband is arrayed as respondent. He filed consent affidavit for selling the property and also for appointment of petitioner as guardian of her daughter S.Hemamalini..

3. By virtue of settlement deed, as per Doc.No.286 of 2005 dated 29.09.2005 on the file of SRO, Chennai North, the 2nd daughter S.Hemamalini is entitled to 25% of share in the schedule mentioned property, while the elder daughter Padmini is entitled to 50% of share and the 3rd daughter Deepalakshmi is entitled to 25% of share in the property. The respondent has settled in favour of his daughter



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Hemamalini on 28.09.2005 in Doc.No.3923 of 2005 on the file of SRO, Purasaiwalkam.

4. The property in question is 1089 sq.ft of vacant land. One proposed purchaser Mr.Ganesh Ram and Mr.Puna Ram Solanki has entered into an agreement of sale on 01.06.2023. The sale consideration was fixed as Rs.60,00,000/- and the said Hemamalini is entitled to 25% of share, amounting to Rs.15 lakhs.

5. The matter was referred to Master for recording the evidence. The petitioner was examined as PW1. The prospective purchaser was examined as PW2 and Dr.S.Bevin, Civil Assistant Surgeon, Institute of Mental Health, Kilpauk, Chennai was examined as PW3. The doctor would depose that the said Hemamalini is suffering from 75% of disability and she is having intellectual disability with moderate condition. This disability is a permanent one and it cannot be curable. The persons having such kind of disability cannot take decisions on their own. If she is treated in a private hospital, she has to pay Rs.8,000/- to Rs.10,000/- per month. Since she cannot act independently, she is in need of a care taker till her life time.



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6. Taking into consideration the expert evidence of the doctor as PW3, who would depose that Ms.Hemamalini is having intellectual disability with moderate condition and disability is found to be permanent one and in the sale of the property, she has got undivided 1/4th share, which is for the benefit of the person, permission is granted to the petitioner for sale of the property viz. “Old No.64, New No.131, Sengahaneer Pillar Koil Street Alias New Street, Mannady, Chennai – 600001” in respect of 25% share of said Hemamalini The petitioner is directed to deposit the sale proceeds in any one of the Bank, after meeting out the medical expenses spent for Ms.Hemamalini and file the medical bills, sale deed as well as the statement of accounts from the Bank, before this Court, within a period of three months from the date of receipt of a copy of this order.

7. With the above observation, this petition is ordered.

8. Post the matter on 05.11.2024 for reporting compliance.

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Index:Yes/No

Neutral Citation:Yes/No



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RMT.TEEKAA RAMAN, J.

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