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O.P. No.299 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

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1. S. Aadhavan S/o. V. Subramanian
 2. V. Subramanian S/o. Venkatachalam Pillai
 3. M. Ponni W/o. Subramanian
- ... Petitioners

PRAYER: Original Petition is filed under Clause XVII of Letters Patent Act, 1865 praying to appoint the 1st petitioner as the legal guardian of the person and Manager of the mentally retarded person Mr. Aswin and to permit the 1st petitioner to receive the pension of the mentally ill person Mr. Aswin.

For Petitioners : Dr. E. Gomathi

ORDER

This petition has been filed under Clause XVII of Letters Patent Act praying to appoint the 1st petitioner as the legal guardian of the person and Manager of the mentally retarded person Mr. Aswin and to permit the 1st



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petitioner to receive the pension of the mentally ill person Mr. Aswin.

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2. According to the petitioners, the 1st petitioner is the son of the 2nd and 3rd petitioners. Mr. Aswin, aged 35years is a mentally retarded peson and he is incapable of earning on his own for his livelihood and he is dependant on his parents, who are the 2nd and 3rd petitioners herein. The 1st petitioner is the biological brother of the said Mr. Aswin. Already the 2nd petitioner approached the National Trust for the Welfare of Persons with Autism, Cerebral Palsy by the Ministry of Social Justice and Empowerment by the Government of India and he was appointed as Legal guardian on 27.11.2023. The 2nd petitioner is a pension holder and he requested the Pension Pay Officer to incorporate his son named Mr. Aswin, a mentally retarded person, after the demise of the 2nd and 3rd petitioners. The Senior Accounts Officer of the Office of the Accountant General, sent a letter dated 03.10./2024, to the Pension Pay Officer that in case of mental incapacity, a guardian has to be appointed by the pensioner during their lifetime.

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Therefore, in order to appoint a Guardian by the pensioner, Form 14 has to be

submitted, for which, a Guardianship certificate is necessary. The 2nd and

3rd petitioners, as senior citizens, are in need to appoint the 1st petitioner as a

legal guardian considering their health condition. They are willing to appoint

the 1st petitioner as his mentally retarded sons's legal guardian. The 1st

petitioner is in the position to take care of his brother and he has given his

consent to the 2nd and 3rd petitioners to become a legal guardian for the

mentally ill person. The petitioner has also relied upon the order of this Court

in O.P. No.731 of 2021 in support of his contention that under Clause 17 of

the Letters Patent, this Court is having power to exercise jurisdiction for

appointment of a legal guardian for a mentally retarded or a mentally ill

person. Hence this petition.

3. After filing of this petition, paper publication was effected and no

any objection from any party. Thereafter, the matter was posted for

examination of witnesses. On the side of the petitioner, PW1 was examined

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and Ex.P.1 to Ex.P.16 were marked.

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4. This Court also perused the evidence and the entire records.

5. As per the evidence of PW1 and the documents Ex.P.1. to Ex.P.16, the 1st petitioner is the biological brother of the mentally retarded person namely Mr. Aswin. The said Mr. Aswin has a case of intellectual disability, mental retardation with 50% disability to his brain, mile stone, poor scholastic performance and his IQ level is 60. The 2nd and 3rd petitioners are the parents of the 1st petitioner and the said Aswin. The said Aswin is under the care and custody of his parents. The 2nd petitioner is a pensioner. The 2nd and 3rd petitioners, being the senior citizens, want to incorporate their mentally ill son Mr. Aswin for receiving the pension amount, for which, a legal guardian has to be appointed to take care of the mentally ill son. The 2nd and 3rd petitioners are willing to appoint the 1st petitioner as the guardian of their mentally ill son. The 2nd petitioner has filed an affidavit that he has

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no objection to appoint the 1st petitioner as a guardian for his mentally ill son.

The 1st petitioner has also expressed his consent and willingness to be a guardian to take care of his mentally ill brother. The 1st petitioner has no adverse interest against his mentally ill brother Mr. Aswin. Therefore, he is the fit person to be appointed as a Guardian to the person and to receive the pension on behalf of the said Mr. Aswin.

6. In view of the above discussions, this **original petition is allowed.**

The 1st petitioner namely S. Aadhavan S/o. V. Subramanian, brother of the mentally ill person namely Mr. Aswin, is appointed as a Guardian to the said Mr. Aswin and the 1st petitioner is permitted to receive the pension on behalf of Mr. Aswin and expend the same for the welfare of Mr. Aswin.

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Index : Yes/No

Speaking Order : Yes/No

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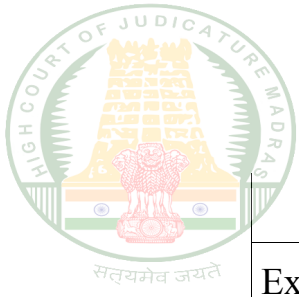
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List of Petitioner side Witnesses:

PW1 : Mr. S. Aadhavan

List of Petitioner side Documents:

Exhibit No.	Date	Description of Documents
Ex.P.1.	17.03.2005	Photocopy of the certificate issued by the Institute of Mental Health for Mr. S. Ashwin.
Ex.P.2	30.05.2008	Photocopy of the DNAL Identity card and passbook with disability certificate.
Ex.P.3	-	Computer generated copy of the disability certificate issued by the department of Empowerment of Persons with Disabilities.
Ex.P.4.	01.10.2013	Photocopy of the authorization for pension & CVP pensioner half.
Ex.P.5	16.04.2018	Photocopy of the certificate issued by the Institute of Mental Health, Kilpauk.
Ex.P.6	13.06.2019	Photocopy of the pension payment order.
Ex.P.7.	21.04.2021	Photocopy of the unique disability ID card.
Ex.P.8.	27.01.2022	Printout of the order in O.P. No.731 / 2021 passed by the Madras High Court, Chennai.
Ex.P.9.	27.11.2023	Photocopy of the certificate of appointment of legal guardian given by the National Trust for



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		the welfare of people with autism.
Ex.P.10.	03.10.2024	Photocopy of the letter given by the Senior Accounts Officer to the Pension Pay Officer.
Ex.P.11	-	Photocopy of the Blank form of Form 14 for application for the grant of family pension on the death of the Government servant / pensioner.
Ex.P.12	-	Photocopy of the Aadhar Card of the 1st petitioner.
Ex.P.13	-	Photocopy of the Aadhar card of the 2nd petitioner.
Ex.P.14.		Photocopy of the Aadhar Card of the 3rd petitioner.
Ex.P.15	-	Photocopy of the Aadhar Card of Mr. S. Aswin.
Ex.P.16	-	Certificates under Section 63(4)(c) of B.S.A. filed for Ex.P.3 and Ex.P.8.



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