

**IN THE COURT OF SH. VIRENDER KUMAR BANSAL
PRINCIPAL DISTRICT & SESSIONS JUDGE,
CENTRAL DISTRICT
TIS HAZARI COURTS, DELHI**

GP No.22/2023

CNR No. DLCT01-012037-2023

IN THE MATTER OF:-

ANEELA

.....PETITIONER

VS.

STATE

..... RESPONDENT

ORDER

1. Vide this order, I shall dispose of the application under Order 1 Rule 10 CPC moved by Mst. Shamim Begum and Mst. Zahida Parveen for impleadment as party in the petition moved by Mst. Aneela under Section 29 read with Section 31 of Guardian and Wards Act, 1890 to be appointed as guardian of her daughters Mst. Shifa, Mst. Zara and Mst. Hania, all minor children. It is alleged that she was with married Mohd. Waseem S/o Mohd. Nawab. Three children were born out of the said wedlock. Mohd. Waseem expired on 18.04.2021 leaving behind the applicant herein and three children. Prayer in the petition is that she be appointed as guardian of the minor children to lookafter them and their property i.e. one shop on ground floor and one hall on first floor with inside staircase upto ceiling

without any roof rights having an area of about 8.23 sq. meters bearing municipal no. 5670, situated at Chowk Bazar, Sarai Hafiz Bana, Sadar Bazar, Delhi where the minor children are collectively having 16.68 % undivided share in one shop on ground floor and one hall on first floor with inside staircase upto ceiling without any roof rights having an area of about 8.23 sq. meters bearing municipal no. 5670, situated at Chowk Bazar, Sarai Hafiz Bana, Sadar Bazar, Delhi.

2. Notice of the application was sent to the petitioner. Reply was filed.

3. I have heard the Ld. counsels for the parties and perused the record.

4. Ld. counsel for applicant submitted that Mst. Rahisa was married to Mohd. Nawab. Property in dispute was purchased by Mst. Rahisa Begum vide Sale deed dated 05.02.1996, registered document no. 138, Additional Book No.I, Volume No. 7123, page 172-178 in the office of Sub-Registrar-I, Delhi. Applicants are daughters of Mohd. Haneef. He was married with Mst. Bismillah Begum, they were blessed with two sons and three daughters namely, Mohd. Nawab, Mohd. Haseen, Mst. Shamim Begum, applicant herein, Mst. Zahidad Parveen and Mst. Zareena Parveen. Mst. Zahida Parveen had died. Mohd. Nawab got married with Mst. Rahisa Begum. She was already having daughter Mst. Sualeha Begum from earlier marriage. From the wedlock of Mst. Rahisa Begum and Mohd. Nawab blessed with daughters, namely, Saba, Tabussum, Sana Nawab and one son

Mohd. Waseem. Mohd. Waseem married with Mst. Aneela and they were blessed with three daughters, namely, Mst. Sahifa, Mst. Zara, and Mst. Hania. Mohd. Nawab passed away on 18.04.2021.

5. Ld. counsel submitted that Mst. Rahisa also expired on 29.10.2015. On her death, the property devolved as per Muslim Law on Mohd. Nawab who inherited 1/4th share, Mohd. Waseem inherited 1/4th share as residuary, Mst. Saba, Mst. Tabussum, Sana Nawab and Sualeha Begum inherited 1/8th share. Mohd. Waseem died on 18.04.2021 in the morning and on his death his property devolved on Mohd. Nawab, who inherited 1/6th share. Mst. Aneela, wife of Mohd. Waseem inherited 1/8th share in the property. Mst. Shifa, Mst. Zara and Mst. Hania inherited 2/3rd share in the property of the deceased collectively and Mohd. Nawab who inherited 26/25th in the property.

6. Ld. counsel submitted that Mohd. Nawab also died on 18.04.2021 in the evening and his property devolved upon Saba, Tabussum and Sana, 2/3rd share collectively. Ld. counsel submitted that Mst. Shifa, Mst. Zara and Mst. Hania daughters of the pre-deceased son do not get any share in the property of Mohd. Nawab as they will get share only in the absence of son/daughter/son's son of the deceased. In this case since three daughters of Mohd. Nawab are alive, therefore, three daughters of pre-deceased son would not get any share in the property of Mohd. Nawab. Similarly, Mst. Sahmim Begum and Mst. Zahida Parveen full sisters of the deceased would also not be entitled to

take share in the property because there is child of the deceased. The remaining 1/3rd share of the property would be taken by the full brothers and sisters of the deceased as residuaries because there is residues left after satisfying the claims of the share.

7. Ld. counsel submitted that all the facts clearly show that Mst. Shamim Begum and Mst. Zahida Begum are having rights in the property and therefore, they are necessary party for deciding the petition for appointment of guardian of the minor where the guardian is also asking for permission to sell the property for the welfare of the children and to meet their expenses. It is prayed that they being the necessary party and in their absence as the petition cannot be decided, therefore the application be allowed.

8. Ld. counsel for petitioner Aneela submitted that application itself is misconceived and moved only to delay the proceedings. In the petition it has been clearly mentioned that they are asking to deal with the share of the minor children only which comes to 16.68% undivided share in one shop on ground floor and one hall on first floor with inside staircase upto ceiling without any roof rights having an area of about 8.23 sq. meters bearing municipal no. 5670, situated at Chowk Bazar, Sarai Hafiz Bana, Sadar Bazar, Delhi.

9. Ld. counsel submitted that even as per the application, after the death Mst. Rahisa Begum 25% went to her husband Mohd. Nawab and 25% share went to Mohd. Waseem her son, 12.5% share each went to their daughters. After the death of

Mohd. Waseem, 5.20% went to his father Mohd. Nawab. His wife Aneela gets 3.13% share and the daughters gets 5.56% share as per the applicants also.

10. Ld. counsel submitted that we are not asking for more share. We are only asking to deal with property of the minor to the extent they are the owners. This petition even does not ask any right whatever other parties have in the property. Ld. counsel submitted that even otherwise it is not a case of partition or deciding the succession. We are only seeking permission to deal with 16.68% undivided share which fell to the minors. It is prayed that applicants have no right, title or interest in the property/shares of the minors in the property. They are also not a necessary party for deciding where Aneela is to be appointed as guardian of the minor or not.

11. Ld. counsel further submitted that in this case the minors are not having the father and also the grand father as the father died in the morning of 18.04.2021 and grand father died in the evening on the same day. Ld. counsel submitted that there is no dispute about all these facts. It is prayed that keeping in view all these facts, it is clear that applicants are neither the necessary nor proper party for deciding the issues in the present case. It is prayed that application be dismissed.

12. After hearing arguments and going through the record, I found that petitioner Aneela has filed the petition for her appointment as legal guardian of the minor children and that she is natural guardian being biological mother of the minor and she

be permitted to sell the undivided share of the minor children i.e. 16.68% share in one shop on ground floor and one hall on first floor with inside staircase upto ceiling without any roof rights having an area of about 8.23 sq. meters bearing municipal no. 5670, situated at Chowk Bazar, Sarai Hafiz Bana, Sadar Bazar, Delhi. The application has been moved by the applicants that they be impleaded as party as they are also having share in the property. It is important to note here that present petition has not been filed for partition or deciding shares of the parties. During the course of argument, Ld. counsel for applicants also admitted that the minors are having share collectively to the extent of 16.68% which is undivided share in one shop on ground floor and one hall on first floor with inside staircase upto ceiling without any roof rights having an area of about 8.23 sq. meters bearing municipal no. 5670, situated at Chowk Bazar, Sarai Hafiz Bana, Sadar Bazar, Delhi.

13. The only issue before the Court is whether petitioner Aneela can be appointed as legal guardian of the person of the minors and also for the property and whether any permission of the sale of the undivided share of the minor to the extent of 16.68% in the above mentioned property can be allowed. For deciding these issues, the presence of the present applicants are not required. They are claiming that they are having right in the property but the scope of guardianship petition cannot be extended to decide shares of the successors who succeeded the Estate of Mohd. Waseem and Mohd. Nawab. They are also not proper party for deciding the issue with respect to the

appointment of Mst. Aneela as legal guardian and to deal with the property of the minors. They have even in the application not mentioned in this regard that on the additional issue of guardianship they have something to say except that they are also having right in the property. It is important to note that applicant has only requested to permit her to deal with the 16.68% undivided share in the property to which they are entitled to in accordance with succession.

14. Under these circumstances and in view of the legal proposition in my opinion, applicants are neither the necessary party nor property party for deciding the present petition. Hence the application under Section 1 Rule 10 CPC is hereby dismissed.

15. Put up with connected G. P. No.27/2023 on **23.01.2026**.

Announced in open Court
on 16th December, 2025

(Virender Kumar Bansal)
Principal District & Sessions Judge (Central)
Tis Hazari Courts, Delhi