

IN THE COURT OF THE ADDITIONAL DISTRICT COURT, TIRUR

Present:- Sri. Krishnakumar.N.R., Additional District Judge.

Friday, the 12th day of January, 2024
22nd day of Pousha, 1945

OP (G&W) NO: 319/2023

(In the matter of appointing the petitioner as guardian for the person and properties of her minor daughter namely Safa.T.K, 8 years(DOB: 11-10-2014) with regard to the item of property shown in the schedule below and permitting her to sign a release deed representing the minor.)

Between:-

Rafeena. P, 46 years, W/o. Saidalavi,
Thekkancherikunnath House,
P.O.Puramannur, Irimbilyam, Puramannur,
Tirur Taluk, Malappuram District, PIN- 676 552

} Petitioner

And:-

1. Muhammedkutty, 59 years,
S/o. Thekkanchery Kunnath Ibrahim,
2. Aboobacker, 53 years,
S/o. Thekkanchery Kunnath Ibrahim,
3. Abdul Hameed, 48 years,
S/o. Thekkanchery Kunnath Ibrahim,
4. Moideenkutty, 46 years,
S/o. Thekkanchery Kunnath Ibrahim,
5. Sabira, 25 years, D/o. Kunnath Saidalavi,
6. Shakkira, 23 years, D/o. Kunnath Saidalavi,
7. Saneera, 18 years, D/o. Kunnath Saidalavi,
8. Khatheeja, 60 years, D/o. Thekkanchery Kunnath Ibrahim,
9. Subaida, 48 years, D/o. Thekkanchery Kunnath Ibrahim,
10. Sajitha, 43 years, D/o. Thekkanchery Kunnath Ibrahim,
11. Jameela, 40 years, D/o. Thekkanchery Kunnath Ibrahim,
(Respondents Nos.1 to 11 are residing at
Valiyakunnu amsom Puramannoor desom,
Tirur Taluk,)
12. Shajas, 33 years, S/o. Muhammed, Ambalath Veettil,
Valiyakunnu amsom Puramannoor desom, Tirur Taluk.

} Respondents

This petition coming on 04th day of January, 2024 for final hearing on the before me in the presence of Sri. K.H.Arshad Ayyoob, Advocate for the petitioner and of Sri. Badarudheen. N, Advocate for the respondents and having stood over for consideration to this day, the court passed the following:-

O R D E R

This is a petition filed u/s.9, 10 and 25 of the Guardians and Wards Act, 1890 for appointing the petitioner/mother as the guardian of the property of her minor daughter named Safa.T.K., aged 8 years, with liberty to execute and register Sale deed with respect to the share of minor in the petition schedule property.

2. The case of the petitioner in brief, is as follows:- The petition schedule property was jointly purchased by Thekenchery Kunnath Saidalavi and his brothers Muhammedkutty (R1), Aboobackar (R2), Abdul Hameed (R3) and Moideen Kutty (R4) as per Sale deed bearing No.1715/2005 of SRO, Kuttippuram. Later, the above mentioned Saidalavi died on 01.04.2019. On the death of Saidalavi his fractional share in the petition schedule property has been devolved upon petitioner/wife and daughters R5 to R7 and minor child Safa and his siblings including R9 to R11. In accordance with the Mohammedan Law petitioners, R1 to R11 and minor Safa will be having share in the petition schedule property as detailed below:

Rafeena.P (Petitioner)	-	36/1440
Muhammedkutty (R1)	-	298/1440
Aboobackar (R2)	-	298/1440
Abdul Hameed (R3)	-	298/1440
Moideen Kutty (R4)	-	298/1440
Sabira (R5)	-	48/1440
Shakkira (R6)	-	48/1440
Saneera (R7)	-	48/1440

Safa (Minor)	-	48/1440
Subaitha (R8)	-	5/1440
Kadheeja (R9)	-	5/1440
Sajitha (R10)	-	5/1440
Jameela (R11)	-	5/1440

While so, it was decided by all the co-owners to sell the petition schedule property to R12 Shajas. An agreement has been executed in between them and R12 on 22.07.2023 as per which R12 has agreed to pay a total sale consideration of ₹13,50,000/- (Rupees thirteen lakhs fifty thousand only). The consideration offered by R12 represents the prevailing market rate. If the share of the minor is allowed to be sold she will be getting ₹45,000/-. The petitioner is ready to deposit that amount in Nationalized bank as Fixed Deposit till the minor attains the age of majority. The amount can be utilized to meet the future education needs of the minor. The minor is under the care and custody of the petitioner and she has no interest adverse to the interest of the minor. Sale of the fractional share of the minor is beneficial to her interest. So, the petitioner may be appointed as the guardian of the property of the minor and she may be allowed to execute and register Sale deed representing the child. Hence, the petition.

3. On filing of the petition notice was issued to the respondents. Though the respondents entered appearance through an Advocate, they have not filed any counter statement despite of giving opportunity. Apart from issuing notice to the respondents notice was ordered to be affixed at the residence of the minor and also in the notice board of the Court and Village Office. A paper publication was also made and copy of the same was produced before the Court. However, nobody appeared before the Court in response of the paper publication and affixture to oppose the application.

4. Thereafter, the petitioner has got herself examined as PW1 and she marked Exts.A1 to A8 documents.

5. Ext.A1 is the copy of Sale deed bearing No.1715/2005 of SRO, Kuttippuram by which deceased Saidalavi and R1 to R4 purchased the petition schedule property. Ext.A2 is the copy of death certificate of Saidalavi. Ext.A3 is the Sale agreement entered into between petitioner, R1 to R11 and R12. Ext.A4 is the copy of birth certificate of the minor. Exts.A6 and A7 are the copy of Aadhar cards of petitioner and minor child. Ext.A7 is the copy of Fair Value Certificate and Ext.A8 is the copy of Family Membership Certificate.

6. Heard the Counsel for the petitioner and perused the records.

7. Now the points that arise for consideration are:-

1) Whether the petitioner can be appointed as the guardian of the property of her minor daughter Safa.T.K. and can she be authorized to sell and execute Sale deed in respect of the petition schedule property representing the minor?

2) Relief and cost?

8. **Point No.1:-** Admittedly, the petition schedule property jointly belonged to Saidalavi and his brothers who are R1 to R4 herein on the strength of Ext.A1 Sale deed of the year 2005. The said Saidalavi died on 01.04.2019. Petitioner is the wife and R5 to R7 and minor Safa are the children of Saidalavi. Since Saidalavi died without any male issues his fractional share in the property has been devolved not only upon the petitioner and her children but also upon his siblings. The petitioner has got 36/1440 and her children including minor Safa have got 48/1440 shares each.

9. Except the minor daughter all other shares are competent to enter into contract and execute sale deed in respect of the petition schedule property. All of them have jointly decided to sell the petition schedule property to R12. Since the minor has got only a meager share in the total property, allowing to sell her fractional share along with the share of others will be beneficial to her otherwise the share of the minor will be worthless. R12 has agreed to pay a total consideration of ₹13,50,000/- for the property. Considering

the fair value fixed by the Government for the purpose of stamp duty, the consideration offered by R12 appears to be reasonable.

10. The minor child is staying with the petitioner, who is her mother. She is under her care and custody. The petitioner has no interest adverse to the interest of the minor. The petitioner is ready to deposit the share of the minor in the sale consideration in Nationalized bank till she attains the age of majority. Considering all these facts and other circumstances referred above, I am satisfied that it is only lawful to appoint the petitioner as the guardian of the property of her minor daughter named Safa enabling her to execute and register Sale deed in respect of petition schedule property representing the minor also. Therefore, I find this point accordingly in favour of the petitioner.

11. **Point No.2:-** In the result, the petition is allowed upon the following terms:

- 1) The petitioner is appointed as the guardian of the property of minor daughter, Safa.T.K.
- 2) Permission is hereby granted to the petitioner to execute and register sale deed in respect of fractional share of the minor in the petition schedule property.
- 3) The petitioner shall execute a bond for ₹1,00,000/- (Rupees One Lakh only) with two solvent sureties each for a like sum.
- 4) Draft sale deed shall be produced by the petitioner before this Court for approval before executing the sale deed.
- 5) The due share of the minor daughter ie. ₹45,000/- (Rupees Forty Five Thousand only) in the sale proceeds shall be deposited in a nationalized bank in the name of minor daughter as fixed deposit till she attains the age majority and the F.D. receipts shall be produced before this Court before executing sale deed.

6. The petitioner shall produce the original sale deed before the Court after execution and registration of it.

(Dictated to the Confidential Assistant, transcribed by him, corrected by me and pronounced in Open Court on this the 12th day of January, 2024).

Sd/-

ADDITIONAL DISTRICT JUDGE

Appendix:-

Petitioner's Witnesses: -

PW1- Rafeena

Petitioner's Exhibits:-

A1- 27.04.2005	Certified copy of Jenmam Assignment deed bearing No.1715/2005
A2- 25.10.2023	Certified copy of Death Certificate
A3- 22.07.2023	Certified copy of Sale agreement
A4- 25.10.2023	Certified copy of Birth certificate
A5- -	Certified copy of Adhaar
A6- -	Certified copy of Adhaar of minor
A7- -	Certified copy of Fair value certificate
A8- 31.07.2023	Certified copy of Family Membership certificate

Respondent's Witness: Nil

Respondent's Exhibits: Nil

Sd/-

ADDITIONAL DISTRICT JUDGE

//True copy//

ADDITIONAL DISTRICT JUDGE

Typed by: Ambili Thekkepurakkal
Compared by 1. 2.

Copy of Fair Order in
OP (G&W) 319/2023
Dated:12.01.2024.

