

IN THE COURT OF THE DISTRICT JUDGE, KALPETTA, WAYANAD

Present : Sri.Johnson John, District Judge

Wednesday, the 08th day of February, 2023
19th day of Magha, 1944

ORIGINAL PETITION (GUARDIAN & WARDS) No. 28/2022

Petition for appointment of guardian of person and properties of minors (1) Adithya Prasad @ Adithya.T.P, Aged 15 years (DOB 29.08.2007), D/o Mini, Thevidikkunnu House, CRP Kunnu, 39 VTC Periya-19, Periya Post, Periya Village, Mananthavady Taluk, Wayanad District. (2) Anand.T.P., Aged 11 years (DOB 23.09.2011), S/o Mini, Thevidikkunnu House, CRP Kunnu, 39, VTC Periya-19, Periya Post, Periya Village, Mananthavady Taluk, Wayanad District and (3) Avanthika prasad, Aged 4 years (DOB 30.01.2018), D/o of Mini, Thevidikkunnu House, CRP Kunnu, 39, VTC Periya-19, Periya Post, Periya Village, Mananthavady Taluk, Wayanad District.

Mini, Aged 42 years, W/o (Late) Prasad.P.,
Thevidikkunnu House, CRP Kunnu, 39 VTC Periya-19,
Periya Post, Periya Village, Mananthavady Taluk,
Wayanad District – 670 644.

} Petitioner
Vs.

Philomina, Aged 85 years, W/o (Late) Krishnan,
Thevidikkunnu House, CRP Kunnu, 39 VTC Periya-19,
Periya Post, Periya Village, Mananthavady Taluk,
Wayanad District – 670 644.

} Respondent

This Original Petition (G&W) filed U/s 7 and 29 (a) of the Guardian and Wards Act 1890 for appointing the petitioner as the guardian of the person and property of her minor children and also for permission to alienate the undivided share of the minors in the petition schedule property.

This Original Petition (G&W) coming on this day for hearing before me in the presence of Sri. P.D.Bineesh, Counsel for the petitioner and of Sri. Joseph Zacharias, counsel for the respondent and upon perusing the petition, the court passed the following:

ORDER

This petition is filed under section 7 of the Guardian and Wards Act for appointing the petitioner as the guardian of the person and property of her minor children and also for permission to alienate the undivided share of the minors in the petition schedule property.

2. In the petition, it is stated that the husband of the petitioner and father of minors Sri. Prasad died on 11.09.2021 and that the petition schedule property was owned by late Prasad by virtue of partition deed No. 4070/19 of SRO, Mananthavady. It is stated that the petition schedule property is situated inside vested forest and there is frequent threat of wild animals including elephants. There are about 25 inhabitants in the locality and the Forest Department has initiated rehabilitation program and the husband of the petitioner had applied for the benefit of the said program and it was during the pendency of the said application he expired on 11.09.2021. It is stated that the application preferred by the husband of the petitioner was approved by the Additional Principal Chief Forest Conservator and the petitioner was informed that the transfer of property can be effected after obtaining permission from the court to transfer the right of the minors. It is stated that the petitioner intends to buy another property with a house jointly in the name of the petitioner and minors by utilizing the compensation from the Forest Department. It is also stated that the petitioner has already found a suitable property with a house and had

entered into an agreement for sale on 04.07.2022. As per the said agreement the property and a house is agreed to purchase for a value of ₹13,00,000/- (Rupees Thirteen lakh only). It is stated that the said property is situated in Mananthavady village near Mananthavady town and the same will be more beneficial to the minors. The respondent is the mother of the husband of the petitioner and she has given a consent letter to the Forest Department that she has no objection in giving the compensation to the petitioner. The minor Adithya Prasad is now studying in 10th standard and the minor Anand T.P., is now studying in 6th standard and the minor Avanthika Prasad is studying in Nursery and they are in the care and protection of the petitioner and therefore the petitioner is seeking permission to transfer the share of the minors in the petition schedule property in favour of the Forest Department and also for permission to purchase B schedule property by utilizing the consideration, jointly in the name of the petitioner and the minors.

3. Notices were served on the near relatives of the minor specified in the petition. Notice was also affixed on the Village Office concerned, at the notice board of the court and necessary paper publication is also produced.

4. The respondent appeared and filed statement admitting that the intention of the petitioner is to protect the property of the minors and to safeguard the interest of the minors and that the respondent has no objection in appointing the petitioner as guardian of the property of the minors and also for permitting the petitioner to sell or transfer the undivided share of the minors in the property.

5. The petitioner is examined as PW1 and Exts. A1 to A15 were marked.

6. Heard the both sides and perused the records.

7. The points that arise for consideration are the following:

1. Whether the petitioner is entitled to get declared herself as the guardian of the person and property of her minor children ?
2. Whether permission can be given to the petitioner to sell or transfer the undivided share of the minors in the petition A schedule property and also to purchase petition B schedule property jointly in the name of the petitioner and minors by utilizing the consideration?
3. Relief.

8. **Point Nos. 1 & 2 :-** The petitioner who is the mother of the minors was examined as PW1 and for the purpose of chief examination she filed an affidavit reiterating the averments in the petition.

9. The Birth Certificate of the minor Adithya Prasad is marked as Ext.A1 and it shows her date of birth as 29.08.2007. The Birth Certificate of minor Anand T.P. is marked as Ext.A2 and it shows his date of birth as 23.09.2011. The Birth Certificate of minor Avanthika Prasad is marked as Ext.A3 and it shows her date of birth as 30.01.2018. Ext.A4 to A6 are copies of the Aadhar card of the minors. Partition Deed No. 4070/97 of SRO Mananthavady with respect to petition A schedule property is marked as Ext.A7. Ext. A8 is a land tax receipt and Ext. A9 is a fair value certificate issued by the Village Officer. The copy of the death certificate of Sri.Prasad is marked Ext.A10 and it shows that he died on 11.09.2021. The

Legal Heirship Certificate issued by the Thahasildar is marked as Ext.A11. The copy of the Aadhar card of late Prasad is marked as Ext.A12 and the copy of the Adhar card of the petitioner is marked as Ext.A13. Ext.A14 is the letter dated 02.08.2022 from the office of the Additional Principal Chief Forest Conservator with respect to the application of late Prasad and in the said letter it is seen mentioned that a rehabilitation package can be allowed on the basis of the application of late Prasad in favour of all the members of the family and that it is necessary to obtain permission from the court for transferring the share of the minors in the property in favour of the Government. Ext.A15 is the agreement executed on 20.07.2022 by the petitioner for purchasing the B schedule property in the petition.

10. The specific case of the petitioner is that petition A schedule property originally owned by late Prasad the father of the minors and the husband of the petitioner, is situated inside vested forest and there is frequent threat of wild animals including elephants and that the Forest Department has offered a rehabilitation program for the inhabitants of the locality and accordingly late Prasad has made an application seeking the benefit of the program and the Forest Department has approved the said application and offered compensation in favour of the members of the family and therefore it is necessary to obtain the permission of the court for transferring the undivided share of the minors in the property in favour of the Government for availing compensation and also for purchasing another property jointly in the name of the petitioner and the minors by utilizing the compensation amount. Respondent who is the mother of the husband of the petitioner has filed statement admitting that the intention of the petitioner is to protect the property of the minors and that the respondent has no objection in allowing the petition.

11. It is well settled that the paramount consideration in the matter of appointment of the guardian is the welfare of the minor and under ordinary circumstances and in all probabilities a father or a mother cannot have any interest adverse to the interest of the minors.

12. Therefore on a careful consideration of the facts and circumstances of the case, I am satisfied that the proposed transfer of the undivided share of the minors in the property and purchasing another property jointly in the name of the petitioner and the minors is for the benefit and betterment of the minors and therefore the petition can be allowed in the interest of justice.

13. **Point No.3 :-**

In the result, the petition is allowed as follows:-

1. **The petitioner *Mini, W/o Late Prasad P., Age 42 years, residing at Thevidikkunnu house, CRP kunnu, 39, VTC Periya -19, Periya Post, Periya Village, Mananthavady Taluk, Wayanad District* is declared as the guardian of the person and property of the minors by name 1) Adithya Prasad @ Adhithya T.P, 2) Anand T.P, and 3) Avanthika Prasad.**
2. **Permission is hereby granted to the petitioner to alienate the share of the minors in the petition schedule property in favour of the Government or Forest Department for availing the benefit of the rehabilitation program.**
3. **The petitioner shall execute a bond for ₹5,00,000/- (Rupees Five lakh only) with two solvent sureties each for the like sum within one month from the date of this order.**

4. The petitioner shall purchase petition B schedule property jointly in the name of the petitioner and the minors within one month from the date of receipt of the compensation amount from the Government.
5. The petitioner shall produce the copy of the title deed with respect to petition B schedule property in favour of the petitioner and the minors before this court within a period of one month from the date of purchase.
6. The petitioner shall submit the accounts in the court once in a year.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 08th day of February, 2023).

DISTRICT JUDGE

APPENDIX:-

Petitioner's Witness:-

PW1 - 31.01.2023 - Mini

Petitioner's Exhibits:-

A1	29.10.2007	Birth Certificate of the Minor Adithya Prasad.
A2	11.10.2011	Birth Certificate of the Minor Anand T.P.
A3	03.05.2018	Birth Certificate of the Minor Avanthika Prasad.
A4	21.12.2012	Aadhar Card copy of the minor Adithya Prasad.

A5	26.01.2016	Aadhar Card copy of the minor Anand T.P.
A6	12.02.2022	Aadhar Card copy of the minor Avanthika Prasad.
A7	30.12.1997	Petition deed No.4070/97 of SRO, Mananthavady with respect to petition A-Schedule property.
A8	20.09.2022	Land Tax Receipt.
A9	23.08.2022	Fair Value Certificate issued by the village officer.
A10	27.10.2021	Copy of the death certificate of Prasad.
A11	30.01.2022	The Legal Heirship Certificate issued by the Tahsildar
A12	-	Copy of the Aadhar Card of late Prasad.
A13	12.04.2012	Copy of the Aadhar Card of the petitioner
A14	02.08.2022	Letter from the office of the Additional Principal Chief Forest Conservator.
A15	20.07.2022	The agreement executed by the petitioner for purchasing the B-Schedule property in the petition.

DISTRICT JUDGE

Typed by :Pouly Mathew.
 Compared by :Jayaprakash.A.P
 FCS :

FAIR ORDER

IN

OP(G&W) No. 28/2022

DATED: 08.02.2023