



IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., HUBBALLI

Present:
SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Addl. Senior Civil Judge & J.M.F.C., Hubballi.

G & Wc. No.34/2026

Dated this the 18th day of March, 2026

Petitioner/s : Smt. Naseem Banu W/o Late.
Abbas Ali Kapathal, Age:38
years, Occ:Housewife,
R/o.#104, Opposite Masjid,
Raza Town, Old Hubli, Hubballi.

(By Sri. I.K. Belagali, Advocate)

Vs.

Respondent/s : N I L

ORDER

This Petition is filed by the Petitioner under Section 29 of the Guardian and Wards Act, praying to appoint petitioner as a guardian of her minor children i.e., Kumari. Arhan Banu D/o Late. Abbas Ali Kapathal and Kumar. Mohammed Farhan S/o Late. Abbas Ali Kapathal and also permit them to alienate the suit property including share of minor children.



2. In brief, the case of the Petitioner is as under;

A 1st floored RCC residential house, comprised in Plot No.104 in survey No.11/2B and 11/3B of Ward No.65, its E-Swatt No.4826673359, super built up area is 900 sq. ft. along with undivided share to the extent of 54 sq. mtrs. out of measuring 108 sq. mtrs. situated at Ayodhya Village, Raza Town, Old Hubballi, Hubballi was under the absolute ownership of father of minors and major son by name Sri. Malik Rehan and husband of petitioner Late. Abbas Ali S/o Hazratsab Kapathal. The father of the minors by name Abbas Ali S/o Hazratsab Kapathal died on 11.08.2024, leaving behind the petitioner i.e., his wife and children as his legal heirs and they are succeeded to the estate of deceased Abbas Ali S/o Hazratsab Kapathal as his legal heirs and to succeeded to the schedule property as joint holder. It is further submitted that the minor children by name Kumari. Arhan Banu D/o Late. Abbas Ali Kapathal and Kumar. Mohammed Farhan S/o Late. Abbas Ali Kapathal are under the care and custody of petitioner, as the natural mother and guardian of minors. There is no other persons are to act as a guardian in the family.

It is further submitted that the father of the minors by name Abbas Ali S/o Hazratsab Kapathal, in his lifetime constructed the residential house by availing the loans from



his relatives and mortgage the schedule property to the mortgager by receiving the huge mortgage amount and mortgagee in possession of schedule property is forced to returned his mortgage amount and the persons who are advance the hand loan amount for construction house. Hence, the petitioner being house women lady and no one earner in their family to discharge the loan amount and mortgage amount and the petitioner and the said minors and major son are depend on her brothers for their livelyhood, under these circumstances, petitioner, her major and minors are suffering for funds for their lively hood and education, therefore the above reason petitioner is unable to provide necessary funds fro proper education, growth, upliftment and day today livelihood of the said minor children. Under these circumstances and also in the best interest of well-being of said minor children, the petitioner is intends to sell her and her major child share along with the share of minors in the schedule property.

It is further submitted that, after death of Abbas Ali S/o Hazratsab Kapathal, there is no income came from the schedule property and the said schedule property is not useful for the petitioner and major and the minor children and brother-in-law of the petitioner by name Badsha S/o Hazratsab Kapathal has come forward to purchase the



schedule property. The sale of minors share in the schedule property shall be utilized in the best interest of said minor children, petitioner can act in the interest and welfare of minor children. The petitioner is undertakes to utilize the sale proceeds of minors in schedule property for their welfare, well being, education, growth and livelihood of the said minor children. Hence, this petition and prayed to allow the petition.

3. The petition notice has been issued by way of paper publication in Daily Kannada Newspaper 'Vijayavani' and after publishing the petition notice, no one appeared before the court to contest the petition on the date of appearance of the respondent. Hence, the petition filed by the petitioner remained uncontested.

4. In support of the petition, the petitioner filed affidavit in lieu of examination-in-chief and got marked 11 documents as Ex.P.1 to P.11 and closed her side of evidence.

5. Heard arguments.

6. The following points arise for my consideration :

1. Whether the petition filed by the petitioner is deserves to be allowed ?

2. What Order ?



7. My answers to the above points are as follows :

Point No.1 : In the affirmative

*Point No.2 : As per the final order,
for the following:*

REASONS

8. **POINT No.1:** *It is the specific case of the petitioner that, a 1st floored RCC residential house, comprised in Plot No.104 in survey No.11/2B and 11/3B of Ward No.65, its E-Swatt No.4826673359, super built up area is 900 sq. ft. along with undivided share to the extent of 54 sq. mtrs. out of measuring 108 sq. mtrs. situated at Ayodhya Village, Raza Town, Old Hubballi, Hubballi was under the absolute ownership of father of minors and major son by name Sri. Malik Rehan and husband of petitioner Late. Abbas Ali S/o Hazratsab Kapathal. The father of the minors by name Abbas Ali S/o Hazratsab Kapathal died on 11.08.2024, leaving behind the petitioner i.e., his wife and children as his legal heirs and they are succeeded to the estate of deceased Abbas Ali S/o Hazratsab Kapathal as his legal heirs and to succeeded to the schedule property as joint holder. It is further submitted that the minor children by name Kumari. Arhan Banu D/o Late. Abbas Ali Kapathal and Kumar. Mohammed Farhan S/o Late. Abbas Ali Kapathal are under the care and custody of petitioner, as the*



natural mother and guardian of minors. There is no other persons are to act as a guardian in the family.

It is further submitted that the father of the minors by name Abbas Ali S/o Hazratsab Kapathal, in his lifetime constructed the residential house by availing the loans from his relatives and mortgage the schedule property to the mortgager by receiving the huge mortgage amount and mortgagee in possession of schedule property is forced to returned his mortgage amount and the persons who are advance the hand loan amount for construction house. Hence, the petitioner being house women lady and no one earner in their family to discharge the loan amount and mortgage amount and the petitioner and the said minors and major son are depend on her brothers for their livelyhood, under these circumstances, petitioner, her major and minors are suffering for funds for their lively hood and education, therefore the above reason petitioner is unable to provide necessary funds fro proper education, growth, upliftment and day today livelihood of the said minor children. Under these circumstances and also in the best interest of well-being of said minor children, the petitioner is intends to sell her and her major child share along with the share of minors in the schedule property.



It is further submitted that, after death of Abbas Ali S/o Hazratsab Kapathal, there is no income came from the schedule property and the said schedule property is not useful for the petitioner and major and the minor children and brother-in-law of the petitioner by name Badsha S/o Hazratsab Kapathal has come forward to purchase the schedule property. The sale of minors share in the schedule property shall be utilized in the best interest of said minor children, petitioner can act in the interest and welfare of minor children. The petitioner is undertakes to utilize the sale proceeds of minors in schedule property for their welfare, well being, education, growth and livelihood of the said minor children.

9. In order to substantiate the contention of the petition, the petitioner got herself examined as PW.1 and she has produced documents, which are marked as Ex.P.1 to P.11. The Ex.P.1 is the E-Swatt bearing E-swatt No.4826673359, which is standing in the joint names of petitioner and her children. Ex.P.2 is the death certificate of Abbas Ali H Kapathal, which discloses that he died on 11.08.2024. Ex.P.3 and P.4 are the Birth Certificates of Arhan Banu Kapathal and Mohammed Farhan Kapathal, which discloses that they born on 17.07.2009 and 14.02.2012 i.e., they are still minors. Ex.P.5 and P.6 are the study certificates of minors. Ex.P.7 is the



surviving family members certificate. Ex.P.8 to P.11 are the Aadhaar Cards.

10. This Court has gone through all the documents produced by the petitioner and her examination in chief, it is noticed to the Court that, admittedly the petition schedule property is standing in the joint name of petitioner and her children. The petitioner is the natural guardian mother of the minor children i.e., Arhan Banu Kapathal and Mohammed Farhan Kapathal because of financial difficulties it has become difficulty to maintain and run the family that too especially with growing children and their educational expenses and other basic requirements of the family. The retention of the land has become fruitless and impractical. Under these circumstances, the situation has led the petitioner to dispose of the said land for the welfare of the minor children and family members and for the family legal necessities as the petitioner has to give better education and bright future to the children and perform other duties towards the grown-up children. The day to day needs of the children and to give their a healthy life with hygiene and respectable living, the requirement of financial arrangement has put the petitioner to more pressure for the betterment of the children and family members, under the process of alienating the property, to avoid any further and future disparities and technical default in compliance of the



need and requirement under the law in respect of the interest of the minor children and any technicalities to be raised at the later stage the petitioner is necessitated to file this petition and on the other hand, there is no alternate for the petitioner other than to sell and dispose of the said agricultural land. Therefore, the petitioner is constrained to file this petition seeking the permission of this Court for the sale of minor's undivided share in property by appointing her as guardian of the person and the property of her minor children. That is the reason why, the petitioner, next friend of the minor children have decided to dispose of the property and share the sale consideration. At this stage the court has to verify the above averments made by the petitioner is bonafide one or not. Admittedly property cannot be enjoyed conveniently, so next course open to the sharers to dispose of the property and divide the same. Under such circumstances, one cannot find malafidness on part of next friend of minors.

11. Apart from the above, the next friend of the minors have also pleaded that, in order to meet educational expenses and day today expenses of the minors, it is necessary to sell the property. The said ground urged by the guardian of the petitioner cannot be said that illegal and on the other hand alienation going to be made by the next friend of the minors is for legal necessity. Further the next friend of the minors is



utilizing the share of the minors and thereby interest of the minors is also protected. Hence, it is fit case to accord permission.

12. *Admittedly the next friend of the minors is having share in the petition mentioned property, therefore as per the reported ruling of our Hon'ble High Court reported in **2006 (2) KLJ 67 in the matter of A.Chidananda (deceased) by L.Rs) & another V/s Smt.Lalitha.V.Naik**, wherein the Hon'ble Court pleased to hold that:*

“Nonetheless the natural guardian remains a guardian of the minors in other sense also. It is also emphasized that natural guardian who has a share in the property along with the minors undivided interest in the property is legally competent to alienate the property as a whole”.

The said ruling is aptly applicable to the case on hand, because as admitted by the next friend of minors is also share in the petition schedule property, petitioner as well as their next friend are having share. Under the above facts and circumstances, there is no hurdle in law to grant permission as sought by the guardian of the minors. Hence, in view of the



*discussion made in supra I answer **point No.1 in the affirmative.***

13. **Point No.2:** *For the findings given on point No.1, I proceed to pass the following:*

ORDER

The Petition filed by the petitioner under Section 29 of the Guardian and Wards Act, is hereby allowed.

The petitioner is hereby appointed as guardian to the minor children i.e., Kumari. Arhan Banu D/o Late. Abbas Ali Kapathal and Kumar. Mohammed Farhan S/o Late. Abbas Ali Kapathal to look after their welfare and to sell the property, subject to condition that share amount of the minors is to be kept as F.D. in their name till they attains majority and directed to produce the F.D. bond before the Court and utilized the interest



*amount thereon to the interest of the minors,
otherwise said sale is not binding on the minors.*

Issue guardianship certificate as per order.

*(Dictated to the Stenographer directly on computer, script corrected
and then pronounced by me in the Open Court on this the **18th day of
March, 2026**)*

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.*

ANNEXURES

1. List of witnesses examined for the Petitioner/s:

*P.W.1 : Smt. Naseem Banu W/o Late. Abbas
Ali Kapathal.*

2. List of documents exhibited for the Petitioner/s:

*Ex.P.1 : E-Swatt.
Ex.P.2 : Death Certificate.
Ex.P.3 & P.4 : Birth Certificates.
Ex.P.5 & P.6 : Study Certificates.
Ex.P.7 : Surviving family members certificate.
Ex.P.8 to
P.11 : Aadhaar Cards.*



3.List of witnesses examined for the respondent/s:

NIL

4.List of documents exhibited for the Respondent/s:

NIL

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.*