



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.91/2026

Dated this the 02nd day of July, 2026

- Petitioner/s : 1. Afzal Hussain S/o Altaf Hussain, Age:48 years, Occ:Business, R/o.3rd Cross, Prashantnagar, Behind Masjid-e-ali, Harihar, Dist:Davangere.
2. Fakhiha Mariyan D/o Afzal Hussain, Age:13 years, Occ:Student, R/o.3rd Cross, Prashantnagar, Behind Masjid-e-ali, Harihar, Dist:Davangere.

(Since the petitioner No.2 is minor represented by her natural guardian father i.e., petitioner No.1)

(By Sri. M.I. Shivalli, Advocate)

Vs.

Respondent/s : NIL

ORDER

This Petition is filed by the Petitioners under Section 12 of the Guardian and Wards Act, 1980 praying to appoint



petitioner No.1 as a guardian of minor petitioner No.2 and also permit them to alienate the suit property including share of minor petitioner No.2.

2. In brief, the case of the Petitioners is as under:

The petitioner No.1 is the father of the petitioner No.2 and petitioner No.2 is under care and custody of the petitioner No.1. The petition schedule property has been purchased by one Mrs. Khatija W/o Afzal Hussain @ Shaikh Khatija Nazir Ahmed who was legally wedded wife of petitioner No.1 and natural mother to petitioner No.2 and the said Mrs. Khatija W/o Afzal Hussain @ Shaikh Khatija Nazir Ahmed died on 04.01.2023 leaving behind her the husband petitioner No.1 and daughter petitioner No.2 as her legal heirs. It is further submitted that, due to the death of Mrs. Khatija W/o Afzal Hussain @ Shaikh Khatija Nazir Ahmed the petitioner No.1 being husband and the petitioner No.2 being daughter are succeeded to the said property as legal heirs.

It is further submitted that, the petitioner No.1 and 2 and the deceased Mrs. Khatija W/o Afzal Hussain @ Shaikh Khatija Nazir Ahmed who are one family members were decided to take their residence at Hubballi and therefore the deceased Mrs. Khatija W/o Afzal Hussain @ Shaikh Khatija Nazir Ahmed had purchased the petition property to stay in it along with her husband petitioner No.1 and the daughter



petitioner No.2, but she died, hence the petitioner No.1 and 2 are now decided to not to reside in the said house property situated at Hubballi and now they both are residing at Harihar and they want to continue their further living there at Harihar itself and further the petitioner No.1 intending to purchase some of the property at Harihar itself in memory of his deceased wife and further he is in need of money for the education purpose of petitioner No.2 and therefore, the petitioners have decided to sell the petition property. The petitioner No.1 from the sale consideration amount arising after selling the said property, have desired to purchase some of the property in memory of his deceased wife and further he is wanting to give best education to his minor daughter i.e., petitioner No.2. Therefore, the petitioner No.1 approached to execute the registered sale deed of the petition property in favour of the purchaser, but the concerned authority asked to produced the guardianship certificate by obtained from the Court of law and therefore, the petitioner is constrained to file this petition and prayed to allow the petition.

3. The petition notice has been issued by way of paper publication in Daily Kannada Newspaper 'Samyuktha Karnataka' 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 No.1 filed affidavit in lieu of examination-in-chief and got marked 07 documents at Ex.P.1 to P.7 and closed his side of evidence.

5. Heard arguments.

*6. **The following points arise for my consideration :***

1. Whether the petition filed by the petitioners 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, the petitioner No.1 is the father of the petitioner No.2 and petitioner No.2 is under care and custody of the petitioner No.1. The petition schedule property has been purchased by one Mrs. Khatija W/o Afzal Hussain @ Shaikh Khatija Nazir Ahmed who was legally wedded wife of petitioner No.1 and natural mother to petitioner No.2 and the said Mrs. Khatija*



W/o Afzal Hussain @ Shaikh Khatija Nazir Ahmed died on 04.01.2023 leaving behind her the husband petitioner No.1 and daughter petitioner No.2 as her legal heirs. It is further submitted that, due to the death of Mrs. Khatija W/o Afzal Hussain @ Shaikh Khatija Nazir Ahmed the petitioner No.1 being husband and the petitioner No.2 being daughter are succeeded to the said property as legal heirs.

It is further submitted that, the petitioner No.1 and 2 and the deceased Mrs. Khatija W/o Afzal Hussain @ Shaikh Khatija Nazir Ahmed who are one family members were decided to take their residence at Hubballi and therefore the deceased Mrs. Khatija W/o Afzal Hussain @ Shaikh Khatija Nazir Ahmed had purchased the petition property to stay in it along with her husband petitioner No.1 and the daughter petitioner No.2, but she died, hence the petitioner No.1 and 2 are now decided to not to reside in the said house property situated at Hubballi and now they both are residing at Harihar and they want to continue their further living there at Harihar itself and further the petitioner No.1 intending to purchase some of the property at Harihar itself in memory of his deceased wife and further he is in need of money for the education purpose of petitioner No.2 and therefore, the petitioners have decided to sell the petition property. The petitioner No.1 from the sale consideration amount arising after



selling the said property, have desired to purchase some of the property in memory of his deceased wife and further he is wanting to give best education to his minor daughter i.e., petitioner No.2. Therefore, the petitioner No.1 approached to execute the registered sale deed of the petition property in favour of the purchaser, but the concerned authority asked to produced the guardianship certificate by obtained from the Court of law

9. *In order to substantiate the contention of the petition, the petitioner No.1 got himself examined as PW.1 and he has produced documents, which are marked as Ex.P.1 to P.7. The Ex.P.1 is the record of rights bearing survey No.889/plot No.25 measuring 01 gunta 01 anna situated at Kusugal Village, Hubballi Taluk, which is standing in the name of wife of the petitioner No.1 and mother of the petitioner No.2 by name Mrs. Khatija W/o Afzal Hussain. Ex.P.2 is the Sale Deed dated:26.11.2015 executed by M/s Geomac Developers Meenakshi Arcade Deshpandenagar Hubli its Managing Partner Mr. Irfan Ahmed S/o Kasimsab Samsi in favour of Mrs. Khatija W/o Afzal Hussain. Ex.P.3 is the death certificate of Shaikh Khatija Nazir Ahmed, which discloses that she died on 04.01.2023. Ex.P.4 to P.6 are the Aadhaar Cards of petitioners and Shaikh Khatija Nazir Ahmed. Ex.P.7 is the Receipt Form 3.*



10. This Court has gone through all the documents produced by the petitioner and his examination in chief, it is noticed to the Court that, admittedly the petition schedule property is standing in the joint names of petitioners. The petitioner No.1 is the natural guardian father of the minor petitioner No.2 because of financial difficulties it has become difficulty to maintain and run the family that too especially with growing daughter and her educational expenses and other basic requirements of the family. The retention of the property has become fruitless and impractical. Under these circumstances, the situation has led the petitioners to dispose of the said property for the welfare of the minor daughter and family members and for the family legal necessities as the petitioner has to give better education and bright future to the daughter and perform other duties towards the grown-up daughter and to purchase some of the property. 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 petitioners to more pressure for the betterment of the daughter 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 daughter 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 petitioners other than to sell and dispose off the said property. Therefore, the petitioners is constrained to file this petition seeking the permission of this Court for the sale of minor's undivided share in property by appointing them as guardian of the person and the property of his minor daughter. That is the reason why, the petitioner, next friend of the minor petitioner No.2 has decided to dispose off 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 off the property and divide the same. Under such circumstances, one cannot find malafideness 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 minor, 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 minor is for legal necessity. Further the next friend of the minor is utilizing the share of the minor and thereby interest of the



minor is also protected. Hence, it is fit case to accord permission.

*12. Admittedly the next friend of the minor 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 minor is also share in the petition schedule property, petitioners as well as their next friend are having share. Since the intending purchasers have insisted the permission of the Court, the guardian of the minor petitioners has filed the petition. Under the above facts and circumstances, there is no hurdle in law to grant permission as sought by the guardian of the minor petitioner No.2, if imposing condition of fixed deposit of the minor share.



*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 petitioners under Section 12 of the Guardian and Wards Act, 1980 is hereby allowed.

Afzal Hussain S/o Altaf Hussain is hereby appointed as guardian to the minor petitioner No.2 to look after her welfare and to sell the property, subject to condition that share amount of the minor is to be kept as F.D. in her name till she attains majority and directed to produce the F.D. bond before the Court and utilized the interest amount thereon to the interest of the minor, otherwise said sale is not binding on the minor petitioner No.2.

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 **02nd day of July, 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 : Afzal Hussain S/o Altaf Hussain.

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

Ex.P.1 : Record of Rights.

Ex.P.2 : Sale Deed.

Ex.P.3 : Death Certificate.

Ex.P.4 to P.6 : Aadhaar Cards.

Ex.P.7 : Receipt Form 3.

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.