

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III, MANJERI

Present:- Sri. Thushar M., Additional District Judge

Wednesday, the 28th day of February 2024.
9th day of Falguna, 1945.

ORIGINAL PETITION (G & W) Nos.590/2022 and 593/2022.

Original Petition (G & W) No.590/2022

Between:-

- *1. Abdu Rahiman Haji, 85 Years (Died),
S/o. Muhammed, Kottilil House,
Chekannur, Vattakkulam, Muthoor,
Ponnani Taluk.

*** Legal Heirs of Abdu Rahiman Haji:-**

2. Aayisa, 51 Years, D/o. Abdu Rahiman Haji,
3. Hajara K., 52 Years, D/o. Abdu Rahiman Haji,
4. Abdul Jaleel K., 50 Years, S/o. Abdu Rahiman Haji,
5. Muhammed K., 47 Years, S/o. Abdu Rahiman Haji,
6. Subair K., 44 Years, S/o. Abdu Rahiman Haji,
7. Kadeeja., 44 Years, D/o. Abdu Rahiman Haji,
8. Ummusalma., 35 Years, D/o. Abdu Rahiman Haji,
9. Sulaiman., 60 Years, S/o. Abdu Rahiman Haji,
10. Femin Sha M., 26 Years, D/o. Muhammed Ali.M.,

Petitioners

(All petitioners are residing at
Kottilil House, Chekannur, Vattakkulam,
Muthoor, Ponnani Taluk.)

(* Amended as per order in IA 01/2023 dated
19-01-2023).

And:-

1. Ayisha, 45 Years, W/o. Abdulla Kutty Muslyar,
2. Sainul Abideen, 34 Years,
S/o. Abdulla Kutty Muslyar,
3. Aathikka, 32 Years, D/o. Abdulla Kutty Muslyar,
4. Twahira, 29 Years, D/o. Abdulla Kutty Muslyar,
5. Umarul Farooq, 27 Years,
S/o. Abdulla Kutty Muslyar,
6. Hannath, 20 Years, D/o. Abdulla Kutty Muslyar,

Respondents

(All respondents are residing at
Kottilil House, Chekannur, Vattakkulam,
Muthoor, Ponnani Taluk.).

In the matter of minor

Muhammed Amir K.
S/o. Jabir K. (Late).

Date of birth 25-07-2016

Original Petition (G & W) No.593/2022**Between:-**

1. Ayisha, 48 Years, W/o. Abdulla Kutty Muslyar,
2. Sainul Abideen, 34 Years,
S/o. Abdulla Kutty Muslyar,
3. Aathikka, 32 Years, D/o. Abdulla Kutty Muslyar,
4. Twahira, 29 Years, D/o. Abdulla Kutty Muslyar,
5. Umarul Farooq, 27 Years,
S/o. Abdulla Kutty Muslyar,
6. Hannath, 20 Years, D/o. Abdulla Kutty Muslyar,

Petitioners

(All Petitioners are residing at
Kottilil House, Chekannur, Vattakkulam,
Muthoor, Ponnani Taluk.).

And:-

- *1. Abdu Rahiman Haji, 85 Years (Died),
S/o. Muhammed, Kottilil House,
Chekannur, Vattakkulam, Muthoor,
Ponnani Taluk.

*** Respondent Nos. 2 to 9 are Legal Heirs of
Abdu Rahiman Haji:-**

2. Aayisa, 51 Years, D/o. Abdu Rahiman Haji,
 3. Hajara K., 52 Years, D/o. Abdu Rahiman Haji,
 4. Abdul Jaleel K., 50 Years, S/o. Abdu Rahiman Haji,
 5. Muhammed K., 47 Years, S/o. Abdu Rahiman Haji,
 6. Subair K., 44 Years, S/o. Abdu Rahiman Haji,
 7. Kadeeja., 44 Years, D/o. Abdu Rahiman Haji,
 8. Ummusalma., 35 Years, D/o. Abdu Rahiman Haji,
 9. Sulaiman., 60 Years, S/o. Abdu Rahiman Haji,
(Respondents Nos. 2 to 9 are resisiding at
Kottilil House, Chekannur, Vattakkulam,
Muthoor, Ponnani Taluk.).
 10. Femin Sha M., 26 Years, D/o. Muhammed Ali.M.,
Kottilil House, Chekannur, Vattakkulam,
Muthoor, Ponnani Taluk.
- (* Amended as per order in IA 01/2023 dated
05-06-2023).

Respondents

In the matter of minor

Rukkiya Ummu Hani

Date of birth

12-10-2009

D/o. Abdulla Kutty Muslyar. (Late).

This petition coming on the 19th day of February, 2024 for final hearing before me in the presence of Sri. Ziya Murshid and Sri. N.A. Kareem, Advocates for the petitioners in both petitions and of Sri. Sadikhali. P.,

Advocate for the respondents in GOP No. 590/2022, Sri. Suresh Kumar V, Advocate for the respondents in GOP No. 593/2022 and having stood over to the same day for consideration, the court passed the following:

COMMON ORDER

These petitions are filed U/s. 7 and S.29 of the Guardian and Wards Act. The petition GOP 590/2022 is filed to appoint the 4th petitioner as guardian of minor child Muhammed Aamir. K whose date of birth is 25.07.2016. GOP 593/2022 is filed to appoint the 1st petitioner as guardian of minor child Rukiya Ummu Hani whose date of birth is 12.10.2009. The parties in both the GOPs and the properties are same.

2. The 10th petitioner in GOP 590/2022 is the mother of minor Muhammed Aamir. K. The 1st petitioner is the minor's grand father petitioner No.2 to 9 are his children. Respondent No.1 to 6 are the wife and children of Abdullakutty Muslyar deceased son of 1st petitioner and brother of petitioner No.2 to 9 and Jabir. K deceased husband of 10th petitioner.

3. The 1st petitioner in GOP 593/2022 is the mother of minor Rukiya Ummu Hani. Other petitioners are the children of 1st petitioner and her deceased husband Abdulla Kutty Muslyar. 1st respondent is the father of Abdullakutty Muslyar and respondent No. 2 to 9 are sibling of Abdullakutty Muslyar. Respondent No.10 is the wife of Jabir. K. Said Jabir.K who is the brother of 1st petitioner's deceased husband Abdullakutty Muslyar had died on 12.03.2022.

4. The petition schedule item No.1 property was purchased as per document No. 481/1973 of Kumaranellur Sub Registrar Office. Item No.2 property was purchased by document No. 480/1973. Both these properties were jointly purchased by and his wife Ayshakutty. Petition schedule item

No.3 was obtained by Ayshakutty towards her share in partition deed No. 2461/1983 as 2nd schedule in it. Petition schedule item No.4 was also obtained by as per release deed No. 1416/2013 of Edappal SRO. The 1st and 2nd schedule properties belonged jointly the 1st petitioner and his wife Ayshkutty and 3rd and 4th schedule property belonging to Ayshakutty.

5. Ayshakutty died on 09.06.2006. Her right over the property devolved upon her husband and children which included Abdullakutty Muslyar and Jabir.K. Jabir. K died on 29.06.2017. His right over the property devolved upon his wife the 10th petitioner in GOP 590/2022 and the 1st petitioner his father and the minor child Muhammed Aamir. K.

6. Abdullakutty Muslyar died on 12.03.2022. His right over the property devolved upon his wife the 1st petitioner in GOP 593/22 and his children petitioner No. 2 to 6, minor child Rukiya Ummu Hani and his father who is shown as 1st respondent.

7. Abdu Rahiman Haji who is shown as 1st petitioner in GOP 590/2022 and 1st respondent in GOP 593/2022 died on 23.10.2022. His legal heirs are already in the party arena.

8. The share that is due to minor Muhammed Aamir. K and Rukiya Ummu Hani in the properties along with the share due to others is as follows:-

9. As regards item No. 1 & 2 schedule properties. Ayisha, Hajira. K, Kadheeja. K and Ummu Salma who are petitioner No. 2,3, 7 and 8 in GOP 590/2022 and who are respondents 2,3,7 and 8 in GOP 593/2022 are entitled to get 944/12288 shares each. Abdul Jaleel, Muhammed. K, Zubair. K and Sulaiman.K who are petitioner No.4,5,6 & 9 in GOP 590/2022 and shown as respondent No. 4,5,6 &9 in GOP 593/2022 are entitled to get 1888/12288 shares each. The 10th petitioner and 1st respondent in GOP 590/2022 who are

10th respondent and 1st petitioner in GOP 593/2022 are entitled to get 72/12288 shares each. Respondent No. 2 & 5 in GOP 590/2022 who are shown as petitioners No. 2 & 5 in GOP 593/2022 are entitled to get 102/12288 shares each. Respondent No. 3, 4 & 6 in GOP 590/2022 who are petitioners 3, 4 & 6 in GOP 593/2022 are entitled to get 51/12288 shares each. The minor child Muhammed Aamir. K to whom legal guardian is sought to be appointed in GOP 590/2022 is entitled to get 408/12288 shares and the minor Rukiya Ummu Hani to whom legal guardian is sought to be appointed as per GOP 593/2022 is entitled to get 51/12288 shares in petition schedule item No. 1 & 2 properties.

10. As regards petition schedule item No. 3 & 4 properties Ayisha, Hajira, Kadhija and Ummu Salma who are petitioner No. 2, 3, 7 and 8 in GOP 590/2022 and who are respondents 2, 3, 7 and 8 in GOP 593/2022 are entitled to get 864/12288 shares each. Abdul Jaleel, Muhammed. K, Zubair. K and Sulaiman who are petitioner No. 4, 5, 6 & 9 in GOP 590/2022 and shown as respondent No. 4, 5, 6 & 9 in GOP 593/2022 are entitled to get 1728/12288 shares each. The 10th petitioner and 1st respondent in GOP 590/2022 who are 10th respondent and 1st petitioner in GOP 593/2022 are entitled to get 144/12288 shares each. Respondent No. 2 & 5 in GOP 590/2022 who are shown as petitioners No. 2 & 5 in GOP 593/2022 are entitled to get 204/12288 shares each. Respondent No. 3, 4 & 6 in GOP 590/2022 who are petitioners 3, 4 & 6 in GOP 593/2022 are entitled to get 102/12288 shares each. The minor child Muhammed Aamir. K to whom legal guardian is sought to be appointed in GOP 590/2022 is entitled to get 816/12288 shares and the minor Rukiya Ummu Hani to whom legal guardian is sought to be appointed as per GOP 593/2022 is entitled to get 102/12288 shares in petition schedule item No. 3 & 4 properties.

11. The petitioners and respondents in both the petitions wants to partition the properties and get separate shares. Since minors in both the

petitions have got shares of the properties guardian has to be appointed to sign on their behalf in the necessary documents. It would be beneficial to the minor to get their shares separately allotted. The 4th petitioner in GOP 590/2022 is looking after his brother Jabir. K's son minor Muhammed Aamir. K. The 1st petitioner in GOP 593/22 who is the mother of the minor Rukiya Ummu Hani is looking after her. The 1st petitioner in GOP 590/2022 who is the natural and legal guardian of minor Muhammed Aamir. K. In the same way the 1st respondent in GOP 593/2022 is the legal and natural guardian of minor Rukiya Ummu Hani. Relief was sought in both GOPs to remove from the guardianship as he was laid up due to old age. Subsequently he died and that relief was deleted as it became infructuous.

12. It would be beneficial to minors in both GOPs to get their shares separated. As the 4th petitioner in GOP 590/2022 is looking after minor Muhammed Aamir. K he is to be appointed as the guardian of person and property of the minor. He has got no interest adverse to that of the minor and he has filed declaration that he is ready to stand as guardian of his brother's son Muhammed Aamir. K. Thus the 4th petitioner in GOP 590/2022 is to be appointed as guardian of minor Muhammed Aamir. K to sign on his behalf in the partition deed.

13. 1st petitioner in GOP 593/22 is the mother of the minor Rukiya Ummu Hani and she has got no interest adverse to that of the minor. She is looking after the minor. It would be beneficial to the minor to get her share partitioned and separated. Thus the 1st petitioner in GOP 593/2022 is to be appointed as to the guardian of minor Rukiya Ummu Hani to sign on her behalf in the partition deed. Hence the petitions.

14. The respondents in both petitions have not filed any counter in both petitions. Paper publication is done and it is published in "Pradeepam daily"

dated 23.11.2022 in both GOPs. No other person has entered appearance to challenge the petitioner's version in both GOPs.

15. The 4th Petitioner in GOP 590/2022 is examined as PW1 and 1st petitioner in GOP 593/2022 is examined as PW1 Exts.A1 to A12 documents are marked in GOP 590/2022. The documents are the same except the birth certificates.

16. Heard both sides and perused the records.

17. The following points arose for consideration.

1. Whether the petitioner No.4 can be appointed as the guardian of person and property of the minor Muhammed Aamir. K in GOP 590/2022 ?
2. Whether the petitioner No.1 can be appointed as the guardian of person and property of the minor Rukiya Ummu Hani in GOP 593/2022 ?
3. Whether petitioners who are appointed as guardian can sign on behalf of minors in partition deed ?
4. If permitted, What should be the conditions?

18. **The points No.1 to 3:-**The 4th petitioner in GOP 590/2022 and 1st petitioner in GOP 593/2022 have filed affidavit and they are examined as PW1 in GOPs. Exts. A1 to A12 is marked in GOP 590/2022. Since the documents are the same in both GOPs and as both are considered together it is not separately marked. Ext. A1 is the document No. 480/1973 dated 22.06.1973. Ext. A2 is the document No. 481/1973 dated 22.06.1973 these are the documents through which Abdu Rahiman Haji and his wife Ayshakutty had purchased petition schedule item No. 1 & 2 properties. Ext. A3 is the certified copy of document No. 2461/1983 dated 04.08.1983 through which Ayshakutty had obtained her share which is shown as petition schedule item No. 3. Ext. A4

is the relinquishment deed No. 1416/2013 dated 18.03.2013 through which Ayshakutty had obtained right from her siblings over petition schedule item No.4 property.

19. Ext. A5 is the death certificate of Ayshakutty showing the date of death as 09.06.2016. Ext. A6 is the family membership certificate of Ayshakutty showing that her husband and 10 children including deceased Jabir. K are her family members. Ext. A7 is the death certificate of Jabir. K showing his date of death as 29.06.2017. Ext. A8 is the copy of family membership certificate of Jabir. K showing that his father and his son Muhammed Aamir. K, are his family members.

20. Ext. A9 is the death certificate of Abdullakutty Muslyar it shows his date of death as 12.03.2022. Ext. A10 is the family membership certificate of Abdullakutty Muslyar showing that his father his Wife and 6 children including minor Rukiya Ummu Hani are his family members. Ext. A11 is the birth certificate of Muhammed Aamir. K. His date of birth is shown as 25.07.2016. Ext. A12 is the birth certificate of Rukiya Ummu Hani. K. It shows that she was born on 12.10.2009.

21. Here the 4th petitioner is the father's brother of the minor Muhammed Aamir. K in GOP 590/2022. the 1st petitioner in GOP 593/2022 is the mother of the minor Rukiya Ummu Hani. The petitioners and respondents in both GOPs are close relatives of the minors. The respondents have not raised any objection in both these petitions. Even though paper publication is made none has entered appearance to object to the petition. The 4th petitioner in GOP 590/2022 being the father's elder brother of the minor Muhammed Aamir. K would have no interest adverse to that of the minor. He is looking after the minor. The 1st petitioner in GOP 593/2022 being the mother of minor Rukiya Ummu Hani would always be having the best interest of the minor in their mind.

22. Therefore the petitions can be allowed appointing the 4th petitioner in GOP 590/2022 as the guardian of the person and property of the minor person Muhammed Aamir. K. The 1st petitioner in GOP 593/2022 can be appointed as the guardian of personal and property of the minor Rukiya Ummu Hani.

23. Both the petitions are allowed and 4th petitioner in GOP 590/2022 and 1st petitioner in GOP 593/2022 are permitted to sign on behalf of the minors in the partition deed to get the share of minors separately. The minor Muhammed Aamir. K shall get 403/12288 shares and minor Rukiya Ummu Hani will get 51/12288 share in petition schedule item No.1&2 properties and minor Muhammed Aamir. K will get 816/12288 and minor Rukiya Ummu Hani 102/12288 shares in petition schedule item No. 3 & 4 properties. Therefore the points are answered in favour of the petitioners in both GOPs.

24. **Point No.4:-** Therefore the petitions are allowed as follows:-

1. The 4th petitioner in GOP 590/2022 is appointed as the guardian of the person and property of Muhammed Aamir. K.
2. The 1st petitioner in GOP 593/2022 is appointed as the guardian of the person and property of Rukiya Ummu Hani.
3. The guardians appointed are permitted u/s.29 of the Guardians and Wards Act to execute partition deed in respect of petition schedule item No. 1 to 4 and sign on behalf of the minors.
4. The partition deed shall be executed within four months from the date of receipt of certified copy of this order.
5. The 4th petitioner in GOP 590/2022 shall manage the share of minor Muhammed Aamir. K that is 408/12288 in petition schedule item No. 1 & 2 and 816/12288 in petition schedule item No. 3 & 4 which belongs to minor exclusively. He shall file the expense and income derived from that property every year till minor attains majority.

6. The 1st petitioner in GOP 593/2022 shall manage the share of minor Rukiya Ummu Hani that is 51/12288 shares in petition schedule item No. 1 & 2 and 102/12288 shares in petition schedule item No. 3 & 4 which belongs to minor exclusively. She shall file the expense and income derived from that property every year till minor attains majority.
7. If there is violation of any of the clauses said transaction is not binding on the minors and their shares in the petition schedule property.

Thus the petitions are allowed as above.

(Dictated to the Confidential Assistant transcribed by him corrected and pronounced by me in open court this the 28th day of February, 2024).

(Sd/-)
Addl. District Judge –III.

APPENDIX:-

OP (G & W) No.590/2022:-

WITNESS EXAMINED ON THE SIDE OF THE PETITIONERS

PW 1 : Abdul Jaleel.

EXHIBITS MARKED ON THE SIDE OF THE PETITIONERS

- | | | |
|-----|------------|--|
| A1. | 22-06-1973 | : Document No. 480/1973 dated 22.06.1973. |
| A2. | 22.06.1973 | : Document No. 481/1973 dated 22.06.1973. |
| A3. | 04.08.1983 | : Ext. A3 is the certified copy of document No. 2461/1983 dated 04.08.1983. |
| A4. | 18.03.2013 | : Ext. A4 is the relinquishment deed No. 1416/2013 dated 18.03.2013. |
| A5. | 29-06-2016 | : Death certificate of Ayshakutty showing the date of death as 09.06.2016. |
| A6. | 09-11-2021 | : Family membership certificate of Ayshakutty showing that her husband and 10 children including deceased Jabir. K are her family members. |

- A7. 31-08-2021 : Death certificate of Jabir. K showing his date of death as 29.06.2017.
- A8. 18-10-2021 : Copy of family membership certificate of Jabir. K.
- A9. 25-03-2022 : Death certificate of Abdullakutty Muslyar it shows his date of death as 12.03.2022.
- A10. 10-04-2022 : Family membership certificate of Abdullakutty Muslyar.
- A11. 10-09-2016 : Birth certificate of Muhammed Aamir. K. His date of birth is shown as 25.07.2016.
- A12. 22-01-2010 : Birth certificate of Rukiya Ummu Hani. K. It shows that she was born on 12.10.2009.

WITNESSES EXAMINED ON THE SIDE OF THE RESPONDENTS : Nil

EXHIBITS MARKED ON THE SIDE OF THE RESPONDENTS : Nil

OP (G & W) No.593/2022:-

WITNESS EXAMINED ON THE SIDE OF THE PETITIONERS

PW 1 : Ayisha.

(Sd/-)
Addl. District Judge III

Typed by: Sindhu.M.P
Compared by:
Copy ready on :

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Fair/Copy of common Order in
O.P.(G&W).Nos.590/2022 and 593/2022
Dated : 28-02-2024

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