

**IN THE COURT OF THE DISTRICT JUDGE, MANJERI**

Present:- Sri. Muralee Krishna S., District Judge

**Monday, the 30<sup>th</sup> day of January, 2023****the 10<sup>th</sup> day of Pousha, 1944****ORIGINAL PETITION (G & W) No.587/2022****Between:-**

- |                                                                                                                                                                                                                                                |   |                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------------|
| <ol style="list-style-type: none"> <li>1 Sushama E.K, 36 years, W/o Rajesh, Vijayavihar House, Nilambur (PO), Manalodi 679 329</li> <li>2 Ushadevi A.P, 63 years, W/o Ramdas P.V, Vijayavihar House, Nilambur (PO), Manalodi 679329</li> </ol> | } | <b>Petitioners</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------------|

**IN THE MATTER OF MINOR**

|  | NAME                          | DATE OF BIRTH     |
|--|-------------------------------|-------------------|
|  | <b>Goutham Krishna R Nair</b> | <b>27-08-2018</b> |

This petition coming on the 19<sup>th</sup> day of January, 2023 for final hearing before me in the presence of **Sri.I.K.Yoonasalim**, Advocate for the petitioners, having stood over to this day for consideration, the court passed the following:

**ORDER**

This is a petition filed under the provisions of Guardians and Wards Act 1890, for an order appointing petitioner No.1 as the guardian of the properties of the minor Goutham Krishna R. Nair and permit her to sell the minor's share in the petition schedule property. Petitioner No.1 is the mother of the minor.

2. The averments in the petition in brief are as follows:- The petition schedule property was originally belonged to the husband of petitioner No.1 namely Rajesh by virtue of document bearing No.640/2019 of SRO, Nilambur. While in possession and enjoyment of the property, Rajesh expired on 29.05.2022.

Petitioner No.1 is the wife and petitioner No.2 is the mother of Rajesh. The minor is the only son born in the wedlock between petitioner No.1 and Rajesh. Thus on the death of Rajesh, the petition schedule property devolved upon to the petitioners and the minor. The total extent of the petition schedule property is 19 cents. If the property is partitioned among the co-owners, the petitioners and the minor will get only nominal share. More over, Rajesh had several debts to his friends. The petition schedule property is situated in a remote place and hence the petitioners and the minor could not reside in that property. There is other suitable place available for their residence near to their tharavad house. Therefore, the petitioners have decided to sell the petition schedule property. As per the Government notification, the fair value of the land in the petition schedule survey number is Rs.63,580/- per 'Are'. One Manoj, S/o Padmanabhan residing at Kappil desom has come forward to purchase 10 cents of property out of the petition schedule property for a consideration of Rs.2,55,000/- and the house there in for a sum of Rs.12,50,000/-. Accordingly a sale agreement dated 26.08.2022 is also executed to sell the said 10 cents with house to the aforesaid Manoj for a total consideration of Rs.15,05,000/-. Similarly, the remaining 09 cents of property was agreed to be sold to one K.P.Vijayan, S/o Viswanathan residing at Nlambur desom for a consideration of Rs.2,35,000/- and accordingly a sale agreement dated 26.08.2022 is also executed with him. If the property is sold for the aforesaid price, the minor will get Rs.5,95,000/- as his share value. Petitioner No.1 is ready to deposit the said amount in fixed deposit in a Nationalized Bank till the minor attains majority. The minor is now under the care and custody of petitioner No.1. She is not having any interest adverse to that of the minor. With these averments, the petitioners sought appointment of petitioner No.1 as the guardian of the properties of the minor and permit her to sell the minor's share in the petition schedule property.

3. Paper publication was effected regarding the institution of the above petition and the copy of the same is produced before this Court.

4. Petitioner No.1 was examined as PW1 and Exts.A1 to A8 documents were marked.

5. Heard the petitioners and perused the records.

6. The following points arise for consideration:-

*1. Whether petitioner No.1 can be appointed or declared as the guardian of the properties of the minor and whether she can be permitted to alienate the share of the minor in the petition schedule property as pleaded in the petition?*

*2. If permitted, What should be the conditions?*

7. **The points:-** Ext.A1 is the registration copy of the document bearing No.640/2019 by virtue of which the father of the minor had obtained the petition schedule property. Ext A2 is the basic tax receipt of the property issued in the name of the petitioners and the minor. Ext A3 is the death certificate of the father of the minor Rajesh A.P., who died on 29.05.2022. Ext A4 is the family membership certificate of Rajesh A.P., wherein the names of the petitioner, the minor and the father of Rajesh A.P are shown as the family members. Ext A5 is the birth certificate of the minor Gautham Krishna R. Nair, who was born on 27.08.2018. Ext A6 is the sale agreement dated 26.08.2022 entered into between the petitioners and the proposed purchaser K.P. Jayan in respect of 09 cents of property. Ext A7 is the sale agreement executed on the same date in between the petitioners and the proposed purchaser Manoj in respect of the remaining extent of the petition schedule property with the house therein. Ext A8 is the fair value notification of the Government in respect of the property in the petition schedule survey number.

8. Petitioner No.1 is the mother of the minor. The minor is now under the care and custody of petitioner No.1. As per the personal law of the parties,

mother is the natural guardian of the minor. While appointing the guardian of the property or person of the minor, the paramount consideration of the Court should be the welfare of the minor. According to petitioner No.1, she is looking after the affairs of the minor to the best of her ability. Being the mother, in ordinary course, she would not be having any interest adverse to that of the minor. There is nothing in evidence to say that other than petitioner No.1 there is any other suitable person to be appointed as the guardian of the minor. Petitioner No.1 being the natural guardian, a declaration to that effect will be sufficient in this case. Therefore, petitioner No.1 can be declared as the guardian of the property of the minor scheduled in the petition.

9. The definite case of the petitioners is that the minor is having only 1/3 share in the petition schedule property. More over, it is situated in a remote place. Hence, the interest of the minor could be safeguarded, if the property is sold for the best price and the portion of the consideration due to the minor is put in fixed deposit till he attains majority. While going through the evidence adduced by PW1, I am of the view that the proposed sale is not detrimental to the interest of the minor.

10. In the said circumstance, I am inclined to allow this petition, but subject to certain conditions to safeguard the interest of the minor. The points thus answered in favor of the petitioners.

**In the result, this Original Petition is allowed as below:-**

- 1. Petitioner No.1 is declared as the guardian of the properties of the minor, Gautham Krishna R. Nair.***
- 2. Petitioner No.1 is permitted u/s.29 of the Guardians and Wards Act to alienate the share of the minor in the petition schedule property.***
- 3. The sale of the share of the minor in the petition schedule property shall not be for a consideration of less than***

*Rs.5,95,000/- or the fair value fixed by the Government, which ever is higher.*

- 4. Petitioner No.1 shall execute a bond for ₹6,00,000/- (Rupees Six Lakh Only) with two solvent sureties each for the like sum within one month from the date of receipt of certified copy of this order.*
- 5. Petitioner No.1 shall deposit the share of the minor over the sale consideration separately in his name in fixed deposit in a Nationalized Bank till he attains majority and the F.D receipt shall be produced before this Court within 15 days from the date of sale.*
- 6. If petitioner No.1 wants to withdraw the interest accrued on the fixed deposit for the welfare of the minor, she may do so only after obtaining prior permission of this court.*
- 7. Any transaction in contravention of the above clauses is not binding on the minor and his fractional share in the scheduled property.*

*(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 30<sup>th</sup> day of January, 2023).*

Sd/-  
District Judge

**APPENDIX:-**

**WITNESSES EXAMINED ON THE SIDE OF THE PETITIONERS:**

**PW1 : Sushama E.K**

**EXHIBITS MARKED ON THE SIDE OF THE PETITIONERS :**

**A1. 21-02-2019 Jenm Assignment Deed**  
(Document No.640/2019 of SRO, Nilambur)

- A2** 25-07-2022 **Basic Tax receipt** issued from Nilambur Village Office.
- A3.** 12-08-2022 : **Death Certificate** of Rajesh A.P issued by Registrar of Births and Deaths, Nilambur Municipality.
- A4.** 11-07-2022 : **Family membership certificate** of deceased Rajesh A.P issued by Village Officer, Nilambur Village Office
- A5** 28-10-2018 : **Birth Certificate** of minor named Goutham Krishna R Nair, issued by Registrar of Births and Deaths, Thalipparamba Municipality
- A6.** 26-08-2022 : **Sale Agreement**
- A7** 26-08-2022 : **Sale Agreement**
- A8** Dated Nil Certificate of Fair Value of Land

**WITNESSES EXAMINED ON THE SIDE OF THE RESPONDENTS: NIL.**  
**EXHIBITS MARKED ON THE SIDE OF THE RESPONDENTS: NIL.**

Sd/-  
District Judge

*Typed by: Seema*  
*Compared by: 1. Seema*  
*2. Govindaraj*

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**Fair/Copy of Order in OP (G&W)**  
**No.587/2022 Dated: 30-01-2022**

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