

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

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

Monday, the 31st day of July, 2023.

9th day of Shravana 1945

ORIGINAL PETITION (G & W) No.595/2022

Between:-

Venu Gopalan, 41 Years, S/o. Cheruti,
Pulikkal House, Choorakkod,
Kalladikode, Palakkad District, Pin – 678 596.

} Petitioner

And:-

1. Radha, 60 Years, W/o. Sundaran (Late),
Thottappallath House, Perinthalmanna Amsom,
Kakkooth Desom, Perinthalmanna Taluk,
Malappuram District, Pin – 679 322.
2. Aneesh, 38 Years, S/o. Sundaran (Late),
Thottappallath House, Perinthalmanna Amsom,
Kakkooth Desom, Perinthalmanna Taluk,
Malappuram District, Pin – 679 322.
3. Ajeesh, 33 Years, So. Sundaran (Late),
Thottappallath House, Perinthalmanna Amsom,
Kakkooth Desom, Perinthalmanna Taluk,
Malappuram District, Pin – 679 322.

} Respondents

In the matter of minors

P.V. Athul

Date of birth

03-07-2007

Amal P.V.

Date of birth

04-05-2009

This petition coming on the 29th day of July, 2023 for final hearing before me in the presence of Sri. V. Muhammed Rafeeq., Advocate for the petitioner and of Sri. Unnikrishnan K, Advocate for the respondents and having stood over to the same day for consideration, the court passed the following:

ORDER

This is a petition filed under Section 7(i) (a), 10, 29 of the Guardian and Wards Act. The petition is filed by the petitioner who is the father of the minor children P.V Athul whose date of birth is 03.07.2007 and Amal P.V whose date of birth is 04.05.2009.

2. The respondents are the grand mother and uncles (mother's brothers) of minor children. The petition schedule property was acquired by T.P Sundaran grand father of Minors as per proceeding No. C4 268/00 regarding 5 cents of property in survey No.1/5-12 of Perinthalmanna village, Perinthalmanna Taluk.

3. Said Sundaran died on 04.09.2012. The property devolved upon 1st respondent his wife, 2nd and 3rd respondents his sons, and his daughter Anumol @ Anupama who is the mother of the minor children and wife of petitioner. Said Anumol @ Anupama died on 04.08.2013. The property is lying under joint possession and ownership of parties. Considering the small extent of property partition by metes and bounds is practically impossible. Therefore the sharers have decided to assign the property to 3rd party for a good price. The petitioner and two children are living Mannarkkad Taluk in Palakkad District and are unable to look after the property situated in Perinthalmanna in Malappuram District. The sale of minors share will be beneficial to the interest of minors. One Thamarath Muhammedali son of Abdu Rahman has agreed to purchase the property provided legal permission is obtained regarding minors share in the property. Hence, this petition is filed to appoint petitioner who is the father of the minors as the guardian of person and property of the minors.

4. The fair value of the property notified by the Government is Rs. 50,000/- (Rupees Fifty thousand only) per Are. The sharers are assigning

property at the rate of Rs. 90,000/- (Rupees Ninety thousand only) per cent. The share of the minors will come to Rs. 37,500/- (Rupees Thirty seven thousand and five hundred only) each which the petitioner is ready to deposit in any Nationalized Bank as directed by the court. The petitioner has no interest adverse to that of the minors. He is best person to be appointed as the guardian of the minors. Hence, petition is filed to appoint petitioner as the guardian of the minors and permit him to assign the 1/12 share each of the two minors and sign on their behalf during the execution of assignment deed. Hence the petition.

5. The respondents have filed statement admitting the petition claim. Though paper publication was done in 'Pradeepam' daily dated 08.03.2023 and affixture done. Nobody has entered appearance to object the petition.

6. The important points that arise for consideration are:-

1. Whether petitioner can be appointed as the guardian of person and property of the minor children P.V. Athul and Amal P.V ?
2. Whether said guardian can sign on behalf of the minors to transfer the share of minors in petition schedule property ?
3. Relief and costs ?

7. **Point No.1 and 2 are considered together:-** The petitioner examined himself as PW1 and Ext. A1 to A6 is marked. Ext. A1 is the certificate of death of Sundaran issued from Perinthalmanna Municipality. It shows the date of death as 04.09.2012. Ext. A2 is the death certificate of Anumol @ Anupama shows her date of death as 04.08.2013. Ext. A3 is the birth certificate of P.V Athul the date of birth of 03.07.2007. Ext. A4 is the birth certificate of Amal. P.V is date of birth is 04.05.2009. Ext. A5 is the Family Membership Certificate of deceased Sundaran showing that the respondents, petitioner and two minor children are the remaining family members of Sundaran. Ext. A6 is the order

bearing No. C4 268/00 of District Collector, Malappuram through which 5 cents of property in survey No. 1/5 is given to T.P Sundaran. It is dated 07.08.2008.

8. Here Ext. A6 will show that the petition schedule property was acquired by Sundaran. Ext. A1 death certificate shows the date of death of Sundaran. Ext. A5 family membership certificate shows that respondents, two minor children and petitioner are the family members of Sundaran. Ext. A2 would prove the death of Anumol @ Anupama. Ext. A3 and A4 birth certificate of two minor children would show that they are still minors and guardian is to be appointed to deal with the property in which they have got share. Here on the death of Sundaran his wife and children alone are entitled to share in the petition schedule property. Thus the respondents and deceased Anumol @ Anupama had 2/8 share each in the petition schedule property. On the death of Anupama her 2/8 share in the property devolved upon her mother who is the 1st respondent and her two sons. Thus the property is divided into 12 shares. Respondent Nos.2&3 are each entitled to get 3/12 shares. 1st respondent will get 3/12 shares as legal heir of Sundaran she is also entitled to get another 1/12 share as legal heir of Anumol @ Anupama. Thus she is entitled to get 4/12 shares. The two minor children of Anumol @ Anupama are entitled to get 1/12 shares each. Though the fair value certificate is produced it is not marked. The petitioner has stated that the fair value of the property noted by the Government is only Rs. 50,000/- (Rupees Fifty thousand only) per Are whereas they intent to sell the property for Rs. 90,000/-(Rupees Ninety thousand only) per cent. The fair value certificate that is produced shows that the residential plot with private road access is valued at Rs. 52,500/-(Rupees Fifty two thousand and five hundred only) per Are and that with Corporation/Municipality/Panchayath road access is valued at Rs. 66,000/- (Rupees Sixty six thousand only). Thus it can be seen that the property is being sold at a much higher value than the valuation published by the Government.

9. Here the petitioner and the minor children are residing away from the plot and the minors have only 1/12 share each in the property. So partitioning the property by metes and bounds and taking separate share is not feasible. It would be beneficial to the minors if the property is sold and sale proceeds deposited in Nationalized Bank. The petitioner is the father of the children and there is nothing brought out to show that he has got any interest adverse to that of the minors. The respondents have no objection in appointing him as guardian. Even though paper publication and affixture is done nobody has entered appearance to oppose the petition. Therefore the petitioner is only to be allowed appointing petitioner as the guardian of the two minor children and permitting him to sell the minors share in the property. Thus the points are answered in favour of the petitioner.

10. Point No.3: Therefore the petition is allowed as follows:-

1. The petitioner is appointed as the guardian of the person and property of P.V Athul and Amal. P.V.
2. Petitioner is permitted u/s.29 of the Guardians and Wards Act to alienate the share of the minors in the petition schedule property.
3. The property shall not be alienated for a consideration of less than Rs. 90,000/- (Rupees Ninety thousand only) per cent.
4. The sale deed shall be executed within four months from the date of receipt of certified copy of this order.
5. The petitioner shall execute a bond for Rs. 75,000/- (Rupees Seventy five thousand Only) with two solvent sureties each for the like sum within one month from the date of receipt of certified copy of this order as security towards the share of minor children.
6. Petitioner shall deposit Rs. 37,500/- (Rupees Thirty seven thousand and five hundred Only) each that is a total of Rs. 75,000/- (Rupees Seventy

five thousand only) in the name of minors in a Nationalized Bank till they attain majority and the F.D receipts shall be produced before this Court within 15 days from the date of sale.

7. If the interest from the said fixed deposit is necessary for the educational needs of the minors the petitioner guardian can file application before court for the same.
8. If there is violation of any of the clauses said transaction is not binding on the minors and their share in the petition schedule property.

Thus the petition is allowed as above.

(Dictated to the Confidential Assistant transcribed by her corrected and pronounced by me in open court this the 31st day of July, 2023).

Addl. District Judge –III.

APPENDIX:-

WITNESSES EXAMINED ON THE SIDE OF THE PETITIONER:

PW 1 : Venugopalan

EXHIBITS MARKED ON THE SIDE OF THE PETITIONER:

- A1. 11-07-2023 : Death Certificate of Sundaran issued from Perinthalmanna Municipality.
- A2. 11-07-2023 : Death certificate of Anumol T.V.
- A3. 11-07-2023 : Birth certificate of P.V Athul.
- A4. 11-07-2023 : Birth certificate of Amal. P.V.
- A5. 24-01-2022 : Family Membership Certificate of deceased Sundharan.
- A6. 07-08-2008 : Order bearing No. C4 268/00 of District Collector, Malappuram.

WITNESSES EXAMINED ON THE SIDE OF THE RESPONDENTS : Nil

EXHIBITS MARKED ON THE SIDE OF THE RESPONDENTS : Nil

Addl. District Judge III

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

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Fair/Copy Order in
O.P.(G&W) No.595/2022
Dated : 31-07-2023

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