

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE -I,
N. PARAVUR**

Present:- Smt.Jyothi V., Additional District Judge -II/
In charge of Additional District Judge -I

Thursday, the 28th day of November, 2024/ 7th Agrahayana, 1946.

O.P. (G & W) No.21/2024

Petitioners:-

1. Siraj M.Basheer, aged 31 years, S/o.Basheer, Moothedam House, Vengola Kara, Vengola Village, Allapra P.O., Kandanthara, Kunnathunadu Taluk, Ernakulam District - 683 556.
2. Fathima M.Siraj, aged 9 years, D/o.Basheer, Moothedam House, Vengola Kara, Vengola Village, Allapra P.O., Kandanthara, Kunnathunadu Taluk, Ernakulam District - 683 556.
3. Faaiz M.Siraj, aged 5 years, S/o.Basheer, Moothedam House, Vengola Kara, Vengola Village, Allapra P.O., Kandanthara, Kunnathunadu Taluk, Ernakulam District - 683 556.
4. Faiza M.Siraj, aged 3 years, D/o.Basheer, Moothedam House, Vengola Kara, Vengola Village, Allapra P.O., Kandanthara, Kunnathunadu Taluk, Ernakulam District - 683 556.

(Petitioners 2 to 4 represented by Father
Siraj M.Basheer)

By Advs. Hashim Al Thaf & Ajmal Aliyar.

Respondent:- Nil

This O.P. filed under Section 7(1) and 29 of the Guardian and Wards Act to declare the first petitioner as the guardian of the person and property of the minor wards and to release the undivided share of the minors in the scheduled property.

This petition having been finally heard on 21.11.2024 and the Court on 28.11.2024 passed the following:

ORDER

This is an Original Petition filed under Sections 7(1) and 29 of the Guardian and Wards Act, 1890, with respect to minors Fathima M. Siraj, Faiza M. Siraj and Faaiz M. Siraj, aged 9, 5 and 3 years respectively, to declare the 1st petitioner as the guardian of the person and property of the minor children and to release the undivided share of the minors in the scheduled property.

2. The 1st petitioner, father of the three minor children, has filed this petition seeking his appointment as the guardian of the person and property of the minor children. Parties are Muslim by religion and is governed by Hanafi Law of Inheritance. The minor children are residing with the 1st petitioner in Vengola kara, Kunnathunadu taluk and are under the custody of the petitioner. They are the only surviving children of the 1st petitioner and Mrs. Jemsy P H @ Jinsiya, who died on 02.08.2022. The petition schedule property, measuring 4.45 Ares of land comprised in resurvey Nos.223/5-2 and

223/5-4 of Aluva West village belonged to Jumailath and Hydrose, the maternal grandparents of minors. They obtained the same as per sale deed No.1114/1994 of SRO, Aluva. After the death of Jumailath, her undivided half right over the property devolved upon her husband, Hydrose (25% i.e. $\frac{1}{4}$ share), two daughters, Soufiya and Jemsy @ Jinsiya (14.58% i.e. $\frac{7}{24}$ share each), son Muhammed Jishad (29.17% i.e. $\frac{7}{24}$ share) and mother Nabeesa (16.67% i.e. $\frac{2}{12}$ share). Later one of the legal heir, Jemsy @ Jinsiya died intestate. Hence her 14.58% share over the undivided half right of her mother over the petition schedule property devolved upon her legal heirs i.e. her husband (petitioner) as 25% ($\frac{1}{4}$ share), two daughters Fathima M Siraj and Faiza M Siraj as 14.58% (i.e. $\frac{7}{48}$) each, son Faaiz M Siraj as 29.17% ($\frac{7}{24}$ share) and her father Hydrose P K as 16.67% ($\frac{2}{12}$) share. Thus the minor daughters are having 1.062% share each, son is having 2.126%, father is having 1.215% and the petitioner is having 1.822% share in 100 shares over the whole petition schedule property. The legal heirs of Jemsy @ Jinsiya is having a total of 7.29% undivided share in 100% share over the entire petition schedule property.

3. After the death of Jumailath and Jemsy, the legal heirs of Jumailath i.e. husband, daughter and mother, released their respective share in the undivided property in favour of son of Jumailath i.e. Muhammed

Jinshad as per gift deed No.3865/2022 of SRO, Aluva. The petition schedule property is having a total market value of ₹38,18,100/-. Now, the said Muhammed Jinshad along with the legal heirs of Jemsy are intending to sell the entire petition schedule property to one Muhammed Shan, who offered an amount of ₹38,20,000/-. Shares of the minors in the petition schedule property would come to ₹1,62,350/-. 1st petitioner submitted that the share due to the minors will be utilized for their benefit. The 1st petitioner has no interest adverse to the interest of the minors. Therefore, the 1st petitioner requests the court to appoint him as the guardian of the person and property of the minor children Fathima M Siraj, Faaiz M Siraj and Faiza M Siraj, and to grant permission to sell the petition schedule property including the minors' share. Hence, this petition is filed.

4. Public notice was effected in the notice board of Village Office and Panchayat office, where the property is situated. Notice was published in the notice board of the court. Apart from that notice was published in Keralakaumudi_daily also. In spite of the publication of notice to the public at large, no one has appeared or raised any objection. Notice was issued to the near relatives also, and none of such near relatives appeared or raised any objection.

5. No respondents are cited in the petition.

6. When the case was posted for evidence, the 1st petitioner filed affidavit in lieu of chief examination in support of his case. The documents produced by the petitioner were marked as Exts.A1 to A9 series.

7. Heard the 1st petitioner and perused the records.

8. Now, the points that arise for consideration are :-

- 1) Whether the 1st petitioner is entitled to be appointed as the guardian of his minor children Fathima M Siraj, Faaiz M Siraj and Faiza M Siraj, as claimed in the petition?
- 2) Whether the 1st petitioner is entitled to get permission for selling the petition schedule property including the share of the minors?

9. **The points 1 and 2 :-** According to the 1st petitioner, the minors and the deceased, who belonged to the Muslim religion, are governed by Hanafi Law of Inheritance. The 1st petitioner, Muhammed Jinshad, is the husband of the late Jemsy @ Jinsiya who died on 02/08/2022 as evident from Ext A4 death certificate. They have three children: Fathima M. Siraj, Faiza M. Siraj, and Faaiz M. Siraj, born on 21.02.2015, 10.08.2018, and 16.07.2020 respectively, as evidenced by birth certificates marked as Exts. A1 to A3. The petitioner acquired the scheduled property, measuring 04.05 ares and 40 sq. meters in Re-Sy. No. 223/5-2 and 223/4 (Old Sy. No. 871/2N and 871/2M/2)

of Aluva East Village, Aluva Taluk, Ernakulam District, through Ext. A8 gift deed registered as document No. 3865/2022 at the Aluva Sub-Registry Office. The property originally belonged to Hydrose and his wife, Jumailath, as per Sale Deed No. 1114/1994. Upon Jumailath's death on 03.10.2002, her half-share of the property devolved upon her legal heirs, including Hydrose, Souphya, Nabeesa, Jincy, and Muhammed Jinshad.

10. As per Hanafi inheritance rules, Jumailath's half-share is to be distributed among her heirs as follows: Hydrose, the husband, is entitled to one-fourth of her share since she had children. The remaining three-fourths is to be divided among the children, with each son receiving twice the share of each daughter. Since Jumailath had one son, Muhammed Jinshad, and three daughters—Souphya, Nabeesa, and Jincy—the distribution will be as follows: Hydrose will receive one-fourth, and the remaining three-fourths will be divided, giving the son two shares and each daughter one share.

11. Upon Jincy's death, her share in her mother Jumailath's property, along with any other assets, devolves upon her legal heirs, as per Hanafi inheritance rules. Jincy's father, Hydrose, inherits one-sixth of her share, while her husband, the 1st petitioner, receives one-fourth, even that Jincy had children. The remaining portion is divided among her children, with the son receiving twice the share of each daughter. Over the petition scheduled

property, Hydrose initially received $\frac{1}{4}$ of Jumailath's share, totaling 1.0125 Ares. The remaining 3.0375 ares were distributed among the children: the son, Muhammed Jinshad, received two shares (1.215 ares), and each daughter—Souphya, Hydrose, and Jincy—received one share each (0.6075 ares). Ext A5 is the relationship certificate issued from Vengola village office and Jincy's 0.6075 ares, upon her death, is distributed as follows: Hydrose inherits $\frac{1}{6}$ of her share (0.10125 ares), and the 1st petitioner inherits $\frac{1}{4}$ (0.151875 ares). The remaining 0.354375 ares is divided among Jincy's children, with each daughter inheriting 0.0886 ares and the son inheriting 0.1772 ares, approximately.

12. As per Ext.A8, Hydrose and his daughters, Souphya and Nabeesa, transferred their rights in the scheduled property to Muhammed Jinshad, resulting in him holding $\frac{89}{96}$ shares of the property. The petitioner, along with other legal heirs and the minor children, hold $\frac{7}{96}$ shares collectively. Ext.A7 the tax receipt for the period 2023-24 issued from Aluva east village office, Ext A9 and Ext A9(a) extract of thanadaper accounts proves the right of Muhammed Jinshad and the other share holders including the minor's. Since the majority shareholder, Muhammed Jinshad, is willing to sell his undivided share to the intended purchaser, Muhammed Shan C.P.,

retaining the remaining minor share would not yield any substantial benefit or advantage to the minor.

13. The purchaser is offering ₹38,20,000/- as sale consideration for the total extent of 04.45 ares of the land and the minors' share would be ₹1,62,350/-. As per Ext.A8 the market value of the property fixed as on 26/12/2022, the date of registration of Ext.A8 was ₹31,90,000/-. Now the offered sale consideration for the entire 04.45 ares of property is ₹38,20,000/- which is a better price than that of 2022. The 1st petitioner did not submitted any sale agreement with said Muhammed Shan C.P. through which the sale consideration was fixed. Since the offered price is a better one, sale of the minors share over the petition scheduled property is allowed for the consideration of ₹38,20,000/-.

7. Here, the father of the minors wants to declare him as the guardian of the minor and the properties of the minors. **In the decision reported in Tomy Jose's case (1995 (1) KLT 141)**, the Hon'ble High Court held that *"we must bear in mind that it is the natural guardian of the minor who applied for permission for partitioning and sell in future (if needs) the minor's property, it should not be forgotten that the custody of the minor is also with him and that the minor is above 17 years old and till now petitioner has even managed the affairs of the minors. She was given education, food*

and clothing. Nothing is brought out or even suggestive that the petitioner has any adverse interest or any other motive in selling the property of the minor. The court need not approach the request for permission with a penumbra of suspicion whether natural guardian of a minor applies for permission to sell property which belongs to the minor. When an application is filed by the natural guardian and when it is found that he has genuine interest in the welfare of the minor daughter, the statement of such guardian can clearly be believed and the proposal for sale can be presumed to be for the advantage and benefit of the minor. However, conditions can be imposed by the court while granting permission. Section 31 of the Act stipulates that permission cannot be granted except in a case of necessity or evident advantage of the ward. The expression 'evident advantage' does not warrant a negative or narrow meaning. The test should be in approach of prudent man to the problem. The interest of the minor could not be jeopardized as the petitioner has offered to deposit the sale proceeds in court or in the manner directed by the court. Court should not take a rigid view in the matter. The court after granting permission could have seen that the money is utilized profitably or to the advantage of the minor by acquisitions of any alternative property."

8. The law laid down by the Hon'ble High Court applies to this case as well. The 1st petitioner being the father of the minors, does not have any interest adverse to that of the minors. Before appointing a personal guardian of the property of the minors the paramount consideration should be for the welfare of the minors. In this case, 1st petitioner's paramount consideration should be for further welfare of the minors. The minors are under the care and custody of the 1st petitioner. Even after issuing process and paper publication, nobody objected in appointing the 1st petitioner as the guardian of the minor. 1st petitioner's interest is to protect the interest of the minors only. The petition has been filed with the knowledge and consent of the dear and near relatives of the minors. Considering the entire evidence and circumstances of the case, I find that, the sale of petition scheduled property, including the minor's share, could be for the welfare or an advantage of the minor's share. The minors' share are to be secured. The sale has no adverse interest in the minors. The proposed sale is the best interest of the minors also. The best interest of the minors are served by the 1st petitioner. Hence, I am satisfied that petition can be allowed by appointing the 1st petitioner as guardian of the minors petitioners 2 to 4 with power and authority to sell the share of the above said minor in the petition scheduled property in the interest of Justice. The points are answered accordingly.

In the result, the petition is allowed as follows:-

- 1) The 1st petitioner is appointed as guardian of property of the minors petitioners 2 to 4.
- 2) Permission is hereby granted to the 1st petitioner under Section 29 of the Guardian and Wards Act, 1890 to alienate the share of the above said minors in the petition schedule property.
- 3) The 1st petitioner shall execute a bond for ₹3,00,000/- (Rupees Three lakhs only) with two solvent sureties each for the like sum within one month.
- 4) The draft sale deed shall be produced by the 1st petitioner before this court for approval before executing the sale deed.
- 5) The property shall not be sold for a consideration of less than ₹8,00,000/- (Rupees Eight lakh only).
- 6) The due share of the sale proceeds of the minor's share i.e., ₹2,66,667/- (Rupees Two lakh sixty six thousand six hundred and sixty seven only) shall be deposited in a nationalized bank in the name of the above said minor as a fixed deposit and the F.D. Receipt shall be produced before this court within one month of the sale of the property.

- 7) The sale deed of the petition schedule property shall be produced before the court within one month of executing the sale deed.
- 8) The 1st petitioner shall submit a statement of accounts of said FD before the court once a year.
- 9) If the petition schedule property is not sold as per Ext.A4 sale agreement, and the petitioner wants to sell the property other than the person intended, purchaser shall obtain the consent of the court in this case by producing a fresh sale agreement.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court, on this the 28st day of November, 2024.

Jyothi V.
Additional District Judge -II/
In charge of Addl. District Judge -I

Appendix:-

Petitioner's Exhibits:-

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| A1. | 25.03.2017 | Birth certificate of Fathima M.Siraj issued by Secretary and Registrar of Births and Deaths, Aikaranad Grama Panchayath. |
| A2. | 20.10.2023 | Birth certificate of Faiza M.Siraj issued by Registrar of Births and Deaths, Muvattupuzha Municipality. |
| A3. | 15.01.2022 | Birth certificate of Faaiz M.Siraj issued by Registrar of Births and Deaths, Aikaranad Grama Panchayath. |

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| A4. | 03.12.2022 | Death certificate of Jemsy P.H., issued by Registrar of Births and Deaths Edathala Grama Panchayath. |
| A5. | 30.12.2023 | Relationship certificate issued from Vengola Village Office. |
| A6. | Nil | Computer generated calculation of inheritance of minor. |
| A6(a) | Nil | Computer generated calculation of inheritance of minor. |
| A7. | 02.02.2024 | Tax receipt issued from Aluva East Village Office. |
| A8. | 26.12.2022 | Gift deed No.3865/2022 of the Sub Registrar's Office Aluva. |
| A9. | 16.02.2024 | Extract of Thandaper account No.20969 issued from Aluva East Village Office. |
| A9(a) | 16.12.2024 | Extract of Thandaper account No.20969 issued from Aluva East Village Office. |

Respondent's Exhibits:- Nil

Witness for both sides :- Nil

Additional District Judge – I (I/C)

Typed by: Siji
Com. By: Vijitha

G.O.P. No.21/2024
Order dated : 28.11.2024