

**IN THE COURT OF THE VI ADDITIONAL DISTRICT AND SESSIONS
JUDGE :: KAKINADA.**

Present: Smt.Nikitha R.Vora
VI Addl.District Judge, Kakinada

Monday, the 28th day of October, 2024

G.W.O.P.No.35/2024

*(In the matter Minors Kum. Bandaru Bindu Srinija &
Chy.Bandaru Nisith Venkata Srinivasu)*

Between:

- 1.Bandaru Jyothi Venkata Sujatha,
W/o late Venkata Durgarao, 30 years,
Dr.No.1-8-173, Vamsi Krishna Colony,
Mettukuru, Yanam. Puducherry
District – 533 464.
- 2.Bandaru Bindu Srinija,
D/o late Venkata Durgarao, 7 years,
Student, Dr.No.1-8-173, Vamsi Krishna
Colony, Mettukuru, Yanam. Puducherry
District – 533 464.
- 3.Bandaru Nisith Venkata Srinivasu,
S/o late Venkata Durgarao, 5 years,
Student, Dr.No.1-8-173, Vamsi Krishna
Colony, Mettukuru, Yanam. Puducherry
District – 533 464.

(Petitioners 2 and 3 being minors rep.by
their natural guardian and mother,
1st petitioner herein)

.. Petitioners.

AND

Nil

.. Respondent.

This petition coming on 21.10.2024 for hearing before me in the presence of Sri G.V.S.Vinayakarao, Smt.S.Gangadevi, Advocates for Petitioners and the matter having stood over for consideration till this day, this Court made the following:

ORDER

1) The petitioners filed this petition under Section 8 r/w Sec.29 of Guardian and Wards Act to accord permission to the 1st petitioner, who is mother and natural guardian of the minors Bandaru Bindu Srinija and Bandaru Nisith Venkata Srinivasu, who are petitioners 2 and 3 to sell the two minors 2/20th share in the petition schedule property on behalf of

minors and to keep share of minors in FDR in the name of minors with liberty to withdraw quarterly interest by 1st petitioner for education of minors till they attain majority.

2) Briefly, the averments of the petition are as follows:

a) The 1st petitioner is wife of Bandaru Venkata Durgarao and they were blessed with petitioners 2 and 3 by name Bandaru Bindu Srinija and Bandaru Nisith Venkata Srinivasu, who are aged about 7 years and 5 years respectively. The petition schedule property was purchased by father-in-law of 1st petitioner's by name Bandaru Veera Venkata Satyanarayana on 21.12.1998 vide document No.3665/1998 of SRO, Tallarevu for an extent of Ac.0-05 cents or 242 sq.yards of site and constructed a RCC building therein and he enjoyed the said property during his lifetime and died intestate on 26.10.2011 leaving behind his mother, wife and three sons. After death of said Bandaru Veera Venkata Satyanarayana, the petition schedule property devolved upon his mother Saraswathi, wife Seetha and his sons Taraka Ramarao, Venkata Durgarao and Santhosh Kumar as per Hindu Succession Act and each of them got 1/5th share each in the petition schedule.

b) The 1st petitioner herein submits that her husband Venkata Durgarao, who is 2nd son of Bandaru Veera Venkata Satyanarayana died intestate on 30.05.2023 leaving behind the petitioners 1 to 3 and his mother and hence, 1/5th share of husband of 1st petitioner devolved upon them and they got 1/20th share each in the schedule property. The petition schedule property is small extent and building therein is not possible for division and the petitioners are trying to move to 1st petitioner's parents house at Yedida and it is not possible for the petitioners to live in their small house. Hence, the 1st petitioner intends to sell the 3/20th share belonging to the petitioners 1 to 3 with an intention to invest the minors share in a bank for their educational needs. On that one of the family member, who is senior brother-in-law of 1st petitioner by name Taraka Ramarao agreed to purchase the 3/20th share of petitioners for an amount of Rs.2,17,365/- which is highest sale consideration and on that the 1st petitioner on her behalf and on behalf of petitioners 2 and 3 as natural guardian executed agreement of sale on 08.12.2023 and received an amount of Rs.10,000/- as advance. The petitioners have to execute the sale deed after obtaining the permission from

the Court. In the petition schedule property, each petitioner got 1/20th share or 12.1 sq.yards of undivided share which is not suitable for living. Out of sale consideration, each minor can get Rs.72,450/- towards their share. The 1st petitioner undertakes to abide by any conditions that may be imposed by the Court in this regard to safeguard the interest of minors. The 1st petitioner is ready to deposit the share of sale proceeds of minor children in any nationalized bank. Except that there is no adverse interest to the 1st petitioner in disposing the share of the property of minor children.

c) Therefore, in aforementioned circumstances, the 1st petitioner, who is mother and natural guardian of the minors Bandaru Bindu Srinija and Bandaru Nisith Venkata Srinivasu, who are petitioners 2 and 3 seeks permission to sell the share of two minors i.e., 2/20th share in the petition schedule property on behalf of minors and to keep share of minors in FDR in the name of minors with liberty to withdraw quarterly interest by 1st petitioner for education of minors till they attain majority. The petition is filed by the 1st petitioner with bonafide intention in the interest of minors education and other needs. Hence, the petition.

3) The general notice has been published and no objections were received for the petition.

4) To prove the case, the 1st petitioner got examined herself as PW.1 and got marked Exs.P1 to P5. She also got examined her senior brother-in-law as PW2 and got marked Ex.P6 through PW2. She also got examined her mother-in-law as PW3 and got marked Exs.P7 and P8 through PW3.

5) The learned counsel for the petitioners argues that the 1st petitioner is entitled for sale of the petition schedule property and to deposit the sale proceeds in the FDR and to meet the expenses for the necessities and welfare of the wards Viz., Bandaru Bindu Srinija and Bandaru Nisith Venkata Srinivasu out of the accrued interest over the fixed deposit amount as prayed for.

6) Now the point for consideration is :

“Whether the 1st petitioner is entitled for sale of undivided share of minors in the petition schedule property as prayed for?”

POINT:-

7) Before going to the merits of the case, it would be beneficial to quote Sections 4, 7, 8, 28, 29 and 31 of Guardians and Wards Act, 1890 which reads as under:-

Section 4(1) of The guardians and ward Act, herein after referred to 'The Act' says "minor" means a person who, under the provisions of the Indian Majority Act, 1875, (9 of 1875) is to be deemed not to have attained his majority, Section 3(1) of The Indian majority Act says, every person domiciled in India attain the age of majority on his completing the age of 18 years and not before.

PW1 got marked Ex.P4 birth certificate of 2nd petitioner Bandaru Bindu Srinija to establish the Bandaru Bindu Srinija is minor, which shows her date of birth is 03.03.2016, since date of birth of the ward is stated by her natural mother and not a disputed fact, date of birth mentioned in Ex.P4 as far as this case is concerned can be accepted, therefore it can be concluded that by the time of filing this petition dated 16.04.2024, she was 8 years old and has not completed 18 years and hence, she can be considered as minor.

PW1 got marked Ex.P5 birth certificate of 3rd petitioner Bandaru Nisith Venkata Srinivasu to establish the Bandaru Nisith Venkata Srinivasu is minor, which shows his date of birth is 12.01.2018, since date of birth of the ward is stated by his natural mother and not a disputed fact, date of birth mentioned in Ex.P5 as far as this case is concerned can be accepted, therefore it can be concluded that by the time of filing this petition dated 16.04.2024, he was 6 years old and has not completed 18 years and hence, he can be considered as minor.

Section 4(2) of The Act defines "guardian" mean's a person having the care of the person of a minor or of his property, or of both person and property:

Section 4(3) of the Act defines "ward" means a minor for whose person or property, or both, there is a guardian:

Section 7 of the Act deals with the Power of the Court to make order as to guardianship.—(1) where the Court is satisfied that it is for the welfare of a minor that an order should be made— (a) appointing a guardian of his person or property, or both, or (b) declaring a person to be such a guardian, the Court may make an order accordingly. (2) An order under this

section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court. (3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

Section 8 of the Act deals with the Persons entitled to apply for order - An order shall not be made under the last foregoing section except on the application of—

- (a) the person desirous of being, or claiming to be, the guardian of the minor; or
- (b) any relative or friend of the minor; or
- (c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property; or
- (d) the Collector having authority with respect to the class to which the minor belong”

Section 28 of the Act deals with the Powers of testamentary guardian — Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immovable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.

Section 29 of the Act deals with the Limitation of powers of guardian of property appointed or declared by the Court. — Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

- (a) Mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or
- (b) Lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

Section 31 of the Act deals with the Practice with respect to permitting transfers under section 29.—

- (1)** Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.
- (2)** The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.
- (3)** The Court may in its discretion attach to the permission the following among other conditions, namely:—
 - (a) that a sale shall not be completed without the sanction of the Court;
 - (b) that a sale shall be made to the highest bidder by public auction before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court subject to any rules made under this Act by the High Court, directs;

(c) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed there from or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.

- (4)** Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

8) On perusal of above referred provisions, it is clear that except in case of necessity or for an evident advantage to the minor, Court shall not grant permission to the natural guardian to sell the property of the minor. Even as per section 31(1) of the Act, permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward. In the present case, mother of the minors is shown as 1st petitioner and nobody shown as respondent.

9) PW-1 mother of minors i.e., 1st petitioner, filed her chief affidavit and reiterated the contents of petition and prayed to permit her to sell away the undivided unspecified 2/20th share of minors to attend the needs and studies of minors. The 1st petitioner also got examined her senior brother-in-law as PW2 and her mother-in-law as PW3 and got marked Exs.P6 to Ex.P8.

10) The evidence of PW.1 to PW3 along with Exs.P1 to P8 clinchingly proves that the 1st petitioner is none other than the natural mother of the wards - Bandaru Bindu Srinija and Bandaru Nisith Venkata Srinivasu, who are under the care and custody of the 1st petitioner. Originally, the petition schedule property was purchased by father-in-law of 1st petitioner under

registered sale deed dated 21.12.1998 and he died intestate on 26.10.2011 leaving behind his mother, wife and three sons and out of three sons, one son is husband of 1st petitioner by name Bandaru Venkata Durgarao and each got 1/5th share each in the petition schedule property and subsequently, the husband of 1st petitioner died intestate on 30.05.2023 leaving behind the petitioners 1 to 3 and his mother and 1/5th share of husband of 1st petitioner was devolved upon them and on that they got 1/20th share each in the petition schedule property.

11) The evidence of PW.1 shows that the petition schedule property is not suitable for living and it is a small house. The 1st petitioner is housewife and has no source of income and hence, she intends to sell the petition schedule property and utilize the funds derived from the share of minor daughter and minor son, who are petitioners 2 and 3 for their studies and welfare. The 1st petitioner being the natural mother and guardian of the minor wards and as such there is no conflict of interest in between the 1st petitioner and the minor wards and it is just and proper to sell away their shares in the petition schedule property for the purpose of studies of minors and for looking after the welfare of the minor wards by the 1st petitioner. So, this court deems fit and just to accord permission to the 1st petitioner to sell away the undivided unspecified 2/20th share of minors in the petition schedule property and to deposit the sale proceeds of minors' share in any nationalized bank under fixed deposit and the 1st petitioner is permitted to meet the expenses for the maintenance, education and welfare of the minor wards - Bandaru Bindu Srinija and Bandaru Nisith Venkata Srinivasu out of the accrued interest over the fixed deposit as prayed for. In view of the above discussion, the point is answered accordingly.

12) **In the result**, the petition is allowed and the 1st petitioner, namely, Bandaru Jyothi Venkata Sujatha, W/o late Bandaru Venkata Durgarao being the mother and natural guardian of the minors is permitted to sell the undivided 2/20th share of minors Bandaru Bindu Srinija and Bandaru Nisith Venkata Srinivasu in the petition schedule property, within the boundaries mentioned in the petition schedule with the following conditions:-

(i) The 1st petitioner is directed to deposit the total sale consideration amount of minor wards in the name of minors by way of fixed

deposit in any Nationalized Bank, till they attain majority and to file the Fixed Deposit Receipts into this Court;

(ii) A direction to file a copy of sale deed into the Court;

(iii) The 1st petitioner is permitted to withdraw the interest accrued on deposit of FDR of the minors on every 6 months and utilize the same for the welfare of minor daughter and minor son.

(iv) The 1st petitioner shall maintain accounts to that effect and submit the same to the Court for every six months.

(v) If the 1st petitioner fails to deposit the sale proceeds in the name of minors Bandaru Bindu Srinija and Bandaru Nisith Venkata Srinivasu, the proposed execution of sale deed will not bind on the minors.

Typed to my dictation by the Stenographer Grade-II, corrected and pronounced by me in Open Court on this the 28th day of October, 2024.

**Sd/- Smt.Nikitha R.Vora,
VI ADDL.DISTRICT JUDGE,
KAKINADA**

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Petitioners:-

P.W.1 : Bandaru Jyothi Venkata Sujatha

P.W.2 : Bandaru Taraka Ramarao

P.W.3 : Bandaru Seetha

For Respondent:- -Nil--

DOCUMENTS MARKED

For Petitioners:-

Ex.P1	Registration extract of sale deed dated 21.12.1998 vide document No.3665/1998 of SRO, Tallarevu.
Ex.P2	Death extract of Bandaru Veera Venkata Satyanarayana.
Ex.P3	Death extract of Bandaru Venkata Durgarao.
Ex.P4	Date of birth certificate of 2 nd petitioner Bandaru Bindu Srinija
Ex.P5	Date of birth certificate of 3 rd petitioner Bandaru Nisith Venkata Srinivasu
Ex.P6	Sale agreement for Rs.2,17,365/- executed by petitioners in favour of PW2.

Ex.P7	Family members certificate issued by Deputy Tahsildar, Yanam after death of Bandaru Veera Venkata Satyanarayana.
Ex.P8	Family members certificate issued by Deputy Tahsildar, Yanam after death of Bandaru Venkata Durgarao.

For Respondent:- --Nil--

**Sd/- Smt.Nikitha R.Vora,
VI ADDL.DISTRICT JUDGE,
KAKINADA**