AFR

IN THE HIGH COURT OF ORISSA, CUTTACK

GUAP No.04 of 2024

CNR No.ODHC010157572024

(In the matter of an application under
Section 47(e) of the Guardians and Wards Act, 1890)

Shamina Naaz & another ..... Appellants

-Versus-

Rimsha Taashfeen & another ..... Respondents

Advocate for the parties

For Appellants : Mr. T.K. Mishra, Advocate

For Respondent No.1 : Mr. J. Pal, Advocate
Mr. L. Senapati, Advocate

For Respondent No.2 : Mr. M.K. Dash, ASC

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing: 12.08.2026 Dated of Judgment: 07.10.2026

S.K. Mishra, J.

1. This Appeal under Section 47 of the Guardians and Wards Act, 1890 is directed against the Judgment dated 20.10.2023 passed by the learned District Judge,

Ganjam, Berhampur in Guardian Petition No.3 of 2023, whereby the prayer of the Appellants for appointment of Appellant No.1 as guardian of the property of minor Appellant No.2 and for permission to alienate the minor's interest in the property, described in the petition, came to be rejected.

2. The brief facts leading to the filing of the present Appeal are that, the husband of Appellant No.1 and father of Respondent No.1 and the minor, Appellant No.2, Mohammed Mufazil, had purchased an immovable property at Mouza Kalarahanga, Bhubaneswar, measuring an area of Ac.0.127 decimal, under Registered Sale Deed No.2094 dated 26.06.1993. The property was thereafter recorded in his name under Khatian No.725/2253, corresponding to Plot No.1703/4942.

2.1. Mohammed Mufazil died on 22.05.2021. The Respondent No.1 was born on 22.04.2004 and minor Rida Alia was born on 27.04.2013. Appellant No.1, the minor-Appellant No.2 and Respondent No.1 are residing

at Berhampur under the care and custody of Appellant No.1, after the death of Mohammed Mufazil. Thereafter, the Revenue Officer-cum-Tahasildar, Berhampur issued Legal Heir Certificate bearing No.ELHC/2021/187336 dated 26.12.2021 declaring Appellant No.1, Respondent No.1 and the minor-Appellant No.2 as his legal heirs. According to the Appellants, the minor-Appellant No.2 had an equal 1/3rd share in the said property.

2.2. It is the case of the Appellants that after the death of Mohammed Mufazil, Appellant No.1 was maintaining the minor-Appellant No.2 and providing her education. Appellant No.1, being a Pardanashin lady, had no independent and sufficient income to provide proper education, nourishment, food and shelter to the minor. The minor was studying in Std. IV at St. Vincent Convent School, Berhampur.

2.3. Appellant No.1, therefore, sought permission to sell the minor's share in the property. The property is valuable and is fetching a good price in the market. She undertook to utilise the sale proceeds for the education,

maintenance and betterment of the minor and to purchase suitable land in the name of the minor near their residence.

2.4. It is the case of the Appellants that, the property is situated about 170 kilometres away from their residence and that land brokers have kept their eye on the property. There is no male member in the family to look after the said property. Some prospective purchasers approached Appellant No.1 with offers of a good price. On approaching the Sub-Registrar, Khandagiri, Bhubaneswar, she was advised to obtain permission from the competent Court for sale of the minor's share.

2.5. Being so advised, the Appellants filed Guardian Petition No.3 of 2023 under Sections 29 and 31 of the Guardians and Wards Act, 1890, shortly, 'the Act,1890', before the learned District Judge, Ganjam. They sought appointment of Appellant No.1, Shamina Naaz, as guardian of her minor daughter, Appellant No.2, Rida Alia. They also sought permission to sell the minor's share in the property situated at Mouza Kalarahanga,

Bhubaneswar Tahasil, under Khata No.725/2253, Plot No.1703/4942.

3. Respondent No.1 filed a Counter before the Court below admitting the case of the Appellants and supported the prayer for appointment of Appellant No.1 as the guardian of the minor and for permission to sell the minor's share.

4. The learned Government Pleader, though appeared for Respondent No.2, did not file any Counter opposing to such prayer. No other Objection was filed despite publication of notice.

5. Appellant No.1 was examined as P.W.1 and documents were marked as Exts.1 to 6 without any objection. The Respondents did not adduce any oral or documentary evidence.

6. The learned District Judge, Ganjam, by the impugned judgment dated 20.10.2023 passed in Guardian Petition No.3 of 2023, rejected the prayer of the Appellants. Aggrieved thereby, the present Appeal has been preferred, seeking permission to alienate the

minor's share for her education, maintenance and betterment.

7. The learned District Judge noticed that the parties were Mohammedans. The Court, therefore, considered the question of guardianship and alienation of the minor's property under Mahomedan Law. The Court examined whether Appellant No.1, being the mother of the minor, could be appointed as guardian of the minor's property and permitted to sell the minor's share.

7.1. The learned District Judge relied upon the decision of the Supreme Court in ***Meethiyan Sidhiqu vs. Muhammed Kunju Pareeth Kutty & Others***; AIR 1996 SC 1003 : (1996) 7 SCC 436. The Court referred to Section 359 of Mulla's Principles of Mahomedan Law. It was observed that the father, his executor, the paternal grandfather and his executor are the legal guardians of the property of a Muslim minor. No other relation, including the mother, is the legal guardian of the minor's property as of right.

7.2. The learned Court below also referred to Section 360 of Mulla's Principles of Mahomedan Law. It was observed that, in the absence of a legal guardian, the Court may appoint a guardian for the protection and preservation of the minor's property. In doing so, the Court has to be guided by the welfare of the minor. It was also noticed that the mother may be appointed as guardian of the minor's property in preference to the paternal Uncle. She being a Pardanashin lady, it was also held not to be an objection to such appointment.

7.3. The learned District Judge further referred to Section 362 of Mulla's Principles of Mahomedan Law. It was observed that a legal guardian cannot sell the minor's immovable property except in the circumstances stated therein. Such circumstances include the necessity of sale for maintenance where the minor has no other property, debts or legacies of the deceased, expenses exceeding the income of the property, the property falling into decay and absence of reasonable chance of restitution of the property.

7.4. On consideration of the aforesaid principles and the evidence, the learned District Judge held that Appellant No.1 failed to prove the essential requirements for the relief sought. The Court noticed that Appellant No.1 has proved the documents relating to the death of her husband, purchase of the property and recording of the property in his name. However, the Court found that the same was not sufficient to establish the requirements for granting the prayer. The Court, therefore, declined to entertain the prayer of the Appellants (Petitioners before the Court below). Consequently, vide the impugned judgment dated 20.10.2023, the learned District Judge, Ganjam, dismissed the Guardian Petition No.3 of 2023 on contest but without cost and disposed of the Guardian Petition finally.

8. The Appellants have challenged the impugned judgment basically on the ground that the learned District Judge did not consider the welfare and interest of the minor. It was contended by learned Counsel for the Appellants that Appellant No.1, being the natural

guardian of Appellant No.2, sought permission to sell the minor's share for her education, maintenance and betterment. It was further contended that Appellant No.1 has no independent income. Her husband, who was the bread earner, died on 22.05.2021. The property is situated at Kalarahanga, Bhubaneswar, about 170 kilometres from Ganjam. There is no male member in the family to look after the property. It was also contended that the property may be captured by land grabbers or land brokers. It was argued that the sale consideration would be utilised for the betterment of the minor.

8.1. It was further contended that the evidence of Appellant No.1 as P.W.1 supported the case of the Appellants. Her inability to state the market valuation of the property in cross-examination was not fatal to the application under Sections 29 and 31 of the Act, 1890. Learned counsel for the Appellants also referred to Section 39 under Chapter V and Chapter XVIII of Mulla's Mahomedan Law, which deals with guardianship of person and property, so also Section 7 of the Act, 1890,

which deals with the power of the Court to make an order as to guardianship. It was contended that, though the mother is not the legal guardian of the minor's property, she is a *de facto* guardian. Learned Counsel for the Appellants further contend that the judgment of the Apex Court, relied upon by the learned District Judge, Ganjam is distinguishable. It was also contended that Exts.4 and 5 were not properly considered by the learned Court below.

8.2. Though it was neither specifically pleaded before the Court below nor before this Court, Mr. Mishra, learned Counsel for the Appellants submitted that the Appellants are Sunni Muslims. Referring to Sections 359, 360, 362 and 366 of Mulla's Principles of Mahomedan Law, he further submitted that the said provisions govern the guardianship and power of legal guardians for alienation of the property of a minor. However, the learned Court below failed to take note of the said provisions, so also appreciate the minor's welfare and

evident advantage, in terms of Section 31 of the Act, 1890, while passing the impugned judgment.

9. The material facts, which are either admitted or remain uncontroverted on the record, are these: Mohammed Mufazil, husband of Appellant No.1 and father of the minor and Respondent No.1, purchased the property at Mouza Kalarahanga, Bhubaneswar, by Registered Sale Deed No.2094 dated 26.06.1993. He died on 22.05.2021. The minor Rida Alia is presently under the care and custody of her mother. The Legal Heir Certificate dated 26.12.2021 has also been produced. The Appellants asserted that the minor has an undivided one-third share in the property.

9.1. The Appellants pleaded that Appellant No.1 has no independent and sufficient income, that the deceased was the bread earner of the family, that the property is situated at a considerable distance from their residence, and that the income/resources presently available are insufficient to meet the minor's educational,

maintenance and other needs. It was further pleaded that the consideration obtained from a sale would be applied for the minor's education, maintenance and betterment and, to the extent possible, invested in or utilised for acquiring suitable property near the place of their residence.

9.2. The record further shows that Respondent No.1, the major daughter, supported the prayer; the State did not file any Counter Affidavit opposing the application; no other objection was received despite publication; and the Appellants' evidence and Exts.1 to 6 remained unchallenged by any evidence adduced by the Respondents.

9.3. The learned District Judge passed the impugned order, basically, relying on the decision of the Supreme Court in ***Meethiyan*** (supra). The learned Court below, however, proceeded on the footing that the Appellant No.1 has failed to prove the essential ingredients, as detailed in ***Meethiyan*** (supra), while rejecting the prayer for alienation.

10. **Points for determination:**

(i) Whether the impugned judgment is perverse, deserving interference?

(ii) Whether the Appellant No.1, who is the natural mother of the Appellant No-2, can be appointed as the guardian of the minor's property by the Court?

(iii) Whether the statutory requirements for permission to alienate the minor's interest, for the minor's welfare and evident advantage, in terms of Section 31 of the Act, 1890, are satisfied?

(iv) If so, what would be the extent of the minor's share, which may be dealt with, and what safeguards are necessary in the said regard?

11. **Point (i) & (ii) : Perversity and Appointment of the mother as guardian of the minor's property under Mahomedan law:**

The mother is not a legal guardian of the minor's property as of right. In ***Imambandi vs. Mutsaddi and Meethiyan Sidhiqu,*** AIR 1918 PC 11, it was held that an unauthorised mother or other *de facto* guardian cannot, merely, by assuming control over the minor's property, convey the minor's immovable property

so as to bind the minor. The learned Court below was therefore correct only to this limited extent.

11.1. The conclusion, however, does not answer the separate statutory question which arises in the present case. Section 360 of Mulla's Principles of Mahomedan Law recognises that, in default of the legal guardians mentioned in Section 359, the Court is to appoint a guardian for the protection and preservation of the minor's property. Section 7 of the Act, 1890, independently and expressly, empowers the competent Court to appoint a guardian of the minor's property, when such appointment is for the welfare of the minor. Section 17 of the Act, 1890 further directs the Court to be guided by the welfare of the minor, while considering the proposed guardian's character, capacity, nearness of kin and existing relationship with the minor and her property.

11.2. In the present case, the father has died. No Executor under his will or paternal grandfather acting as the legal guardian of the property has been shown.

Appellant No.1 is the mother, the person in whose care and custody the minor admittedly remains, and the person, who has been maintaining and educating her since the death of the father. Respondent No.1, who is the major daughter of the Appellant No.1, has expressly supported the application. The State has filed no Counter opposing the case. There is no material before this Court suggesting that the proposed guardian has any adverse interest in the minor's property or that her appointment would be contrary to the minor's welfare. On the contrary, the uncontroverted circumstances appearing from the record satisfy the welfare-oriented considerations under Sections 7 and 17 of the Act, 1890.

11.3. Hence, this Court is of the view that, the Appellant No.1 mother does not become the legal guardian of the minor's property (Appellant No.2) by status alone. However, she is not disqualified from being appointed by the competent Court as guardian of the minor's property, when the statutory welfare requirements are satisfied. Once appointed by the Court,

her powers are controlled by the Act, 1890, in particular, Sections 29 and 31 thereof. Point Nos.(i) & (ii) are answered accordingly.

12. **Point (iii): Whether the statutory requirements for permission to alienate the minor's interest, for the minor's welfare and evident advantage, in terms of Section 31 of the Act, 1890, were established before the Court below?**

Section 29 of the Act, 1890 places the immovable property of the ward under judicial control by prohibiting transfer without previous permission of the Court. Section 31 of the Act, 1890 then provides the substantive test; permission may be granted in a case of necessity or for an evident advantage to the ward. The enquiry is therefore not whether the mother is a legal guardian under personal law, but whether the Court, having appointed her, is satisfied on the material before it that a controlled sale is justified for the minor's welfare and evident advantage.

12.1. The Supreme Court and High Courts have repeatedly emphasised the protective character of this jurisdiction. In ***Harikrishnan vs. Sri Chanda Prabhuji Jain Temple***, reported in AIR 1962 Mad 267, it was explained that the Court exercises a protective and administrative jurisdiction over the ward and that the enquiry under Section 31 of the Act, 1890 is directed to necessity or evident advantage. In ***Smt. Sakshi Devi v. State of NCT of Delhi***, reported in 2014 SCC OnLine Del 2740, upkeep and maintenance of the minor as a legal necessity was recognized and permission was accorded for sale of the minor's undivided share, subject to safeguards. These authorities are not Muslim-law authorities as to who is the legal guardian, but they are relevant to the statutory meaning and operation of Sections 29 and 31 of the Act, 1890.

12.2. The present facts disclose more than a bare desire to liquidate the minor's property. The father, who was stated to be the bread earner, is no longer alive; the mother states that she has no independent and sufficient

income; the minor is of school-going age; the property is situated at a substantial distance from the family's place of residence; and the mother proposes to apply the consideration for education, maintenance and acquisition/investment of property for the minor. The major daughter supports the application and there is no opposing evidence. The cumulative circumstances, viewed in the protective framework of Section 31 of the Act, 1890, establish a case of necessity and, at the least, an evident advantage to the ward.

12.3. The fact that the mother could not state the precise market value in cross-examination cannot, by itself, be treated as conclusive against the minor. The statutory scheme itself supplies the answer. The Court can protect the minor by obtaining an independent valuation and by making the permission conditional upon the property not being sold below the value so ascertained and upon preservation/investment of the minor's proceeds. The absence of an exact valuation in the oral testimony is therefore a matter requiring a

safeguard, not a reason to reject the application altogether.

12.4. The apprehension stated by the Appellants that the distant property may be exposed to neglect or interference should not be treated as a proved allegation of land grabbing unless supported by material. Nevertheless, the distance of the property and the absence of a person presently available to supervise it are relevant practical circumstances when considered together with the admitted need to secure the minor's education, maintenance and future interests. Hence, this Court is of the view that, while dealing with such kind of issues, the learned Court below ought to have based the order principally on the proved financial and welfare circumstances, while treating the remaining apprehensions with due caution. Point No.(iii) is answered accordingly in favour of the Appellants.

13. **Point (iv): Extent of share and safeguards:**

So far as share of minor daughter-Appellant No.2, before dealing with the said issue, it would be apt

to mention here that the property (both movable as well as immovable) left by a deceased Muslim is called "Matruka", as held in ***Jamil Ahmad Vs. Vth ADJ, Moradabad,*** (2001) 8 SCC 599, in ***Trinity Infraventures Ltd. Vs. M.S. Murthy,*** 2023 SCC OnLine SC 738 and in ***Zoharbee & Another Vs. Imam Khan (D) Thr. LRs. & Others,*** 2025 SCC OnLine SC 2252.

13.1. So far as the present lis is concerned, the relevant principles under Mahomedan Law (updated 20th Edition) are Section 41, Section 51, Section 56, Section 61, Section 63, Section 65 and Section 66.

13.2. Section 41 deals with the estate of deceased Muslim which devolves upon his heirs at the moment of his death and the heirs succeed as tenants-in-common in specific shares. As per Section 51 , there is no distinction in Muslim inheritance between movable and immovable property or between ancestral and self-acquired property. Section 56 mandates that "vested inheritance" is the share which vests in an heir at the moment of the ancestor's death. If the heir dies before distribution, the

share of inheritance, which has vested in him, will pass to such person as are his heirs at the time of his death. The shares, therefore, are to be determined at each death.

13.3. So far as Sunni Law, in Section 61, heirs are classified as "Sharers", "Residuaries" and "Distant Kindred". The same is reproduced below for ready reference.

> *"61.* ***Classes of heirs:*** *There are there classes of heirs, namely, (1) Sharers, (2) Residuaries, and (3) Distant Kindred:*
>
> *(1)* ***"Sharers"*** *are those who are entitled to a prescribed share of the inheritance;*
>
> *(2)* ***"Residuaries"*** *are those who take no prescribed share, but succeed to the "residue" after the claims of the sharers are satisfied;*
>
> *(3)* ***"Distant Kindred"*** *are all those relations by blood who are neither Sharers nor Residuaries."*

13.4. As to extent of share, Section 63 mandates that , after funeral expenses, debts and legacies, the first step is to identify the sharers and assign their prescribed shares. Section 63, so also table of shares in Sunni Law, being relevant, are reproduced below:

*"**63. Sharers:** After payment of funeral expenses, debts, and legacies, the first step in the distribution of the estate, of a deceased Mahomedan is to ascertain which of the surviving relations belong to the class of sharers, and which again of these are entitled to a share of the inheritance, and, after this is done, to proceed to assign their respective shares to such of the sharers as are, under the circumstances of the case, entitled to succeed to a share.* ***The first column in the accompanying table contains a list of sharers; the second column specifies the normal share of each sharer; the third column specifies the conditions which determine the right of each sharer to a share, and the fourth column sets out the shares as varied by special circumstances****."*

"TABLE OF SHARES-Sunni Law				
(1) Shares	***(2) Normal Share***		*(3)* ***Conditions under which the normal share is inherited***	*(4)* ***This column sets out-*** *(A) Shares of Sharers Nos.3, 4,5,8 and 12 as varied by special circumstances:* *(B) Conditions under which shares Nos.1, 2, 7, 8, 11 and 12 succeed as Residuaries.*
	of one	*of two or more collec-tively(b)*		
1. FATHER	*1/6*	*..*	*When there is a child or child of a son h.l.s.*	*[When there is no child or child of a son h.l.s., the father inherits as a residuary: see Tab. of Res., No.3]*
2. TRUE GRANDFATHER [sec 62 cl.(a)]	*1/6*	*..*	*When there is a child or child of a son h.l.s. and no father or nearer True grandfather*	*[When there is no child or child of a son h.l.s., the Tr.G.F. inherits as a residuary, provided there is no father or nearer Tr. G.F.: see Tab. of Res., No.4]*
3. HUSBAND	*1/4*	*..*	*When there is a child or child of a son h.l.s*	*1/2 when no child or child of a son h.l.s.*
4. WIFE	***1/8***	***1/8***	***When there is a child or child of a son h.l.s***	*1/4 when no child or child of a son h.l.s.*
5. MOTHER	*1/6*	*..*	*(a) When there is a child or child of a son h.l.s., or* *(b) when there are two or more brothers or sisters, or even one brother and one sister, whether full consanguine or uterine.*	*1/3 when no child or child of a son h.l.s. and not more than one brother or sister (if any), but if there is also a wife or husband and the father, then only 1/3 of what remains after deducting the wife's or husband's share.*

6. TRUE GRANDFATHER [sec 62 cl.(a)]	*1/6*	*1/6*	*A. Maternal - when no mother and no nearer true grandmother either paternal or maternal.* *B. Paternal - when no mother, no father, no nearer true grandmother either paternal or maternal, and no intermediate true grand-father.*	
7. DAUGHTER	***1/2***	***2/3***	***When no son***	*[With the son she becomes a residuary, see Tab, of Res., No. 1.]*
8. SON'S DAUFHTER h.l.s. [sec 62. Cl. (f) *e.g.*	*1/2*	*2/3*	*When no (1) son, (2), daughter, (3) higher son's son, (4) higher son's daughter. or (5) equal son's son. (d)*	*When there is only one daughter, or higher son's daughter but no (1) son, (2) higher son's son, or (3) equal son's son, the daughter or higher son's daughter will take ½ and the son's daughter h.1.s. (whether one or more) will take 1/6 i.e, 2/3 – ½ [With an equal son's son she becomes a residuary; she Tab. of Res., No.2].*
(i) Son's Daughter	*1/2*	*2/3*	*When no (1) son, (2) daughter, or (3) son's son.*	*When there is only one daughter, the son's daughter (whether one or more) will take 1/6, if there be no son, or son's son. [With the son's. son she becomes a residuary: see Tab. of Res., No. 2.]*
(ii) Son's Son's Daughter	*1/2*	*2/3*	*When no (1) son, (2) daughter, (3) son's son, (4) son's daughter, or (5) son's son's.*	*When there is only one daughter or son's daughter, the son's son's daughter (whether one or more) will take 1/6, if there be no (1) son, (2) son's son or (3) son's son's son. [With the son's son's son she becomes residuary: see Tab. of Res., No. 2.]*
9. UTERINE BROTHER *10. or SISTER*	*1/6*	*1/3*	*When no (1) child, (2) child of a son h.l.s, (3) father of (4) true grandfather.*	
11. FULL SISTER	*1/2*	*2/3*	*When no (1) child, (2) child of a son h.l.s., (3) father (4) true grandfather, or (5) full brother.*	*[With the full brother she becomes a residuary: see Tab. of Res., No.5.]*

12. CONSANGUINE SISTER	*1/2*	*2/3*	*When no (1) child, (2) child of a son h.l.s., (3) father, (4) true grandfather, (5) full brother, (6) full sister, or (7) consanguine brother.*	*But if there is only one full sister and she succeeds as a sharer, the consanguine sister (whether one or more) will take 1/6, provided she is not otherwise excluded from inheritance. [With the consanguine brother she becomes a residuary: see Tab. of Res., No. 7.]*

(b) The collective share is always divided equally among those to whom it is allotted.
(c) A Mahomedan can have as many as four wives at a time.
(d) If there be son's son and son's son's daughter, the former is a higher son's son in relation to the latter. If there be a son's son and son's daughter the former is a lower son's son in relation to the latter. And if there be a son's son and son's daughter or a son's son's daughter, the former is in equal son's son in relation to the latter, both being equally removed from the deceased."

(Emphasis supplied)

13.5. Section 65 mandates, after satisfaction of the Sharers, any residue ordinarily devolves upon the Residuaries in the prescribed order. Section 66 commands that where there is a residue after satisfying the Sharers but there is no Residuary, the residue to the Sharers in proportion to their shares, i.e., "Return" or "Radd". The husband and wife do not take Return so long as there is another heir.

13.6. The legal heir certificate establishes the stated relationship of the heirs, but it should not be treated by itself as a conclusive adjudication of the fractional shares under Mahomedan Succession Law. The permission shall therefore operate only in respect of the minor's lawful

undivided share, as established from the succession/title material on record.

13.7. In the instant case, on the stated facts as detailed above, pertaining to the suit property, no other objection was filed despite publication of notice, opposing to such prayer, or disputing the share of the legal heirs. Hence, as per the materials on record, the widow (Appellant No.1) would be entitled to 1/8th share. The two daughters, including the Appellant No.2, together therefore take 7/8th of the estate of the deceased father. The reason is that the widow first takes her fixed Qur'an share of 1/8th, because the deceased left children. The two daughters together take their fixed share of 2/3rd because there is no son. The fixed shares therefore total 19/24th, leaving 5/24th as residue. Since, on the assumed facts, there is no residuary heir, the doctrine of Return (Radd) applies. The widow does not participate in "Radd" while another heir exists; the 5/24th residue therefore return to the two daughters in proportion to their shares.

Their aggregate entitlement consequently becomes 7/8th, divided equally between them, i.e., 7/16th each.

13.8. As to safeguards of the share of the minor in the property, Section 31(2) and (3) of the Guardians and Wards Act, 1890 expressly permit the Court to attach conditions. Having regard to the protective purpose of the Act,1890 and the fact that the proposed guardian is also the beneficiary's mother, it would be appropriate to impose the following safeguards: (a) an up-to-date independent valuation of the property by the competent revenue/valuation authority shall be obtained; (b) the minor's share shall not be sold below the verified market value attributable to that share, subject to any higher price obtained; (c) the sale shall be effected only after prior permission/confirmation in the manner directed by the guardianship Court; (d) the mother shall furnish the bond and surety required by Section 34; (e) the entire net sale consideration attributable to the minor shall be deposited in a fixed deposit or other Court-approved secure investment in the minor's name under the

guardianship of Appellant No.1, except such portion as the Court, on a specific application, permits to be used for the minor's education, maintenance or other demonstrable welfare need; and (f) the guardian shall file the sale deed, proof of receipt of consideration and an account statement before the guardianship Court within a fixed period. Point No.(iv) is answered accordingly.

Result

14. On a cumulative consideration of the pleadings, the uncontroverted evidence, the statutory Scheme and the authorities referred to above, this Court is satisfied that the approach of the learned Court below was too narrow to reject the application without examining whether she ought to be appointed by the Court as guardian and whether a controlled sale would amount to necessity or evident advantage to the minor.

15. The impugned judgment dated 20.10.2023 passed in Guardian Petition No.3 of 2023 is therefore set aside. The Appeal is allowed and stands disposed of.

16. Appellant No.1, Shamina Naaz, is appointed as guardian of the property of minor Appellant No.2, Rida Alia, for the limited purposes of protection, management and the transaction authorised by this judgment pertaining to the property, which was the subject matter in Guardian Petition No.3 of 2023, subject to the Guardians and Wards Act, 1890 and the following conditions:-

(i) The minor's exact lawful undivided share, as detailed above, shall first be verified from the title and succession material. Permission shall be extended only to that share and not to any larger interest.

(ii) The learned guardianship Court shall obtain or verify an independent current valuation of the property. The minor's share shall not be sold for less than the value attributable to that share in the verified valuation, unless the Court, for recorded reasons, approves a higher or otherwise legally permissible price.

(iii) The sale shall be effected only with prior compliance before the learned guardianship Court, including execution of the requisite bond/surety and completion of such notice or confirmation procedure as the Court considers necessary.

(iv) The net consideration attributable to the minor shall be deposited/invested in a secure fixed deposit or other Court approved instrument in the minor's name under the guardianship of Appellant No.1. Withdrawal of the principal shall require further order of the competent Court, except to the extent expressly permitted under this judgment or subsequent order by the competent Court for the minor's demonstrable education, maintenance, health, residence or other welfare.

(v) Appellant No.1 shall submit to the learned guardianship Court, within the period fixed by that Court, preferably, within six weeks of

receipt of the sale consideration, a certified copy of the sale deed, proof of the sale consideration actually received, the deposit/investment receipt relating to the minor's share and a statement of account.

(vi) The guardian shall act as a person of ordinary prudence and shall not utilise the minor's money for her personal purposes or for the benefit of any third person.

(vii) The permission granted by this Judgment is confined to the minor's lawful share and does not enlarge the title of any other co-sharer.

17. It is clarified that this Court has not treated the mother as the natural or legal guardian of the minor's property under Mahomedan Law. The authority to manage and alienate the minor's property flows from her appointment by the competent Court and from the conditional permission granted under the Guardians and Wards Act, 1890.

18. The learned guardianship Court shall issue the necessary guardianship certificate/order and take consequential steps for valuation, bond/surety, deposit of sale proceeds and accounting in accordance with law, as detailed above.

19. This Court is hopeful that the Appellant No.1 shall cooperate with the learned guardianship Court, who shall do the needful at the earliest, as directed/observed above.

20. Office is directed to send a copy of this Judgment urgently to the learned Court below for information and necessary action, as detailed above.

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S.K. MISHRA, J.

Orissa High Court, Cuttack.
Dated, the 7th October, 2026 /Prasant