

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 26/08/2015

DATED: 29/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.1347 of 2015

K.Palaniswamy

...Appellant/Petitioner

Vs.

1.M.Chinnayan

2.P.Makesh

....Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Order 47 of Guardian and Wards Act, 1890, against the order of the dismissing the petition for seeking permission to sell the Minor's 1/3 share in the property in H.M.G.O.P.No.75 of 2013, dated 30.04.2015, by the Principal District and Sessions Judge, Tiruppur.

For Appellant : Mr.K.R.Krishnan

J U D G M E N T

The averment of the petitioner in H.M.G.O.P.No.75 of 2013 is as follows:-

The petitioner is the father of Minor K.P.Arijun Pradeep, who was born on 26.08.2004. The said minor's mother P.Jayalakshmi is wife of the petitioner. The minor is under the care and custody and natural guardianship of the petitioner. The petitioner submitted that the property mentioned hereunder in the schedule belonged to petitioner's family by virtue of ancestral ownership. The petitioner and minor constitute a Hindu joint family. On 16.12.2010, a partition was effected in the petition mentioned property between petitioner, his father and his sisters by virtue of partition deed bearing Registration No.7597/2010 on the file

of Sub Registrar of Utthukuli. In the said partition, "B" schedule property has been allotted to the petitioner. The petition mentioned property is an ancestral property of the petitioner's family. The petitioner and his daughter K.P.Priyadharsini and minor K.P.Arijunpradeep have inherited 1/3 common share each in schedule mentioned property. Minor K.P.Arijunpradeep is having 1/3 common share in petition mentioned property by virtue of Hindu Succession Act. The minor jointly have 1/3 share in the schedule mentioned property for the extent of 0.71 acre.

2. The petitioner further submitted that his daughter K.P.Priyadharsini is currently undergoing IInd year B.Sc. in Tamilnadu Agricultural University. Minor K.P.Arijunpradeep is studying in 9th standard at Private Excellence Education at Vedanta Academy, Tirupur. The petitioner further submitted that the schedule mentioned properties are the dry land without any income and they are lying fallow. The lands are not yielding any income and it is inconvenient and very difficult to cultivate the properties. Even if the said lands are leased, no one is ready to have on lease of the same. Now, the lands in the nearby area are sold due to water scarcity and dry rain feted land etc. On 20.02.2013, the respondents 1) Mr.Chinnayan, 2) Makesh, offered to purchase minor's properties for a value of sum of Rs.4,99,900/-, for total extent of 0.72. 1/2 acres (Rs.6,90,000/- per acre) from the petitioner with permission of the Court. The respondents have come forward to purchase the properties of the petitioner's family and their co-shares and other co-sharers in the same field for same price per acre value including the share of the minor for reasonable and proper value. If the petition mentioned property is sold for the said price the minor would get more advantage and benefits. To safeguard the interest of the minor and for the benefit of the minor, the petitioner had intent to sell minor's share in the petition mentioned property subject to the Court verdict in this petition. Minor's mother and other family members and relatives have no objection to sell the property to respondents and they have also given consent to deal under the above said manner. Further, it is offered that the petitioner has to execute the sale deed in favour of the aforesaid respondent or their nominee with respect of the minor 1/3 share in schedule mention property, if the Court directed him to do so. Hence, the petitioner has sought permission before the learned Principal District and Sessions Judge, to sell the under mentioned dry land on behalf of the minor's 1/3 share.

3. The petitioner further submits that the proposed act is definitely beneficial to the interest of the minor. Moreover, the price offered is on the higher side. As already mentioned, the dry land remains unprofitable and there is no

permanent income. Hence, the proposal will not be against the interest of the aforesaid minor. The petitioner has no proper income to maintain and provide good education to the minor. If the property is sold, the sale proceeds will render help to the minor and give a better life to the minor and good education. The petitioner's daughter also intended to sell her share in the same field for her welfare. The petitioner has undertaken to deposit a sum of Rs.4,99,900/- for minor, out of sale consideration of the minor, into any nationalized bank as directed by the Court. Further, the petitioner has undertaken that the said deposit would not be withdrawn till the minor attains the age of a major or order of this Court. The petitioner requested leave to withdraw interest every year, so as to enable him to maintain the minor son. The cause of action arose on when partition was effected on 16.12.2010, when minor was born on 26.08.2004 and when the respondent offered to the petitioner on 01.03.2013 and all subsequent days cause of action raised within the Avinashi Taluk. Hence, the petitioner entreated the Court to allow the petition.

4. The respondents submitted that they are ready to purchase petition mentioned property as per order of the Court as agreed with the petitioner. The facts contained in petition are true and correct and admitted by this respondents. The respondents submitted that they purchased the entire field from other co-sharers in the petition mentioned property except petitioner's property. The respondents further submitted that they offered good and marketable price for the petition mentioned property. They are ready to deposit the sale amount before this Court. The respondents purchased other co-sharers property in the same field as per order of the learned Principal District Judge, Tirupur in H.M.G.O.P.No.63/2013, H.M.G.O.P.No.87/2013, H.M.G.O.P.No.124/2013 and H.M.G.O.P.No.123 of 2013. Hence, the respondents entreated the Court to allow the petition.

5. The learned Principal District and Sessions Judge, Tirupur after considering the averments of both parties and on recording the evidence of the petitioner and the respondent and also perusal of Exs.P1 to P4, dismissed the petition in H.M.G.O.P.No.75 of 2013. Against the said order, the above appeal has been preferred by the petitioner.

6. The highly competent counsel Mr.K.R.Krishnan appearing for the appellant submits that the appellant is the father of minor son viz., K.P.Arijun Pradeep and he is in the care and custody of the natural parents. The said minor was born on 26.08.2004 and he is residing with his parents viz., the appellant herein and his wife P.Jayalakshmi. The petitioner's schedule mentioned property comprised in Re-Survey No.146/2B situated at Kavundampalayam Village to an extent of 0.72 1/2 acres, has been classified as dry land. The

property is the appellant's ancestral property and the same was partitioned among the joint family members which has been registered under the registered partition deed bearing registration No.7597/2010.

7. The highly competent counsel appearing for the appellant further submits that the appellant and his daughter, viz., K.P.Priyadharsini and his minor son K.P.Arijun Pradeep have each inherited one third common share in schedule mentioned property. The minor son is having 1/3 common share in the petition mentioned property by virtue of Hindu Succession Act, as such, the minor's share is to an extent of 0.71 acre. The daughter of the appellant is studying in the II Year B.Sc., degree course at Tamil Nadu Agricultural University. The minor son is studying in the 9th standard at the Private Excellence Education at Vedanta Academy, Tirupur. The petition mentioned properties are classified as dry lands and with no irrigation facilities as such, the said lands is lying vacant and with no cultivation due to shortfall of rain from year to year. Under the circumstances, the said property is not fit for cultivation due to lack of irrigation. Under the circumstances, the first and second respondents have offered to purchase the minor's properties for a value of Rs.4,99,900/- from the petitioner. If the minor's share is sold for the said price, the minor would receive more advantage and benefits. If the said properties are sold to the respondents, the minor's welfare will not be affected. Further, the sale consideration will be utilized for the minor's higher educational expenditure. The sale consideration is also at an attractive price. Now, the dry land remains in a state of un-profitability and there is no income.

8. The highly competent counsel appearing for the appellant further submits that the appellant had given an undertaking before the trial Court stating that the sale consideration amount will be deposited into any nationalized bank as directed by the Court, besides the appellant had given a further undertaking that the said deposit would not be withdrawn till his minor son attains the age of a major. The sale price also is fixed on the basis of guideline value. The respondents have filed their counter statements and also given evidence stating that they are ready to purchase the minor's share and the said sale consideration will be deposited in the name of the minor in any Nationalized Bank. The highly competent counsel further submits that the mother of the minor has also given consent for alienating the minor's share since it will be more beneficial to the minor. As such, the biological parents of the minor who is taking care and responsibility of the minor and they are providing good education to the minor. Now, the minor son is studying at Private Excellence Education at Vedanta Academy, Tirupur. It clearly proves that the parents of the minor are taking much

care and responsibility for the future of their minor son.

9. The highly competent counsel appearing for the appellant further submits that the learned Judge mentioned in his order that 4 items have been situated in the schedule mentioned property as B schedule mentioned property, the same has not been covered under the partition deed of the schedule mentioned property. Therefore, the learned Judge dismissed the permission petition. Actually, the property to an extent of 0.72 1/2 ares was clearly mentioned in the petition. Therefore, the highly competent counsel entreats the Court to grant permission to the appellant to sell the schedule mentioned properties of the minor K.P.Arijun Pradeep's share to the respondents or their nominee for a sum of Rs.4,99,900/- as a total sale consideration.

10. On considering the current factual position of the case and arguments advanced by the highly competent counsel for the appellant, this Court is of the view that:-

(i) The appellant's son is aged about 12 years and after around 6 years, he would become a major. Now, the property to an extent of 0.72 1/2 acres comprised in Re-Survey Field No.146/2B situated at Kavundampalayam Village stands in the name of the minor. The father of the minor intends to sell the said land for a sum of Rs.4,99,900/-. If the said amount is deposited in a Nationalized Bank the deposited amount will double itself in about 7 1/2 years, but the value of the land will appreciate much more than what the bank can offer and the interest income at the time of payment is taxable.

(ii) The appellant's minor son may earn several lakhs in future but the subject matter of the land cannot be retained if sold.

(iii) Money is a movable property but land is an immovable property and hence more benefits will accrue from the immovable property than the movable property. Therefore, this choice or option should be considered.

(iv) The subject matter of the property would normally double its value within 5 years and the same amount, if deposited in a Bank will similarly gain but in only around 7 1/2 years and that will be subject to reduction of interest tax on the fixed deposit amount. Money could be gained in a proper way through several methods but if the land of the minor boy is sold it cannot be replaced in the future. As such, this is the crucial point of contention.

11. On considering the facts and circumstances of the case and submissions made by the highly competent counsel

for the appellant and this Court's view as mentioned above (i) to (iv), the above appeal is dismissed. There is no order as to costs.

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ASSISTANT REGISTRAR (CS-II)

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SUB-ASSISTANT REGISTRAR

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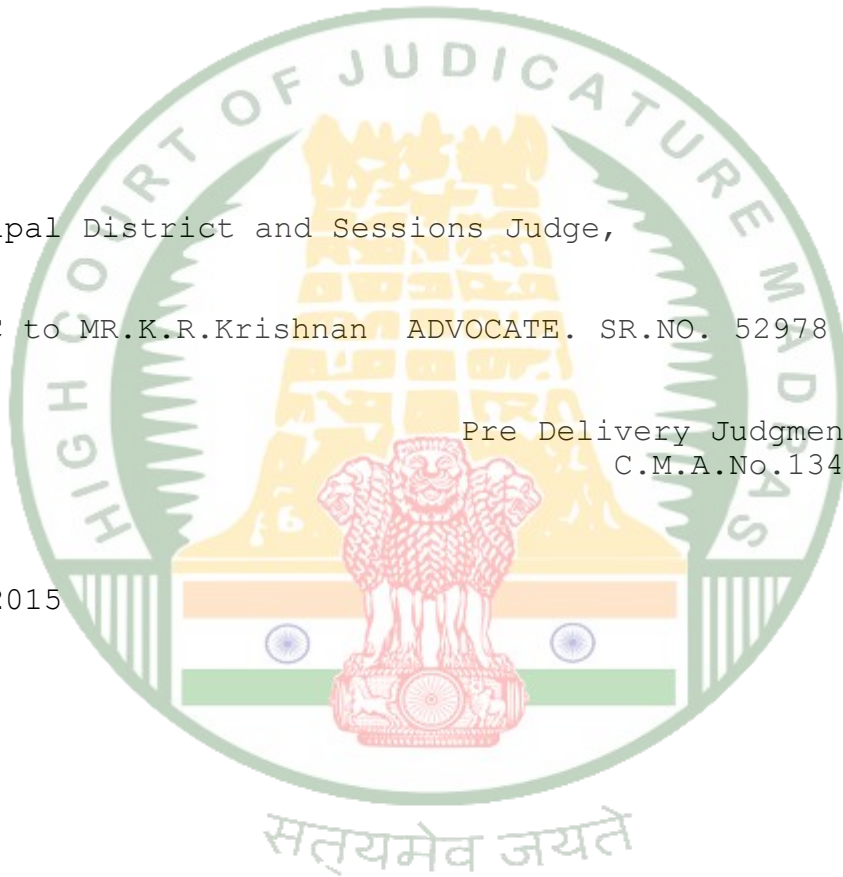
To

The Principal District and Sessions Judge,
Tiruppur.

+1 CC to MR.K.R.Krishnan ADVOCATE. SR.NO. 52978

Pre Delivery Judgment made in
C.M.A.No.1347 of 2015

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