

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 1610 of 2015

Mrs. Sridevi

..Appellant/Petitioner

Vs.

Mrs. Jamunarani

..Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed Under Section 47 of the Guardian and Wards Act as against the order dated 16.04.2015 passed in G.O.P. No. 62 of 2013 by the Principal District Court, Pondicherry.

For Appellant :: Mr.S. Manohar for
Mr.C. Sakthimanikandan

For Respondent :: Mr.R. Kumaravel

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred as against the dismissal of G.O.P. No.62 of 2013 by the Principal Sub Judge, Pondicherry, filed by the appellant herein seeking permission to sell 2/5th share of her minor children in the immovable property left behind by her husband Arutperunjothi @ Jothi.

2. According to the appellant, her husband Arutperunjothi, since deceased, got married to one Dhavamani and through her, a female child, by name, Kalaiselvi, was born on 31.07.1993, who has now attained majority. After the death of Dhavamani, the said Jothi got married to the appellant and through her, two children, namely, Vinothini and Muruges, were born on 26.11.2000 and 04.04.2004 respectively. Her husband Arutperunjothi @ Jothi died on 30.10.2012 leaving behind his mother Ponnammal, Kalaiselvi, the appellant and her two minor children as legal heirs to succeed to his estate. After the death of the said Jothi, the appellant, who is a house wife and unemployed was finding it difficult to meet the family expenditure including the educational expenses of the minor children. The deceased, during his life time, had purchased a property described hereunder by way of sale deed dated 26.05.1999:

"புதுச்சேரி ரிடி., உழவர்கரை சப்.ரிடி., உழவர்கரை நகராட்சி, உழவர்கரை வருவாய் கிராமத்தில், சு.ஞ. சூடி, 88.4.ருஇ ஊயனயளவசந சூடி, 410 ல் அடங்கிய 02 ஆர் 30 சாந்தியாருக்கு 04 குரி 05 வீசம் காலிமனை மட்டும்."

All the five legal heirs are entitled to equal share in the aforesaid property. Since the appellant was finding it difficult to meet the expenses of her family as well as the educational expenses of her minor children, her mother-in-law Ponnammal and Kalaiselvi, daughter of Arutperunjothi through his first wife, who has become major, came forward to dispose of each of their proportionate one-fifth undivided share in the aforesaid property. However, their share alone cannot be sold separately. Hence, the appellant decided to sell the aforesaid property to the respondent and hence, on 04.04.2013, she entered into a sale agreement with the respondent for a sale consideration of Rs.13,05,000/- and received an advance amount of Rs.7 lakhs. As each of the minor children of the appellant is entitled to one-fifth share in the property, on 08.04.2013, the appellant deposited the proportionate share of the minors in the advance amount received, namely, Rs.2,61,000/- each, in Indian Overseas Bank, Reddiarpalayam Branch, Puducherry in Deposit Nos. 123531 and 123532. Since necessary permission from the Court has to be obtained for selling two-fifths share of her minor children, as each one of them is entitled to one-fifth share in the property, the appellant filed G.O.P. No. 62 of 2013 before the Trial Court under Section 8(2) of Hindu Minority and Guardianship Act, 1956 read with Section 29(a) of Guardians and Wards Act, 1890 seeking permission. However, the said petition was dismissed holding that the appellant has not adduced any evidence before the Court, either oral or documentary to support her claim that she has got no other income and that she has no other movable or immovable property except the aforesaid property. Moreover, the Trial Court was also of the opinion that no proper explanation had been given as to under what circumstance, the sale agreement was entered into by the appellant, without getting prior permission from the Court. Hence, the present appeal.

3. However, a perusal of the records would reveal that the appellant was examined as P.W.1 on 03.04.2014 and as many as 9 documents namely, Exs.P1 to P9 were marked which include the agreement of sale executed between the appellant and respondent herein (Ex-P1); xerox copy of the sale deed dated 26.05.1999 through which the appellant's husband Arutperunjothi had purchased the property aforementioned (Ex-P3); certified copy of the judgment and decree in O.S. No. 2035 of 2013 dated 19.02.2013 declaring the appellant, her minor children, her mother-in-law and Kalaiselvi, who is Arutperunjothi's daughter through his first wife as the legal heirs of the deceased Arutperunjothi (Ex-P2); the original deposit receipts in the name of the minors (Exs-P5 and P6) and the valuation certificate issued by Taluk Office, Oulgaret, dated 06.08.2013 pertaining to the aforementioned property (Ex-P9). Ex-P2 makes it clear that the appellant, her minor children, Kalaiselvi, daughter of Arutperunjothi through his first wife and Ponnammal, mother-in-law of the appellant, are the legal heirs of Arutperunjothi. Only Vinothini and Murugesh, the children of the appellant are minors. When

evidence is available to show that the property was purchased by the appellant's husband; that the appellant, her children, Kalaiselvi and Ponnammal are the legal heirs of appellant's husband (Ex-P2) and the proportionate share of the minors in the advance amount has also been deposited in the name of the minors, evidenced by Exs-P5 and P6, it cannot be said that there is no evidence adduced by the appellant. Admittedly, she is a housewife and her husband also died leaving behind two minor children and it would be very difficult to take care of the minors. That apart, the interest of the minors is safeguarded by deposit of their share amount in Fixed Deposit. When such is the position, there may not be any problem to grant permission to sell away the property.

4. Therefore, the order of the Trial Court dated 16.04.2015 passed in G.O.P. No. 62 of 2013 is set aside and permission is granted to the appellant to sell two-fifths share of the minors, namely, Vinothini and Murugesh, in the property aforesaid, to the respondent on condition that the proportionate share amount of the minors in the total sale consideration shall be deposited in interest bearing Fixed Deposit in the name of the minors. The Civil Miscellaneous Appeal is ordered accordingly. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

nv

To

The Prl. District Court, Pondicherry.

+1 cc to M/s. C.SakthiManikandan, Advocate, sr.38504

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