IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1194 of 2016

Minor R.Lokeswaran
represented by his Natural Guardian
and Mother R.Sathiya ...Appellant

Versus

J.Ramesh ...Respondent

(sole respondent impleaded as a party respondent vide order of the court dated 14.07.2016 by TMJ, made in C.M.P. No.9428 of 2016 in C.M.A. No.1194/2016)

PRAYER: Civil Miscellaneous Appeal filed under Section 47 of Guardian Wards Act against the order dated 28.04.2016 made in H.M.G.O.P. No.3 of 2016 on the file of the Hon'ble Principal District Judge, Vellore, Vellore District.

For appellant : Mr.A.Ilayaperumal

For respondent : Mr.G.Sureshkumar

J U D G M E N T

The Civil Miscellaneous Appeal, filed by the appellant, is directed against the correctness of the order dated 28.04.2016 made in H.M.G.O.P. No.3 of 2016 on the file of the Hon'ble Principal District Judge, Vellore, Vellore District.

2.The appellant is the mother and natural guardian of the minor by name R.Lokeswaran and the respondent is the father of the minor son. It is the claim of the appellant that she and her minor son jointly purchased the schedule mentioned property as a vacant site from and out of the funds earned by the appellant's husband Ramesh under the sale deed dated 22.02.2006 for a sum of

Rs.1,36,500/-. However, the appellant's husband had already filed H.M.G.O.P. No.5 of 2009 to appoint him as guardian for the minor son Lokeswaran and to mortgage the said petition mentioned property. The said H.M.G.O.P. No.5 of 2009, filed by the father of the minor son, was allowed by the Trial Court and subsequently the father of the minor son was appointed as guardian and he was also permitted to mortgage the petition mentioned property in the name of Federal Bank, Vellore. After mortgaging the property, housing loan was obtained by the appellant's husband. Subsequently, it appears that the father of the minor son committed default by not paying the said loan amount. As a result, the Bank officials have taken action to recover the default loan amount against the property. At that stage, the appellant has filed a petition, seeking permission to sell the minor share in the property.

3.It is seen that the learned Trial Court has held that since the appellant's husband was already permitted to mortgage the petition mentioned property, the appellant is not entitled to again sell the property without cancelling the registered mortgage. Aggrieved over the same, she is before this Court.

4.Learned counsel appearing for the appellant would submit that the entire loan amount has been paid. In support of his contention, he has produced a certificate dated 14.09.2016, issued by the Federal Bank Branch Manager, Vellore, making it clear that the housing loan in the name of Mrs.Sathiya.R, loan account No.11927300002673 stands closed as on 30.12.2015 and a receipt dated 31.12.2015, issued by the Manager, Federal Bank, Vellore, shows that a sum of Rs.9,73,809/- has been fully paid.

5.Learned Trial Court has taken a view that the appellants' husband has already been appointed as Guardian and he was already permitted to mortgage the property in the name of Federal Bank, Vellore and obtained Housing loan and the appellant's husband defaulted the above loan and failed to pay the above said loan and thereafter the Bank Officials have taken action to recover the default loan amount by selling the property through auction under SARFAESI Act and therefore, the appellant cannot be permitted to sell the property, without cancelling the earlier mortgage.

6.In view of the fact that the respondent, who is the father of the minor son, appeared before this Court and submitted that the entire loan amount had already been paid and as on today there is no arrears of loan amount and considering the receipt dated 31.12.2015, issued by the Manager, Federal Bank, Vellore clearly shows that a sum of Rs.9,73,809/- has been fully paid with interest by the appellant and the mortgage also stood discharged and also considering the No Due Certificate dated 14.09.2016, issued by the Federal Bank Branch Manager, Vellore making it clear that the housing loan in the name of the appellant stands closed as on 30.12.2015, this Court has no impediment for granting permission to sell the property. Accordingly the impugned order is set aside and the appeal is allowed.

7.In view of C.M.P. No.9043 of 2016 in C.M.A. No.1194 of 2016, permitting the appellant to mark the Memorandum of deposit of Title Deeds dated 31.03.2010 and Receipt dated 31.1.2015 as exhibits in this appeal is allowed, the said Exhibits are marked on the side of the appellant as under:-

Ex.P.9	-	31.03.2010	Copy of Memorandum of deposit of Title Deeds
Ex.P10	-	31.12.2015	Copy of receipt issued by the Manager,Federal Bank Ltd., Vellore

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

vga

To

1.The Principal District Judge,
Vellore, Vellore District

2.The Section Officer, V.R.Section,
High Court, Madras.

1 CC to Mr.A.Ilayaperumal, Advocate, SR. 55008

C.M.A. No.1194 of 2016

MG (CO)
PSI 06/10/2016