

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.1216 of 2016

R.Rani

...Appellant/Petitioner

...vs...

Sri Kumar Raj

... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed against the Judgment and Decree passed in H.M.G.O.P.No.152 of 2015 dated 05.04.2016 on the file of the Principal District Court at Coimbatore.

For Appellant :Mr.MA.P.Thangavel

For Sole Respondent :Mr.R.Jayaprakash

JUDGMENT

Impugning the fair and decreetal order dated 05.04.2016 and made in the petition in H.M.G.O.P.No.152 of 2015 on the file of the learned Principal District Judge, Coimbatore, this Civil Miscellaneous Appeal has been filed under Section 47 of Guardians and Wards Act, 1890.

2. Heard, Mr.Ma.P.Thangavel, learned counsel for the appellant and Mr.R.Jayaprakash, learned counsel for the sole respondent.

3. On perusal of the records, it reveals that the appellant being the mother of her minor child by name B.R.Lokesh has filed a petition under Section 8(2) of the Hindu Minority and Guardianship Act before the Principal District Court, Coimbatore, seeking permission to sell the minor's share in the petition mentioned property for the welfare of the minor.

4. Despite the counter statement filed by the respondent, he has not raised any objection as he had proposed to purchase the property which is intended to be sold by the appellant/petitioner.

5. The Principal District Judge, Coimbatore, after

considering the rival submissions has found that the appellant/petitioner had not come forward to sell the minor share with good intention. He has also found that instead of preferring to sell the minor share, she could have come forward to sell her share. As per the learned Principal District Judge, Coimbatore, since the petitioner/appellant had not assigned any reason for selling the minor's share, he has dismissed the petition on 05.04.2016, which is impugned in the present Civil Miscellaneous Appeal.

6. Mr.Ma.P.Thangavel, learned counsel for the appellant would contend that 2848 sq.feet (or) 6 cent 234 sq.feet was allotted to the petitioner in a partition suit filed by the appellant along with her son in O.S.No.430 of 2013 as per "C" schedule property in the above said partition suit. As per the decree passed in the above said suit, the appellant/petitioner and her son are each entitled to an extent of 1424sq.feet.

7.Now, the appellant/petitioner for herself and on behalf of her minor son had entered into a registered sale agreement with the respondent herein to sell only an extent of 1506.8 sq.feet or 3 cent 200sq.feet for the welfare of the minor child, as well as for his education expenses.

8.Mr.Ma.P.Thangavel has also submitted that such an agreement of sale in respect of a major portion of her share i.e., an extent of 1424sq.feet was entered into between her and the respondent herein. He has therefore clarified that only a small extent of 108sq.feet alone in the minor's property was intended to be sold and therefore the remaining extent of 1316 out of 1424 sq.feet is lying in the name of minor son, and that the remaining portion was not at all subject to any part of the agreement of sale or any encumbrance. Further, he would submit that the appellant as well as the respondent had mutually agreed that the actual guideline value would be followed and a sum of Rs.3,45,600/- i.e., at the rate of Rs.3200 per sq.feet (108sq.feet X 3200), is fixed on sale consideration. Therefore, the appellant undertakes to deposit this amount in the scheme of fixed deposit in the name of minor in anyone of the nationalized bank till the minor attains majority and she might be permitted to withdraw the accrued interest thereon for the welfare of the minor as well as to meet out his educational expenses.

9.The learned counsel for the respondent has not raised any objection.

10.Considering the submissions made by Mr.Ma.P.Thangavel, learned counsel for the appellant, this Court is of the view that the proposal of the appellant to sell the share of the minor cannot be suspected and that, only for the

welfare of the minor as well as for his studies, she has sought the permission of the Court to sell the share of the minor and therefore, the act of the appellant/ petitioner being mother of the minor cannot be suspected as it is seemed to be in good faith. Hence, the appeal is allowed and the impugned order dated 05.04.2016 is set aside and the petition in H.M.G.O.P.No.152 of 2015 is allowed.

11.The appellant is permitted to sell the minor's share as afore stated for the sale price of Rs.3,45,600/- (Rs.3200 per sq.foot) as per the guideline value (108sq.feetXRs.3200/-=Rs.3,45,600/-). The sale consideration shall be invested in anyone of the Nationalized Bank in the name of minor untill he attains majority. The appellant being the mother is permitted to withdraw the accrued interest thereon once in three months and it shall be spent only for the welfare of minor as well as his educational expenses.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Coimbatore.

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C.M.A.No.1216 of 2016

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