

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1336 of 2015

Chidambaram

S/o late Perumal

.. Appellant/Petitioner

-vs-

1. V.Ravichandran @ Veerappan

2. Amirthammal, W/o Pandurangan

@ Durai Pandurangan ... Respondents/Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 47(e) of the Guardian and Wards Act, 1890, against the order dated 20.08.2014 made in G.O.P.No.32 of 2014 on the file of the Principal District Judge, Pondicherry.

For Appellant :: Mr.S.Sivashanmugam

For Respondents :: No appearance for R1 & R2

JUDGMENT

The appellant herein, having moved a petition under Section 8(2)(a) of the Hindu Minority and Guardianship Act, 1956 read with Section 29(a) of the Guardians and Wards Act, 1890 before the Court below seeking to appoint him as a guardian for the Minor Saimanohar, S/o Chidambaram, born on 23.5.99 and Minor Dhanajeyan, S/o Chidambaram, born on 9.10.2002 and also to grant permission to sell the petition mentioned property to the intending purchaser viz., the first respondent herein unsuccessfully, has come to this Court with the present appeal challenging the decretal order dated 20.8.2014 passed by the Court below dismissing the petition on the ground that the appellant had failed to prove his claim in respect of the minors' interest.

2. Learned counsel for the appellant has submitted that the petition mentioned property originally belonged to his father Mr.Pandurangan @ Durai Pandurangan, who married one Tmt.Amirthammal, the second respondent herein on 7.7.1955, in whose favour a life estate was created in respect of the petition mentioned property. Although Mr.Pandurangan had

purchased the property on 21.8.2002, within two years therefrom, he has gifted the same to his grandchildren, namely, Minor Saimanohar born on 23.5.99 and Minor Dhanajeyan born on 9.10.2002 through a gift deed dated 4.8.2004 with the life estate to be enjoyed by his wife Mrs.Amirthammal, who is the mother of the appellant. But unfortunately the said Pandurangan died on 30.4.2009. After the death of his father, the appellant has entered into a sale agreement on 19.11.2012 for selling the property gifted to the minors in favour of the first respondent. Subsequently, on the ground that his mother relinquished her life interest in respect of the petition mentioned property through a release deed dated 7.5.2013, the appellant had moved a petition in G.O.P.No.32 of 2014 on the file of the learned Principal District Judge, Pondicherry seeking (a) to appoint him as a guardian for the Minor Saimanohar born on 23.5.99 and Minor Dhanajeyan born on 9.10.2002; (b) grant permission to sell the petition mentioned property to the intending purchaser viz., the first respondent herein for not less than Rs.5,00,000/- and to utilize the balance sale consideration of Rs.1,00,000/- to meet out the family expenses and educational expenses for the minor sons. The Court below, considering the fact that the appellant without obtaining the prior permission from the Court ought not to have entered into a sale agreement at all with the first respondent on 19.11.2012 for selling the property, taking note of the paramount interest/welfare of the minor children, namely, Minor Saimanohar and Minor Dhanajeyan, as the appellant had miserably failed to mention even his avocation and also the necessity to sell the petition mentioned property on which the children of the appellant Minor Saimanohar and Minor Dhanajeyan are having limited right with the right of life estate in favour of his mother, has turned down the request of the appellant to appoint him as the guardian of the minors and also to sell the petition mentioned property. The learned counsel further submitted that the Court below has wrongly given a finding that even for entering into a sale agreement for sale of the petition mentioned property, prior permission of the Court should have been obtained, which is absolutely unwarranted. As a matter of fact, to show his bona fides that there is going to be a sale of the property belonging to the minors, a copy of the sale agreement entered into with the first respondent dated 19.11.2012 has been produced before the Court below. Therefore the order of the Court below is to be interfered with, he pleaded.

3. This Court is unable to agree with the contentions of the learned counsel for the appellant. When the appellant's father, late Pandurangan had purchased the petition mentioned property on 21.8.2002, he has executed a gift deed with regard to the said property in favour of his grandchildren and in the said settlement deed/gift deed dated 4.8.2004, late Pandurangan, the

father of the appellant, has also reserved the right of life estate in favour of his wife Mrs.Amirthammal, the second respondent herein. No doubt, the life estate owner Mrs.Amirthammal has executed a release deed on 7.5.2013 releasing her right over the property. Since the release deed is dated 7.5.2013, which is much after the agreement of sale entered into on 19.11.2012 with the first respondent, this Court is of the considered opinion that after the execution of the sale agreement only, the release deed has been executed on 7.5.2013. Hence this Court is not inclined to agree with the case of the appellant that there was a valid release deed executed by his mother on her own volition. Secondly, nowhere the appellant has mentioned about the nature of property, whether it is agricultural land or house site. Thirdly, as rightly held by the Court below, the appellant has not mentioned anywhere about his avocation. Lastly, his necessity to alienate the property by way of sale has not been satisfactorily explained. For all these reasons, this Court is not inclined to interfere with the order passed by the Court below. Accordingly, the civil miscellaneous appeal fails and it is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss

To

1. The Principal District Judge
Pondicherry

+1cc to Mr.S. Sivashanmum, Advocate, S.R.No.65073

rsi(CO)
bb(27/12/2016)

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