IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.2694 of 2016

V.Annapoorani ... Appellant/Petitioner

vs.

1.K.Varadharajan,
2.C.Chandrasekaran ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Order 43 Rule 1 of CPC., against the Fair and Decretal order dated 04.08.2016 passed in H.M.G.O.P No. 122 of 2015 on the file of the District Court, Tiruppur, Tiruppur District.

For Appellant : Mr.C.Prakasam

For Respondents : Ms.T.Karthiga for R1.

Mr.T.E.Badrinathan for R2.

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the order dated 04.08.2016, passed by the learned District Judge, Tiruppur in H.M.G.O.P. No.122/2015.

2.This appeal is filed by the mother of the minor child V.Jawahar. The appellant had filed an application under Section 8 of the Hindu Minority and Guardianship Act seeking permission to sell the property of the minor situate at Kangeyam for consideration of Rs. 21,50,000/- to the second respondent. The first respondent is the father of the minor child. It is seen from the records that the property originally belonged to the father of the minor under two sale deeds dated 02.11.1998 and 23.03.2009. By a settlement deed dated 12.08.2013, the father, viz., the first respondent had executed a settlement deed in favour of the minor child. Permission was sought for by the mother before the Principal District Court, Tiruppur, for sale of the property for the educational expenses of the minor child, who was then studying in X standard at Sainik School, Amaravathi Nagar, Udumalaipet. The learned District Judge has dismissed the petition on the ground that it is not shown that the first respondent, the father of the minor is not able to maintain the minor child and also that the minor was then aged 15 years and will attain majority in the next three years and therefore, it is unnecessary to sell the property of the minor. Aggrieved by the said order, the mother has filed this appeal.

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3.I have heard Mr.C.Prakasam, learned counsel appearing for the appellant, Ms.L.Karthiga, learned counsel appearing for the first respondent and Mr.T.R.Badrinathan, learned counsel appearing for the second respondent.

4.Considering the fact that the property originally belong to the father of the minor child and later settled in favour of his son by settlement deed on 12.08.2013. The mother of the minor child seeks permission to sell the property inorder to provide good education for the minor child. I am of the considered view that the learned District Judge was not right in dismissing the application. As the value of the property was appreciated because of the lapse of two years from the date of agreement, I had required the second respondent, viz., the purchaser to pay enhanced consideration. Accordingly, the purchaser has come forward to pay Rs.25,00,000/- as consideration for sale. Therefore, the appellant would be permitted to sell the property for a consideration of Rs.25,00,000/- instead of Rs.21,50,000/- as agreed to in the agreement dated 10.08.2015.

5.In the result, this appeal is allowed. The order of the learned Principal District Judge, Tirupur is set aside and the appellant is permitted to sell the property as per the agreement dated 10.08.2015 to the second respondent for a consideration of Rs. 25,00,000/-. The second respondent shall deposit a sum of Rs.24,75,000/- (Rs.25,00,000 less Rs.25,000/-already paid as advance) as fixed deposit in any one of the Nationalised Bank in Kangeyam and produce the fixed deposit receipt before the District Court, Kangeyam.

6.The appellant will be entitled to withdraw the interest from the Fixed Deposit once in 6 months to enable her to spend the same for the educational expenses of the minor child. The amount thus kept in fixed deposit should be paid over to the minor once he attains the age of majority.

Sd/-
Assistant Registrar(CS)

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//True Copy//

Sub Assistant Registrar

rm/ggi
To
The District Judge, Tiruppur.
+ cc to M/s. C. Prakasam, Advocate SR.66084

C.M.A.No.2694 of 2016

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