

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.2386 of 2017

and

C.M.P.No.12848 of 2017

Arun Kumar Swaminathan

..Petitioner

.. Vs..

Nil

.. Respondent

PRAYER:- Appeal filed under Order 41 Rule 1 of C.P.C., against the Order of decreetal order passed in H.M.G.O.P.No.249 of 2016 dated 29.04.2017 on the file of the Principal District Judge, Thiruvallur and set aside the portion of the order namely Class 4 and 5 of Decree.

For Appellant : Mr.N.C.Ashok Kumar
for Mr.C.Jagadish

JUDGEMENT

This appeal is directed against an order of the Principal District Judge, Thiruvallur made in H.M.G.O.P.No.249 of 2016, granting permission for sale of the property, subject to the condition that the appellant should deposit a sum of Rs.17,55,000/- [Rupees Seventeen Lakhs Fifty Five Thousand Only] being the 1/4th share of the minor in the total consideration of Rs.70,20,000/- [Seventy lakhs Twenty Thousand Only]. The appellant, who is the father of the minor child is aggrieved in as much as the learned District Judge while calculating the 1/4th share of the minor has not taken into account, the housing loan repaid by the appellant, the capital gains tax paid by him and the expenses incurred in the process of sale.

2. According to the petitioner, the amount realised after the repayment of the housing loan of Rs.21,20,783/- [Rupees Twenty One Lakhs Twenty Thousand Seven Hundred and Eighty Three Only], capital gains tax of Rs.2,70,200/- [Rupees Two Lakhs Seventy Thousand Two Hundred Only] and Rs.70,200/- [Rupees Seventy Thousand Two Hundred Only] towards other charges is only Rs.45,58,817/- [Rupees Forty Five Lakhs Fifty Eight

Thousand Eight Hundred and Seventeen Only]. Therefore, the learned District Judge should have directed to deposit only 1/4th share of the said sum of Rs.45,58,817/- [Rupees Forty Five Lakhs Fifty Eight Thousand Eight Hundred and Seventeen Only] i.e., Rs.11,39,704/- [Rupees Eleven thousand Thirty Nine Thousand Seven Hundred and Four Only] towards the share of the minor.

3. The appellant has also produced the discharge receipt to show that he has repaid the housing loan of a sum of Rs.21,20,783/- [Rupees Twenty One Lakhs Twenty Thousand Seven Hundred and Eighty Three Only] and the tax challan showing the payment of Rs.2,70,200/- [Rupees Two Lakhs Seventy Thousand Two Hundred Only] towards capital gains tax. Therefore, the order of the learned District Judge, Tiruvallur, suffers from an error and it has to be suitably modified. Hence, the appeal is partly allowed and the direction issued by the learned District Judge, Tiruvallur, to the petitioner to deposit a sum of Rs.17,55,000/- [Rupees Seventeen Lakhs Fifty Five Thousand Only] in the name of the minor is modified and there will be a direction to deposit a sum of Rs. Rs.11,40,000/- [Rupees Eleven Lakhs Forty Thousand Only] instead of Rs.17,55,000/- [Rupees Seventeen Lakhs Fifty Five Thousand Only].

4. The appellant is granted eight weeks time from today to deposit the said sum of Rs.11,40,000/- [Rupees Eleven Lakhs Forty Thousand Only] in a fixed deposit in the name of the minor in anyone of the Nationalized Banks in the City for a period of 10 years and produce the fixed deposit receipt along with the copy of the sale deed before the District Court, Tiruvallur. This will be in compliance with the order of the learned District Judge, Tiruvallur. No Costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KP

To

The Principal District Judge,
Tiruvallur.

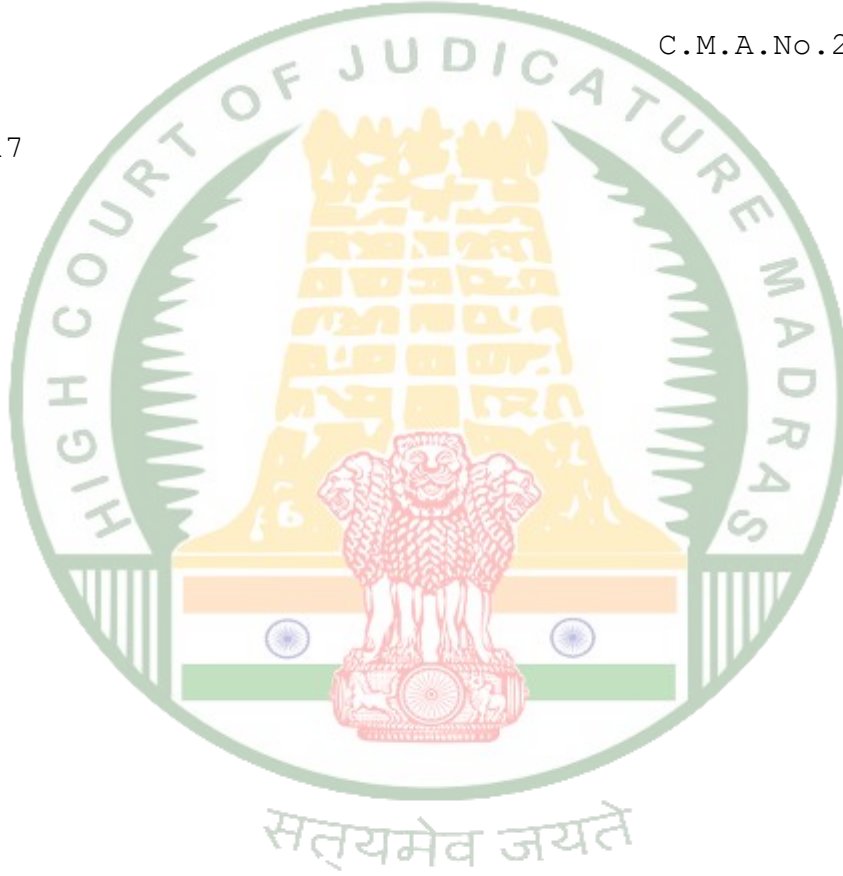
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1. The Sub Assistant Registrar,
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+lcc to Mr.C.Jagadish, Advocate, S.R.No.57258

C.M.A.No.2386 of 2017

CP (CO)
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