

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A No.756 of 2016

JUDGMENT: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

Challenge in this CMA at the instance of petitioner is the order dated 25.07.2016 in G.O.P.No.182 of 2016 whereunder the learned V Additional District and Sessions Judge, Nellore dismissed the petition filed by the petitioner represented by his father under Sections 29 and 31 of Guardian and Wards Act, 1890 and under Sections 8 and 13 of Hindu Minority and Guardianship Act, 1956.

2a) The petitioner's case is that he is the minor son of Nemallapudi Srinivasulu Reddy. His grand-father viz. late Lacha Reddy purchased the petition schedule property under registered sale deed dated 20.07.1971 and during his life time he executed a registered Will deed dated 08.07.2002 and bequeathed the petition schedule property in favour of his grand son, who is the petitioner herein. Lacha Reddy died on 14.05.2011 and after his death the Will became operational and the minor petitioner became owner of the petition schedule property.

b) The further case of the petitioner is that the petitioner and his father considered that there is no benefit in retaining the petition schedule property since it is an old building which would not fetch any income during minority of the petitioner. Hence, they proposed to sell

the said property and keep the sale proceeds in fixed deposit in the name of minor petitioner till he attains majority. The father of the petitioner has no other source of income for looking after the welfare of the children. Hence, the petitioner represented by his father filed G.O.P.No.182 of 2016 seeking permission of the Court to sell the petition schedule property. None was shown as respondents.

c) During enquiry PWs.1 and 2 were examined and Exs.A1 to A6 were marked on behalf of petitioner.

d) PW1 is the father of the minor petitioner and PW2 is the third party who proposed to purchase the petition schedule property of the minor for Rs.48 lakhs.

e) A perusal of the impugned order shows that though trial Court having regard to the oral and documentary evidence agreed that the minor became the owner of the property in view of Ex.A2—Will and subsequent death of Lacha Reddy. However, observed that as per the recital in Ex.A2—Will certain conditions were imposed therein to the effect that the wife of late Lacha Reddy i.e. Smt. Nemallapudi Vasanthamma shall act as guardian of the petitioner and she got every right to draw income from the petition schedule property to maintain the petitioner. She would handover the petition schedule property after he attained majority and during the minority of the petitioner she had no right to alienate the property. Further, the other legal heirs of Lacha Reddy have no right over petition schedule property and in view of aforesaid recital, Nemallapudi Vasanthamma was a necessary party but

she was not added as party to the petition and the father of the minor petitioner was not appointed as guardian and he was not given any kind of right over the petition schedule property to deal with the same. The father of the minor petitioner has suppressed material facts and filed the petition and therefore, the petition was not maintainable and accordingly dismissed the same.

Hence, the CMA.

3) In the CMA the petitioner filed CMP No.1538 of 2016 under Order XLI Rule 27 CPC to receive certain documents as additional evidence on behalf of appellant/petitioner and the said petition is allowed and the additional documents are marked as Ex.A7 to A10. Ex.A7 is the death certificate dated 18.02.2006 of Nemallapudi Vasanthamma; Ex.A8 is the certificate dated 14.03.2016 issued by Sri Chaitanya Techno School, Bengaluru; Ex.A9 is the copy of SSC marks certificate issued by Sri Chaitanya Techno School, Bengaluru and A10 is the Aadhaar Card of petitioner's father—Nemallapudi Sreenivasulu Reddy.

4) Heard learned counsel for appellant/petitioner.

5) He would submit that grand-mother of the minor petitioner viz. Nemallapudi Vasanthamma died way back on 01.02.2006, therefore, as observed by the trial Court, the question of said lady acting as guardian of the minor boy does not arise and therefore, she was not added as a party in the GOP. However, the trial Court dismissed the petition on an

erroneous observation that grand-mother of the petitioner alone was the guardian of the minor boy and she was not added as a party by suppressing the material facts. Learned counsel argued that the minor petitioner has completed SSC and he has to pursue his higher studies and petitioner's father has no other source of income to expend on his education and therefore permission be accorded.

6a) A perusal of Ex.A7—death certificate issued by the Municipal Corporation, Nellore would show that Smt. Nemallapudi Vasanthamma died on 01.02.2006. The guardian petition was filed in the year 2016. Therefore, as rightly submitted by the petitioner's counsel, the question of the old lady acting as guardian of her grand-son and showing her as party in the permission petition does not arise. Since grand-mother of the minor boy died, non-adding her is not a consequence.

b) Coming to the request of the petitioner, in a case of this nature paramount interest and welfare of the minor will be prime consideration. Exs.A8 and A9 would show that the minor petitioner has completed his SSC in Sri Chaitanya Techno School, Bengaluru and necessarily he has to pursue his higher education. According to the petitioner's father, he has no other source of income to look after the welfare of the minor boy and further, the petition schedule property is an old house and not fetching any income. Admittedly, the minor petitioner is now under the care and custody of his father who represents him in the petition. Being father, he can be believed to look after the interest of the minor boy and

admittedly there is no conflict of interest between them. Having regard to the above, in our considered view, the CMA can be allowed.

7) In the result, this CMA is allowed by setting aside the order dated 25.07.2016 in GOP No.182 of 2016 passed by the V Additional District and Sessions Judge, Nellore and permission is accorded to the father of the minor petitioner to alienate the petition schedule property to the third parties within three months from the date of this order and he is directed to deposit the sale proceeds in Fixed Deposit in any Nationalized Bank at Nellore in the name of minor petitioner till he attains majority and submit the FD receipt to the trial Court for information. The father of the minor petitioner is entitled to spend the interest for the welfare of the minor boy.

As a sequel, Miscellaneous Petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J

Date: .04.2017
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Appendix of Evidence

For Appellant/petitioner

Ex.A7 : Original death certificate of Nemallapudi Vasanthamma dated 18.02.2006
Ex.A8 : Certificate dated 14.03.2016 issued by Sri Chaitanya Techno School, Bengaluru
Ex.A9 : Copy of SSC marks certificate issued by Sri Chaitanya Techno School, Bengaluru
Ex.A10: Aadhaar Card of petitioner's father—Nemallapudi Sreenivasulu Reddy

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J