

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.No.1622 of 2018

1. Ramesh
2. Elumalai
3. Chitra

... Appellants/Petitioner

verses

Nil

...Respondent

Prayer : The Civil Miscellaneous Appeal is filed under Section 8 (5) of Hindu Minority and Guardianship Act, praying to set aside the Fair and Decretal Order in H.M.G.O.P.No.18 of 2016 dated 11.04.2017, on the file of the Principal District & Sessions Court at Thiruvannamalai and pleased to permit the appellants to sell the schedule properties in the interest of Minors.

For Appellants : Mr.P.Vasanth

JUDGMENT

The relief sought for in the Civil Miscellaneous Appeal is to set aside the Fair and Decretal Order in H.M.G.O.P.No.18 of 2016 dated 11.04.2017, on the file of the learned Principal District & Sessions Court, Thiruvannamalai and pleased to permit the appellants to sell the schedule properties in the interest of Minors.

2. Heard the learned counsel for the appellants and perused the materials on record.

3. It is the case of the appellants that the 1st and 3rd appellants are father and mother of the minor children Harikrishnan and Rameh. 2nd appellant is the grandfather of the minors. The minors Harikrishnan and Rajesh were born on 19.08.2003 and 27.03.2005 respectively and both of them are studying at R.V.Higher Secondary School, Sendrayanpatti, Naripalli, Harur Taluk, Dharmapuri District. The schedule mentioned properties in item - I and II originally belonged to the grandmother of the aforesaid minors Mrs.Saroja. Out of love and affection and for their benefits, she had executed a settlement Deed in favour of the Minors on 13.03.2007 and the same was registered as documents No.472/2007. The schedule

mentioned property in item-III was purchased in the name of minors on 17.07.2010 by the 2nd appellant and the same was registered as document No.3100/2013. Now, the minors are under the care and custody of the appellants.

4. The learned counsel for the appellants would submit that the appellants being agriculturists, so far they were able to educate their children in a good institution and spent the entire income derived from agriculture for the education of their children. Due to heavy drought and other unexpected medical expenses of the appellants they are unable to meet out the educational expenses of the minors. Therefore, they filed a petition in H.M.G.O.P.No.18 of 2016 before the Principal District and Sessions Court, Thiruvannamalai, seeking permission to sell the properties purchased in the name of minors for their education purpose. But without looking into the bonafide of the need, the Court below had dismissed the petition.

5. Aggrieved against the order dated 11.04.2017, the appellants are before this Court by way of filing this present Civil Miscellaneous Appeal.

6. Heard the learned counsel for the appellants and perused the materials available on record.

7. On a perusal of records, it is seen that the appellants had bonafidely approached the Court below seeking the leave to sell the property purchased in the name of minors for the welfare and interest of the minors. It is the wish and desire of the parents to educate their children in good institution and the same cannot be deprived off by the order of the Court below on mere surmises. The education of the minor children is paramount than the property.

8. Considering the facts and circumstances of the case, this Court is inclined to allow this Civil Miscellaneous Appeal and pass the following order:

a) This Civil Miscellaneous Appeal is allowed and the fair and decretal order made in H.M.G.O.P.No.18 of 2016 dated 11.04.2017 is hereby set aside.

b) The learned The Principal District & Sessions Judge, Thiruvannamalai is directed to bring the schedule mentioned properties in item Nos.I to III in Public Auction sale. The sale amount should be deposited in a fixed deposit in any one of the nationalized Bank in the name of the minors.

c) Thereafter the Principal District & Sessions Court, Thiruvannamalai is directed to permit the appellants who are the

guardians of minors to withdraw a sum of Rs.1,00,000/- (for each minor) on behalf of two minors per year from the sale amount with future income of the interest.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

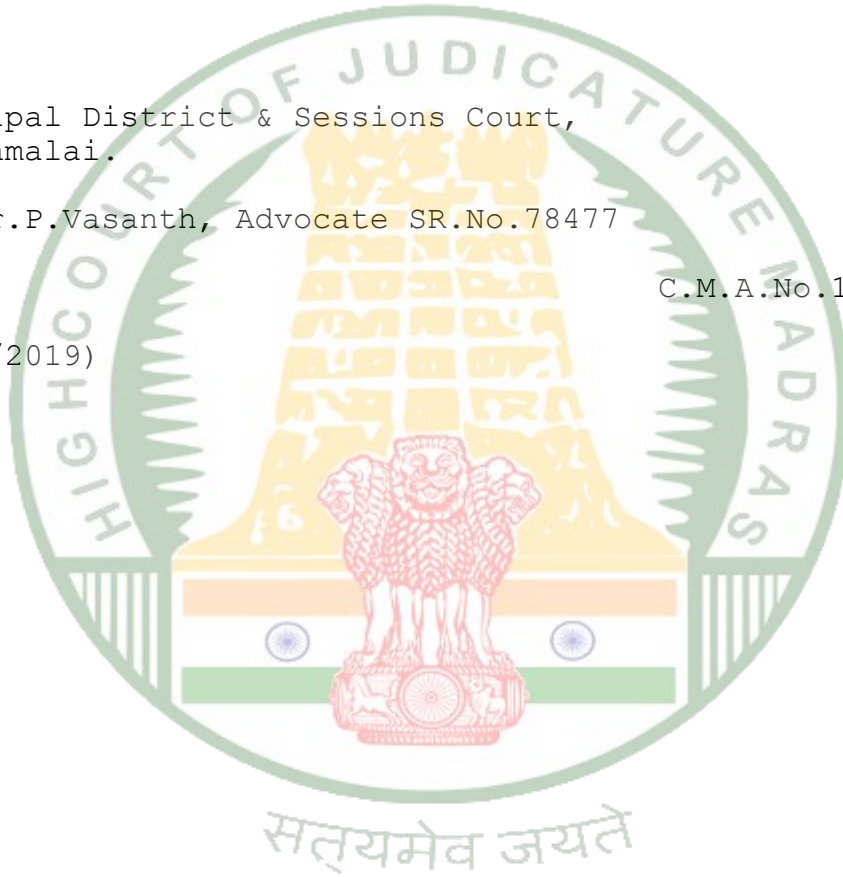
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To
The Principal District & Sessions Court,
Thiruvannamalai.

+1cc to Mr.P.Vasanth, Advocate SR.No.78477

C.M.A.No.1622 of 2018

SJ(CO)
GMY(20/02/2019)



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