



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2018

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CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

C.M.A(MD)No.1238 of 2017

P.Muthusamy : Appellant / Petitioner

Vs.

NIL : Respondent / Respondent

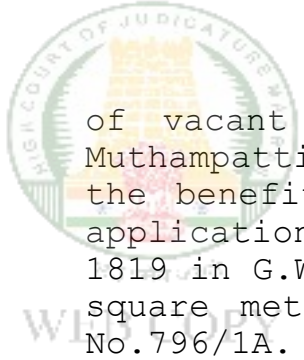
PRAYER: Appeal is filed under Section 47 of the Guardian and Wards Act, against the fair and decreetal order, dated 24.10.2017 passed in G.W.O.P.No.11 of 2017 on the file of the Principal District Judge of Karur.

For Petitioner : Mr.M.P.Senthil

ORDER

This Civil Miscellaneous Appeal has been filed praying to set aside the fair and decreetal order, dated 24.10.2017 passed in G.W.O.P.No.11 of 2017, by the learned Principal District Judge, Karur.

2. The petitioner herein is the father and natural guardian of his two minor sons viz., Sivasubramanian born on 12.06.2000 and Sundaramurty born on 11.12.2002, thorough his wife Ponmani. The property in Survey No.796/1A to an extent of Hectares 0.42.0 (Acre 1.04) with a well, 2HP Motor Pump Set and its Service Connection No.59, and also a terrace house and a tiled house with a Service Connection No.26 is one of the 33 items of property, which was settled by the grandfather of the said minors appointing their father / petitioner, as guardian, under a registered Settlement Deed, dated 25.11.2017, marked as Ex.P3. Birth Certificate of the said minor sons / petitioners are marked as Ex.P1 and P3 respectively. The said Settlement Deed was acted upon and the petitioner in his capacity as the guardian of the minor son is in enjoyment of the property. Since the petitioner is now facing financial crisis and is unable to meet the educational expenses, the petitioner has proposed to lease out an extent of 2550 Square Meters



of vacant land specified with boundaries to one Katturaja of Muthampatti Village for a monthly rent which will be utilized for the benefit of the minor sons. Hence, the petitioners filed an application under the provisions of the Guardians and Wards Act, 1819 in G.W.O.P.No.11 of 2017, seeking permission to lease out 2550 square meters of vacant land with specified boundaries in Survey No.796/1A.

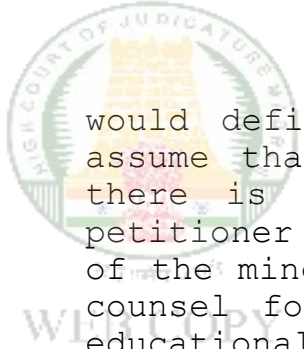
3. The learned Principal District Judge, Karur, dismissed the said application after hearing in his order dated 24.10.2017 stating that much extent of land has been settled in favour of minor sons under Ex.P3, Settlement Deed and the petitioner could raise income engaging in agricultural to meet meager amount of Rs.1000/- per month towards the educational expenses of the minors and if the lease is created, it will bind the minors for a long time and it will be difficult for them to get back the land and the alleged requirements of the petitioner does not seem to be a bonafide one. Aggrieved by the order of dismissal, the petitioner has preferred the present Civil Miscellaneous Appeal before this Court, to set aside the impugned order.

4. Perused the materials on record. Heard and considered the arguments advanced by the counsel for the appellant.

5. Admittedly, the property to be leased out by the petitioner belongs to minor sons of the petitioner. The minor sons are under the care and custody of the petitioner. The petitioner is the natural guardian as well as appointed as guardian in Ex.P3 Settlement Deed itself. The petitioner entered a lease agreement on behalf of his minor sons, as guardian, with one Katturaja for a period of 29 years and 11 months and the lessee has agreed to pay the monthly rent of Rs.7500/- at first instance and after the five years, the rent would be Rs.12500/-, and after five years the rent would be Rs.17,500/- and after the five years, the monthly rent would be Rs.22,500/-. The rent would be enhanced at the rate of Rs.5000/- for every years. Only 2550 Square Meters land alone is to be leased out, which is a vacant land.

6. The purpose for which the land in question is proposed to be leased out is for a business of the lessee and an affidavit is also filed by the petitioner before this Court that the lessee is ready to deposit a sum of Rs.5,00,000/-, to the credit of G.W.O.P.No.11 of 2017 before the trial Court, which could be invested for the benefit of the minors. The petitioner has also agreed in his undertaking affidavit that the permission is restricted till the attainment of majority of the minors and the minors, after attaining majority, could ratify the lease now granted. Even express lease could be entered thereafter.

7. This Court is also of the view that the proposed lease on the basis of the undertaking affidavit of the petitioner and the lease agreement is intended for the benefit of the minors and also



would definitely be in the interest of the minors. No one can assume that the same shall not be beneficiary to the minors and there is no scope for holding that the proposed lease by the petitioner with one Kattturaja would be detrimental to the interest of the minors. The minors are bound to derive more benefits. The counsel for the petitioner has not chosen to file in respect of educational expenses incurred by minors' education.

8. Considering the above facts and circumstances of the case and also the proposed lease agreement and the undertaking affidavit filed by the petitioner before this Court, this Court is inclined to set aside the impugned order passed by the learned Principal District Judge, Karur.

9. In the result, this Civil Miscellaneous Appeal is allowed and the impugned order, dated 24.10.2017 passed in G.W.O.P.No.11 of 2017, by the learned Principal District Judge, Karur, is set aside. This Court grants permission to the petitioner for the proposed lease with one Kattturaja S/o. Mookkan, residing at Muthampati, Pothuravuthanpatti Post, Krishnarayapuram Taluk, Karur District (Aadhar No.9578 0190 8683] on the following conditions:-

i. A sum of Rs.5,00,000/- (Rupees Five Lakh Only) should be deposited by the lessee to the credit of G.W.O.P.No.11 of 2017, on the file of the Principal District Court, Karur, within a period of 10 days from the date of receipt of a copy of this order.

ii. Upon such deposit, copy of the registered lease deed attested by the petitioner and the lessee should be filed into the said Court within the above stipulated period.

iii. The trial Court should invest the amount of Rs.5,00,000/- and its interest in a Nationalized Bank for the benefit of the minor sons for a period of two years at the first instance and thereafter renewed for every one year, until further orders from this Court.

iv. After attainment of majority of the minors, the ratification of release deed should be obtained from the sons, who attained the majority and the copy of the ratification deed or fresh lease deed should be filed before the said trial Court and

v. If the appellant / petitioner fails to comply the conditions (i) and (ii) within the stipulated time, the aforesaid permission would be deemed to be revoked

Sd/-

Assistant Registrar(C.O)

/True Copy/



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1.The Principal District Judge,
Karur.

2.The Record Keeper, (2 copies)
Vernacular Section
Madurai Bench of Madras High Court.
Madurai.

+One cc to Mr.M.P.Senthil, Advocate, SR.No.43393

RL/5C/4P/KK/SAR4/1/2/2018

C.M.A (MD) No.1238 of 2017

Dated:-
23.01.2018