

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.68 of 2018

Ponnammal

... Appellant

Vs

NIL

... Respondent

Prayer :- Civil Miscellaneous Appeal filed under Section 47 of Guardians and Wards Act, 1890, to set aside the order dated 19.8.2017 on the file of the Principal District Judge, Namakkal, made in G.O.P.No.16/2016 and allow the above appeal.

For Appellant : Mr.S.Kalyanaraman

JUDGMENT

This appeal is filed for appointing the petitioner as the guardian of the minors and also for leave of the Court for the sale of minor share in a property having an extent of 83.25 cents in Survey No.12/3-C of Chinnamudalaipatti Village, Namakkal Taluk and a fractional right over a Well.

2. The shorts facts are :

- The petitioner was married to one Karuppannan. They have Raja, their only son, and Kalaiarasi and Yogalakshmi, their two daughters. Yogalakshmi was married to Madheswaran and their children are Swetha and Ramesh, the minors involved in this case.
- Yogalakshmi died on 08.11.2006 and her husband Madheswaran died on 22.01.2008, and consequently the minors Swetha and Ramesh have come under the custody and care of their maternal grandmother, the petitioner herein.
- This issue apart, Karuppannan, the maternal grandfather of the minors had about 83¼ cents landed property. He died intestate on 03.01.2010, whereinafter the property devolved on his heirs equally. In other words, both the minor children would be jointly entitled to 20.81 cents in the entire property.

- Since the minors have lost their parents, they are now under the care of maternal grandmother, the petitioner herein. Hence she prays that she be appointed as the guardian of the minors. Further to provide for their upkeep, maintenance, education, the petitioner seeks leave of the Court to sell the share of the minors in the suit property.
- In fact, the petitioner, her son Raja and her daughter Kalaiarasi had jointly entered into a sale agreement dated 07.10.2015 for the sale of the aforesaid property for a total consideration of Rs.16,94,000/-.

3. On this set of facts, the petitioner had approached the District Court with the twin prayers stated above. The District Court, has rejected the petition on the following two grounds :

- a) The petitioner had not impleaded her son Raja and her daughter Kalaiarasi in the petition.
- b) That under the said agreement Rs.50,000/- was received, but it was not accounted.

4. The learned counsel of the submitted that the minors have no other means to sustain themselves and the only way they could be supported effectively is by raising certain funds from and out of the sale proceeds, which may fall in their share. He also circulated a copy of the Adangal for the property. It shows no yield is harvested.

5. The point before the Court is about appointing the petitioner as the guardian of the minors and to ascertain, if there exists real and bonafide necessity for the petitioner to sell the property. Unfortunately, the focus of the Court below was deflected towards two grounds enumerated above in paragraph No.3.

6. The Court is not always expected to weigh the necessity to sell the property of the minors meticulously, and it can only undertake a broad exercise for the purpose. Since no other property is shown to exist, and since the minors have lost their parents, necessarily some funds would still be required to support their upkeep.

7. Now the petitioner, Ponnammal and other heirs of Karuppannan, namely Raja and Kalaiarasi have filed separate affidavits declaring before this Court that they would deposit Rs.1,50,000/- each to the children from and out of the sale proceeds to show the expression of their love and affection for the children. This cannot be lost by the sight of by this Court. If the sale goes through as per the sale agreement, the minors would be entitled to Rs.4,23,500/-. Now adding another

Rs.4,50,000/- which the other sharers have consented to give to the children, the total share would be Rs.8,73,500/-.

8. The learned counsel for the appellant agrees that Rs.9,00,000/- could be deposited in the names of the minor children.

9. In conclusion this Court allows the appeal, set aside the Order of the trial Court in G.O.P.No.16/2016, appoints the petitioner as the guardian of the minors Swetha and Ramesh, and grants the petitioner the leave to sell minors' share in the property, subject to the condition that a sum of Rs.9,00,000/- (Rupees nine lakhs only) is deposited in the District Court which shall invest the money in a fixed deposit in any one of the Nationalised Bank. On such deposit, the interest amount accrued therein is directed to be withdrawn every quarterly for upkeep of the minor children by the petitioner. The petitioner is directed to file a statement of accounts every six months before the District Court. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ds

To:

1. The Principal District Court
Namakkal.
2. The Section Officer
V.R. Section, High Court, Madras.

+1 cc to M/s.S.Kalyanaraman, Advocate, S.R.No.51066

C.M.A.No.68 of 2018

RR(CO)
SSM(10/09/2019).

WEB COPY