

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2020

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THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRP.NOS.2780 & 2781 OF 2010

1. Backiyam ..Petitioner in CRP.No.2780 of 2010
2. Minor Jayaprakash
@ Senthil Kumar. ..Petitioner in CRP.No.2781 of 2010

Vs

1. Ayyavoo @ Venkitachalam
2. Prabha
3. Venus .. Respondents in both CRPs
(Respondents 2 & 3 were impleaded
vide order of this Court dated 3.1.2020.)

Prayer in CRP.No.2780 of 2010:

Civil Revision Petition is filed under Article 115 of CPC to set aside the Fair & Final order passed in R.E.A.No. 49 of 2004 in REP.No. 16 of 1993 in O.S.No. 463 of 1988 on the file of the District Munsif Court, Sankagiri dated 04.11.2004.

Prayer in CRP.No.2781 of 2010:

Civil Revision Petition is filed under Article 115 of CPC to set aside the Fair & Final order passed in R.E.A.No. 50 of 2004 in REP.No. 16 of 1993 in O.S.No. 463 of 1988 on the file of the District Munsif Court, Sankagiri dated 04.11.2004.

For Petitioners : Mr.B.Singaravelu
(in both CRPs)

For Respondents : M/s.B.Gopalakrishnan -R2 & R3
(in both CRPs)

COMMON ORDER

These Civil Revision Petitions are filed against the fair & final order passed in R.E.A.Nos. 49 & 50 of 2004 in REP.No. 16 of 1993 in O.S.No. 463 of 1988 on the file of the District Munsif Court, Sankagiri dated 04.11.2004.

2. Petitioner in CRP.No. 2780 of 2010 has filed a Suit against the respondents herein in O.S.No. 463 of 1988. Subsequently the said suit was decreed and therefore she filed REP. No. 16 of 1993 and during the pendency of the said REP, the petitioners herein have filed separate petitions in REA.No. 49 of 2004 & REA.No. 50 of 2004 to remove the guardian ship and to declare the petitioner in CRP.2781 of 2010 as major. Both the petitions were dismissed by the trial Court. Challenging the same, present CRPs are filed.

3. Heard the learned counsel appearing for the petitioners and the learned Counsel appearing for the respondents 2 & 3 and perused the materials available on record.

4. The learned counsel for the petitioners would submit that at the time of filing the said REAs, the REP.No. 16 of 1993 was pending. The Court below without considering the said fact, has mechanically dismissed the said applications by observing that REP is closed. The learned counsel for the petitioners further submitted that even though the sale was over, the sale proceeds is deposited in the Court and in order to withdraw the decree amount, it is necessary to declare the petitioner as major, since he attain majority. Therefore, the reasons stated by the Court below for dismissing the applications are not reasonable and liable to be set aside.

5. The learned counsel appearing for the respondents 2 & 3 would submit that since the REP is disposed of, there is nothing for the minor to conduct the case. Hence the contention of the petitioner is highly unsustainable and the order passed by the trial Court does not warrant any interference by this Court.

6. Admittedly, the petitioner has filed a suit in O.S.No. 463 of 1988 against the respondents and after decree, he filed a execution petition in REP.No. 16 of 1993 and during pendency of the said execution petition, the petitioner had become major. In order to declare him as major and to remove his mother from the guardian ship, both the petitioners herein have filed separate applications in REA Nos. 49 of 2004 and 50 of 2004. But the Court below had dismissed the said applications on the ground that REP.No. 16 of 1993 is not pending. However, again an execution petition came to be filed in REP.No. 101 of 20014, in which the 2nd decree holder/petitioner in CRP.No. 2781 of 2010 is a party and he has to be declared as major and the guardian ship of his mother has to be removed.

7. Considering the facts and circumstances of the case and the submissions made by the learned counsel appearing for the

parties concerned, this Court is of the view that since the sale was over and the sale proceeds is deposited in the Court, no prejudice would be caused to the respondents/judgment debtor in the event of the minor being declared as a major. Hence, it would be proper to grant liberty to the petitioners to raise all their grounds before the Execution Court.

7. In the result, these Civil Revision Petitions are disposed of with the following directions;

- i. The petitioners shall file appropriate applications before the Execution Court in REP.No. 101 of 2004 and raise all their grounds.
- ii. On such filing, the Execution Court shall consider the same and pass orders on merits and in accordance with law.
- iii. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

The District Munsif,
Sankagiri.

+2cc to Mr.B.Singaravelu, Advocate, S.R.No.25064, 25065

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