

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.4033 of 2019

A.Maheswari .. Appellant/Ist Petitioner

-vs-

1. M.PalanisamyIst Respondent/2nd Petitioner
2. K.Kalayarasi
3. R.Kanagaraj ...Respondents2 &3/Respondents
(Since the respondents are formal parties hence notice may be dispensed with)

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 47 of the Guardian and Wards Act, 1890, against the judgment and decree passed in H.M.G.O.P.No.80 of 2019 dated 10.07.2019 on the file of the Principal District Court at Coimbatore.

For Appellant :: Mr.Ma.P.Thangavel

For Respondents :: No appearance for R1
Mr.P.Chinnadurai for R2 & 3

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. This civil miscellaneous appeal has been filed against the impugned judgment and decree dated 10.7.2019 passed in H.M.G.O.P.No.80 of 2019 by the Principal District Court, Coimbatore. Mr.Ma.P.Thangavel, learned counsel appearing for the appellant argued that when the petition under Section 8 of the Hindu Minor and Guardianship Act in H.M.G.O.P.No.80 of 2019 was filed before the Principal District Court, Coimbatore seeking permission to sell the minors share in the petition schedule property, it is the claim of the appellant-Mrs.A.Maheswari that she married the late P.Ashokumar on 22.2.2007 and out of the said wedlock, two male children, namely, Kokilan and Kirthik

were born on 16.12.2007 and 4.11.2011 respectively. They are minors as on today. Their birth certificates were also enclosed as document nos.1 and 2 of the petition. Both the minors are under the care and custody of the appellant/mother, who is the natural guardian. Since the properties described in the petition schedule are the joint properties of late P.Ashokumar and his father Mr.M.Palanisamy, the first respondent herein, who had derived title under the sale deed dated 11.3.2013 bearing Document No.1533 of 2013 registered on the file of the Sub Registrar, Vadavalli and another sale deed dated 11.3.2013 bearing Document No.1534 of 2013 registered in the same office. As the late Mr.P.Ashokumar, the husband of the appellant had an undivided half share in the petition schedule properties along with his father Mr.M.Palanisamy, the first respondent herein, they were in peaceful possession and enjoyment of the same. Though it was purchased as vacant site, subsequently developed into a residential building constructed jointly by Mr.P.Ashokumar and the first respondent herein. Unfortunately, late P.Ashokumar died intestate on 12.9.2014 leaving behind his wife, the appellant herein and her two minor sons, namely, Kokilan and Kirthik as well as the first respondent/father as his legal heirs. Since the late P.Ashokumar was the only bread winner of the family, the appellant and the first respondent being unemployed and the first respondent being a senior citizen, after the death of late P.Ashokumar, they are unable to maintain the properties. Besides, the day to day family expenditure, maintenance including the welfare of the minors and their education expenses could not be met and this has become a mounting obligation for them to cope up with. Now the two minor sons are studying in Isha Vidya Matriculation School, Coimbatore in Seventh and Second standards respectively. After the sudden demise of Mr.P.Ashokumar, they are finding it difficult to run the family. Therefore, the appellant and the first respondent approached the second and third respondents for selling the petition schedule properties for a total sum of Rs.30,00,000/- and the first respondent received a sum of Rs.5,00,000/- as advance. Mr.Ma.P.Thangavel, learned counsel appearing for the appellant further submitted that an extent of 4 cents and 291 sq.ft., was purchased in the name of the appellant and she in turn, is taking steps to settle 50% from and out of the said extent of 4 cents and 291 sq.ft., in the name of her two minor children. Therefore, when the appellant and the first respondent are taking adequate care and interest of the minors, the Court below, taking note of the welfare of the children, wrongly directed both the appellant and the first respondent to sell the property for Rs.30,00,000/- and out of the said amount, a further direction was given to deposit Rs.5,00,000/- each in the name of the minors to be invested in fixed deposit with a

nationalised bank for one year, which shall be renewed periodically, till they attain majority, so that the proceeds by way of interest can be utilised towards the maintenance and care of the minor children. Learned counsel for the appellant also submitted that as far as sale of the property for Rs.30,00,000/- is concerned, there is no difficulty, because the purchasers have agreed to purchase the property for Rs.30,00,000/-. With regard to the deposit of Rs.5,00,000/- each in the name of the minors till they attain majority, it would result in prejudice. The reason being that since they are studying in Isha Vidya Matriculation School, Coimbatore in Seventh and Second standards respectively, their school tuition fees being reasonably high, have to be meted out. If the share of the minors are invested in fixed deposit, that would fetch only minimum interest with which it will be difficult to educate them. To show the bona fides, the mother of the children, the appellant herein, after purchasing 4 cents and 291 sq.ft., of land out of the proceeds coming from the sale of the petition schedule properties, is going to settle 50% from and out of the said extent of property in the name of the minors. But the doubt and suspicion entertained by the Court below that the appellant may not take proper care and custody of the minor children are uncalled for.

3. Mr.P.Chinnadurai, learned counsel appearing for the respondents 2 & 3 also stated that the first respondent, being father of late P.Ashokumar, father in law of the appellant, grandfather of the minor sons, has also sold away his share in favour of the respondents 2 & 3 on 12.6.2020.

4. Now the appellant has agreed to settle 50% extent from and out of 4 cents and 291 sq.ft., of land purchased by her. Secondly, as the minor children Kokilan and Kirthik are pursuing Seventh and Second standards respectively in Isha Vidya Matriculation School, Coimbatore, the tuition fee receipts found in Ex.P13 would clearly show that the appellant has to pay their school tuition fees. Therefore, accepting the arguments advanced by the learned counsel for the appellant that the appellant having utilised her share of Rs.7,50,000/- for purchase of 4 cents and 291 sq.ft., of land and is also willing to settle 50% from and out of the said extent in favour of her two minor children, this Court, modifying that portion of the order passed by the Court below in directing the appellant to deposit a sum of Rs.5,00,000/- each in the name of the two minor children, allows the civil miscellaneous appeal by passing the following order:-

"The appellant, as agreed before me, is directed to settle 50% from and out of the extent of 4 cents and 291 sq.ft., of land in the name of the two minor children Kokilan and Kirthik, within a period of sixty days from the date of receipt of a copy of this order. The appellant and the respondents 2 & 3 are also given sixty days time to complete the registration process."

No order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Principal District Judge
Coimbatore

copy to
The Section Officer
VR Section
High Court Madras-104

+1 cc to Mr.P.Chinna Durai Advocate sr29737

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