

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD
CIVIL MISCELLANEOUS APPEAL No.982 OF 2019**

JUDGMENT: (per Hon'ble Sri Justice M.S.Ramachandra Rao)

This appeal is preferred by the appellant challenging the order dated 30.07.2019 in G.W.O.P.No.1 of 2019 of the IX Additional District and Sessions Judge, Sircilla. The appellant had filed the said OP before the said Court under Section 29 of the Guardian and Wards Act, 1890 and also under Section 8(2)(a) of the Hindu Minority and Guardianship Act, 1956, to appoint her as a guardian of her then minor children and to permit her to mortgage the subject property to raise a loan from the first respondent in the OP for construction of a house thereon.

2. It is her case that her husband Sirigiri Mallaiah died; that during the life time, her husband purchased the subject property under a registered sale deed dated 01.02.2007; that on his death on 28.03.2013, the appellant and her minor daughter and son inherited it as legal heirs and she was taking care of them.

3. She stated that she intended to construct ground floor and first floor in the property by mortgaging it to the first respondent bank in the OP and that she had also obtained permission from the Municipal Corporation, Sircilla on 23.03.2018. She also stated that she is a Government employee working as a Junior Assistant in the Education Department and earning Rs.25,317/- per month and that she would be in a position to pay the monthly instalments to the bank.

4. The first respondent bank filed a counter stating that if the appellant applies for a loan, the same would be considered by the first respondent in accordance with the norms prescribed therefor from time to time.

5. Before the Court below, the appellant examined herself as P.W.2 and her daughter as P.W.1. She also marked Exs.A.1 to A.9.

6. In the affidavit filed on behalf of her daughter as P.W.1, it appears that a mistake occurred and allegedly the age of the daughter P.W.1 was incorrectly mentioned as 41 years and it was also shown that she was an employee. It appears that from the affidavit prepared in the Court below to be filed on behalf of P.W.2/appellant, the matter was cut and pasted in the affidavit in chief examination of P.W.1. On the basis of said mistake, the Court below dismissed the OP.

7. It appears that due to negligence of the Advocate in the Court below, the mistake occurred and the appellant cannot be made to suffer for the fault of the Advocate. The Court below ought to have seen that after the death of the husband, the appellant would be the person taking care of the minor daughter and son, and in our opinion, it erroneously held that there is no material to show that she was taking care of the children.

8. In this Court, affidavit of the daughter of the appellant has been filed by way of third party affidavit which indicates that she has attained the age of majority and she has stated that she had no

objection if the appellant mortgages the schedule property in favour of the first respondent for construction of RCC building for the welfare of herself and her younger brother.

9. In our considered opinion, the impugned order cannot be sustained since it cannot be said that the attempt of the appellant to get herself appointed as a guardian of the persons and properties of her children are not *bona fide*. The capacity of the appellant to raise a loan and repay cannot be doubted in view of the fact that she is gainfully employed. There is no adverse material on record to show that she had acted in any way against the interest of the children.

10. Accordingly, the Civil Miscellaneous Appeal is allowed, order dated 30.07.2019 in G.W.O.P.No.1 of 2019 is set aside and the appellant is appointed both as a guardian of her minor son and also permitted to mortgage the subject property in the OP for construction of a RCC building in the said property to the first respondent or any other financial institution. No costs. Miscellaneous petitions, if any, pending shall stand dismissed.

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

Date: 21.01.2020
TJMR