

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.4463 of 2019

1.Kalpana

2.Sundaramoorthy

..Appellants

Vs.

NIL

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 47 of Guardian and Wards Act, as against the order and decreetal order in GOP.No.140/2018, on the file of Principal District Court, Villupuram District dated 30.01.2019.

For Appellants : M/s.R.Poornima

For Respondent : NIL

JUDGMENT

The Fair and Decreetal order dated 30.01.2019 made in GOP.No.140 of 2018 is under challenge in the Civil Miscellaneous Appeal.

2. The appellant filed a petition before the Principal District Court, Villupuram under Section 8(2) of the Hindu Minority and Guardian Ship Act, 1956 and Section 29 of the Guardian and Wards Act, 1890, seeking permission of the trial Court to sell away the schedule mentioned property on behalf of the minors in favour of one Swaminathan S/o.Venkatramji for sale consideration of Rs.3,28,300/-, which belong to Minors Pradeesh and Srinisha for their welfare.

3. The petition was filed in the year 2018. Probably, the property value by this time would have increased. That apart, the trial Court adjudicated the issues with reference to the documents. The trial Court considered all the documents filed by the appellant and the first petitioner was examined as P.W.1. P.W.1 narrated the necessity for seeking such a permission to sell the property and only for the purpose of maintaining and taking care of the Minors Pradeesh and Srinisha as there is no sufficient income to maintain the minors for providing good education and necessary comforts. The second petitioner was examined as P.W.2, also deposed necessity for selling the schedule mentioned property. Ex.P1 is the original Registered gift deed executed by

Kuppusamy in favour of Minors Pradeesh and Srinisha. Ex.P2 and Ex.P3 discloses that the Birth Certificate of Minors. Ex.P4 is the Registered Sale agreement entered into between Swaminathan and first petitioner Kalpana on behalf of Minors Pradeesh and Srinisha. Ex.P5 is the Registered copy of sale deed executed in favour of Kuppusamy chettiar by Babu Naidu.

4. The petitioners are being parents and natural guardian of Minors Pradeesh and Srinisha. The trial Court with reference to the documents, found that the paternal grandfather of the minors had executed a gift deed in favour of Minors Pradeesh and Srinisha naming the 1st petitioner Kalpana as guardian in respect of suit 'A' schedule property and Ex.P4 is the Registered Sale agreement between Swaminathan and 1st petitioner Kalpana on behalf of Minors Pradeesh and Srinisha in respect of 'B' schedule property. Ex.P5 is the Registered copy of sale deed executed in favour of Kuppusamy chettiar by Babu Naidu. The trial Court found that the petitioners have not established that the paternal grandfather of the minors namely Kuppusamy Chettiyar is having absolute title over the petition mentioned property to execute a

settlement deed in favour of the Minors Pradeesh and Srinisha.

5. The settlor's title over the petition mentioned property is not clear. Under those circumstances, the trial Court formed an opinion that as the properties are ancestral one, the title of property cannot be decided in the Guardian O.P. In the event of granting such a permission, the same should not cause any prejudice to any of the persons. In such circumstances, their permission is sought for to sell the property. The person, who is approaching the Court of law, must establish that the property belongs to the person, enabling the Court to consider grant of permission.

6. In the present case, the Ex.P5 document is insufficient to arrive a conclusion that the settlor Kuppusamy Chettiyar is have absolute title over the petition property. When the Court raised such a doubt, it is for the appellant to adjudicate the issues before the competent Forum and establish the title and right. Contrarily, in a Guardian O.P petition, such adjudication cannot be entertained and the trial Court has not committed any error or infirmity as such in arriving such a conclusion.

7. Thus, the Fair and Decreetal order dated 30.01.2019 made in GOP.No.140 of 2018 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.4463 of 2019 is dismissed. No costs.

22.03.2021

kak

Index: Yes/No

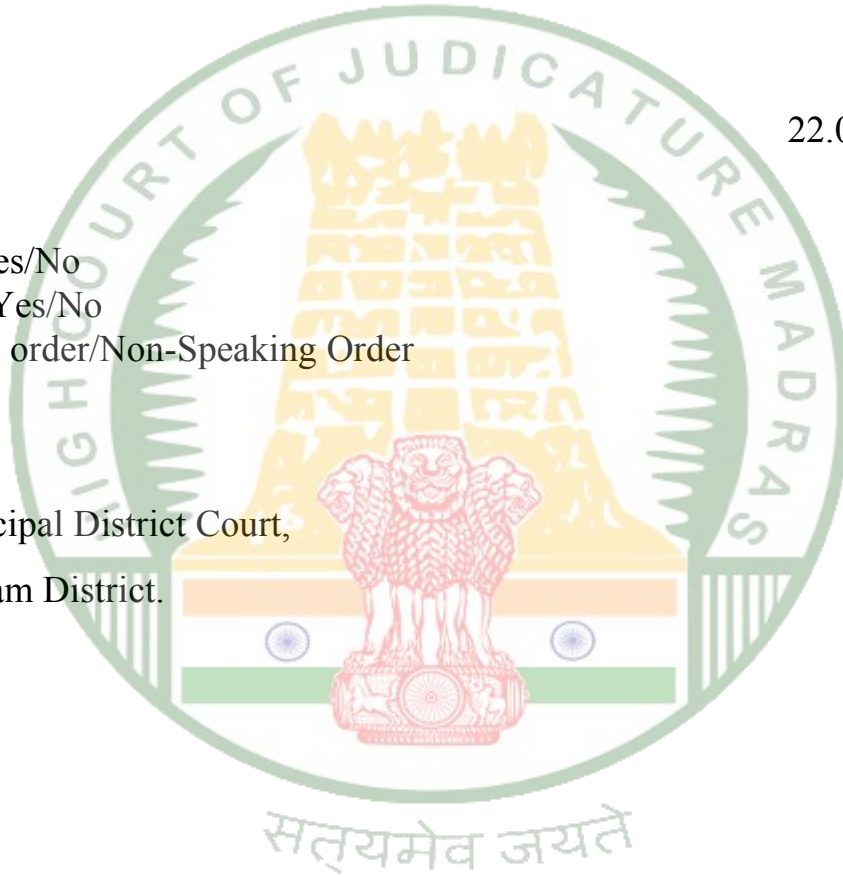
Internet: Yes/No

Speaking order/Non-Speaking Order

To

The Principal District Court,

Villupuram District.

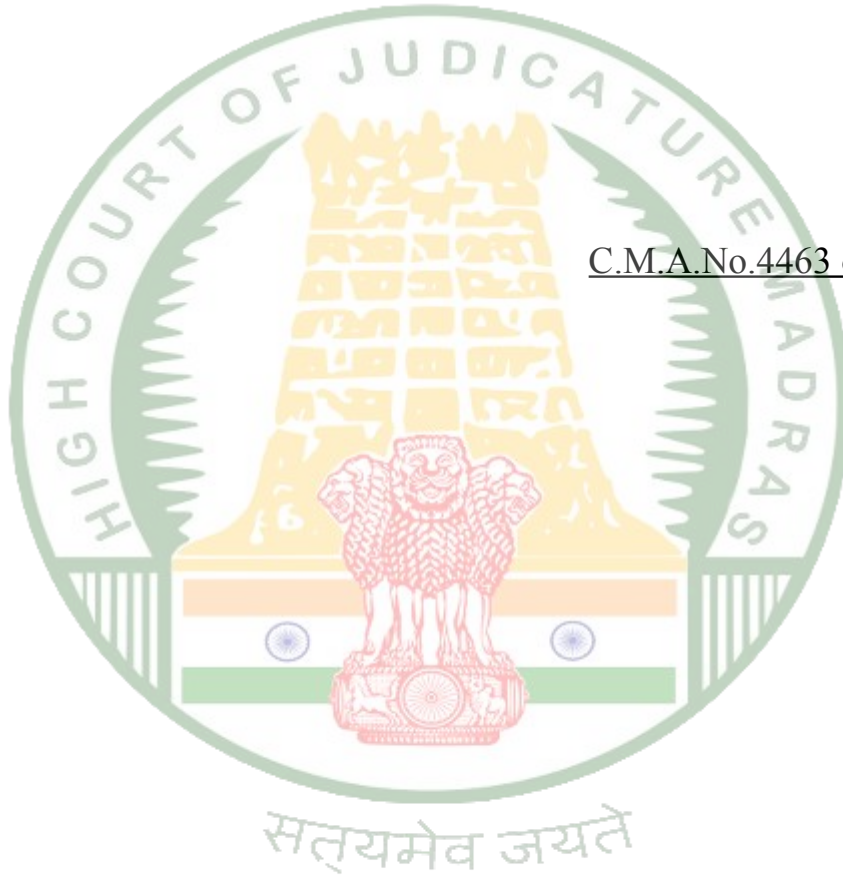


WEB COPY

S.M.SUBRAMANIAM, J.

C.M.A.No.4463 of 2019

kak



C.M.A.No.4463 of 2019

WEB COPY

22.03.2021