



C.M.A. No.2384 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2022

CORAM:

THE HONOURABLE Ms. JUSTICE **P.T. ASHA**

C.M.A. No.2384 of 2021

Chakravarthy

.. Appellant

Vs.

Nil

... Respondent

Civil Miscellaneous Appeal is filed under Section 47 of the Guardian & Wards Act, 1890, against the fair and decreetal order passed in G.W.O.P. No.32 of 2019 before the Principal District Judge, Villupuram dated 29.04.2019 and to set aside the same.

For Appellant

: Mr. S.Ramachandran



C.M.A. No.2384 of 2021

J U D G M E N T

WEB COPY This appeal is filed challenging the order passed by the Principal District Judge, Villupuram in G.W.O.P. No.32 of 2019 in and by which the learned Judge has dismissed the application only on the ground that the petitioner who is the father of the minors has not proved the Will in the manner known to law by examining the attesting witnesses. Challenging the same, the appellant is before this Court.

2. Since the scope of the appeal is limited to the correctness of the order rejecting the petition filed under Section 7 and 29 of the Guardian and Wards Act, I shall first consider the recitals in the Will.

3. A perusal of the Will shows that the testator has divided his property into four schedules namely 'A', 'B', 'C' & 'D'. In this Will the suit 'A' schedule property has been bequeathed to his elder son one Solai, 'B' schedule property has been allotted to the share of his second son one Palanisamy, C schedule property has been allotted to the share of his third son one Semmalai and 'D' schedule property has been allotted to the share of his youngest son one



C.M.A. No.2384 of 2021

Chakkaravarthi, the appellant herein. The testator has bequeathed the aforesaid properties not only to his sons but also his grandsons who were to enjoy it absolutely after they attain majority.

4. The learned Principal District Judge, Villupuram, has overlooked the fact that the petition has been filed seeking permission to sell a portion of the property that has been bequeathed under the Will dated 15.02.1990 to the appellant and his son for the educational purposes of the children. The sale is only for the benefit of the minors. The appellant had stated before the learned Judge that he would deposit the sale consideration in a Nationalised Bank. The learned Judge has turned down the request of the appellant only on the ground that the minors have to prove that they have obtained the right to the property under Ex.P1 Will and since the same has not been proved, the learned Judge dismissed the petition.

5. This Court, while exercising jurisdiction under Guardian and Wards Act, acts in a *parens patriae* capacity. The appellant / guardian seeks permission to sell a portion of the property for meeting the educational expenses



C.M.A. No.2384 of 2021

of the minor children that too by putting the sale consideration in a fixed deposit in the name of the minors. The entire property is not sought to be sold but only a portion.

6. Considering the above and also taking into account the ground on which the petition has been rejected, I propose to allow the appeal and remit the matter back to the learned Principal District Court, Villupuram to permit the appellant to prove the Will dated 51.02.1990 in the manner known to law.

7. Accordingly, the Civil Miscellaneous Appeal is allowed and the matter is remitted back to the file of the learned Principal District Judge, Villupuram. The appellant shall be permitted to let in fresh evidence to prove the Will by examining the attesting witnesses, etc. Thereafter, the learned Principal District Judge, Villupuram shall consider the matter afresh and pass orders. The entire exercise shall be concluded within a period of one month from the date of receipt of a copy of this order. No costs.

29.06.2022

Index :Yes/No
Speaking/Non speaking order
bkn



WEB COPY



C.M.A. No.2384 of 2021

The Principal District Judge, Villupuram.



WEB COPY



C.M.A. No.2384 of 2021

P.T.ASHA, J.

bkn

C.M.A. No.2384 of 2021

29.06.2022