



C.M.A.No.2176 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 11.10.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2176 of 2022

and

C.M.P.No.16873 of 2022

S.Thangavelu

... Appellant/Petitioner

Vs.

1.Shaju Sebastian
2.T.N.Rathinam
3.N.Malathipriya
4.K.Saraswathi
5.K.Theepak
6.K.Sivabackiam
7.Shanmugapriya
8.Lalithapriya
9.A.Palanisamy

... Respondents/Respondents



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Prayer: Civil Miscellaneous Appeal is filed under Section 47 of the Guardians and Wards Act, 1890 read with Section 8 of the Hindu Minority and Guardianship Act, 1956, against the order dated 20.10.2021 in H.M.G.O.P.No.97 of 2021 on the file of the learned Principal District Judge, Tiruppur.

For Appellant : Mr.P.Satheesh Kumar

JUDGMENT

The paternal grandfather of a minor K.Thirridhaman has filed H.M.G.O.P.No.97 of 2021 on the file of the learned Principal District Judge, Tiruppur, seeking permission under Section 8 of the Hindu Minority and Guardianship Act, 1956 to sell the 4/48th share belonging to the minor in the suit schedule property in favour of the 1st respondent.

2.It is the case of the appellant/petitioner that he is the maternal grandfather of the minor who is aged about 15 years having been born



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on 27.06.2007. The minor had lost his father due to heart attack on 17.01.2017 and his mother had followed on 02.02.2017. After the death of the parents, the minor is under the care and custody of the appellant.

3.The petition mentioned property which is an agricultural land belonged to the maternal grandfather of the minor namely, Nachimuthu along with Kalimuthu, Krishnasamy and Palanisamy by virtue of a joint Sale Deed dated 30.12.1986. The said Nachimuthu died on 01.01.1991 leaving behind his wife Rathinam, two daughters, Hemapriya and Malathipriya and his parents. Hemapriya is the mother of the minor. After the demise, all the owners of the properties have decided to alienate the agricultural lands and the minor who is one of the co-owners is entitled to 4/48 share in the property. At present, the minor is pursuing his school education in a reputed school and attending extra curricular activities outside the School as per the wish of his parents. The appellant does not have the requisite finance for the



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minor's higher education and therefore, when the other co-owners, namely, the respondents 2 to 9 decided to sell the properties, the appellant has also agreed to the same. The 1st respondent has agreed to pay a fair and equitable price of Rs.63,00,000/- for the petition mentioned property and the Agreement of Sale dated 28.02.2019 was entered into which was registered as Doc.No.3347/2019 with the 1st respondent. The petitioner has received a sum of Rs.1,00,000/- by Demand Draft dated 07.08.2018 drawn on State Bank of India, Pollachi Branch as advance. The share of the minor out of the total sale consideration would be a sum of Rs.5,25,000/- which the petitioner undertakes to deposit in a Nationalised Bank to earn interest. The purchaser and the other co-owners have been arrayed as the respondents in the above petition.

4.The learned Principal District Judge had dismissed the petition on the ground that the petition was totally bereft of any reason and further, there is nothing to state that as to how the interest of the minor



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would be protected. Challenging the same, the appellant is before this Court.

5.Heard the learned counsel appearing for the appellants and perused the papers.

6.The provisions of Section 8 of the Hindu Minority and Guardianship Act, 1956, sets out the power of a natural guardian. Sub Section 2 places restrictions on the natural guardian from doing certain acts without previous permission of the Court, one of which is set out in Sub Section 2(9), i.e, mortgage or charge, or transfer by sale, gift, exchange or otherwise of any part of the immovable property of a minor.

7.A perusal of the Agreement of Sale dated 28.02.2019 which has been marked as Ex.P.10 would show that the minor has been shown as the second vendor in the Agreement and that the property has been



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agreed to be sold at Rs.63 lakhs and Rs.1 lakh has been received by the minor by way of a Demand Draft dated 07.08.2018. Therefore, the Agreement of Sale has already been entered into with regard to the minor's share even without prior permission of the Court. The other factor this Court has noticed is that on the date of the Agreement of Sale, i.e., 28.02.2019, a Demand Draft for Rs.1,00,000/- constituting the minor's share has been paid by the vendor. However, though the amount has been received in the year 2019, a Fixed Deposit in the name of the minor with the State Bank of India, Kutchery Street, Udumalpet, has been opened only a year later on 25.02.2020 after a period of six years. That apart, though the Agreement of Sale is dated 28.02.2019, the advance amount has been paid six months earlier on 07.08.2018.

8.The petition filed under Section 8 of the Act is also very sketchy about the benefits that the minor would have by selling the property and how the appellant proposes to financially protect the



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interest of the minor upon receiving the sale consideration. The terms of the Agreement of sale would indicate that the sale would be finalised one month after the permission from the Competent Court is obtained for the minor's share.

In the light of the manner in which the Agreement itself has been entered into and the advance of the sale consideration credited to the account of the minor, it does not inspire the confidence with reference to the sincerity and earnestness displayed by the appellant (paternal grandfather) in protecting the interest of the minor. In the case of a minor, this Court has to exercise extreme caution since it is acting in the capacity as a “*Parens Patriae*”. Therefore, I see no reason to interfere with the Judgment of the Principal District Judge, Tiruppur, however, taking into account the fact that the minor is one of the co-owners and all the co-owners have agreed to sell the property, liberty is given to the appellant herein to file a fresh application seeking permission giving the details of the special need for selling the share of



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the minor and also setting out in detail the manner in which the appellant as the paternal grandfather of the minor would secure the minor's interest till he attains majority. No costs. Consequently, connected Miscellaneous Petition is closed.

11.10.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The Principal District Judge,
Tiruppur.



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P.T. ASHA, J,

mps

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