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W.P.No.1989 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

W.P.No.1989 of 2023
and WMP.No.2066 of 2023

Minor Jagadeesh
Rep. By his father and Natural guardian
Kumar, S/o.Krishnan

... Petitioner

Versus

1. The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai.

2. The Sub Registrar,
Office of the Sub-Registrar,
Omalur, Salem.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, call for the records pertaining to the Refusal Check Slip vide Refusal Number - RFL/ Omalur/ 182/ 2022 issued by the 2nd respondent in so far it related to refusal of the Sale deed dated 3.11.2022 presented by the petitioner directing him to obtain an order from the court to sell the immovable property measuring Acres 0.12.1/2 cents in Survey No. 182/2C, 182/2E land measuring Acres 0.31 1/2 cents in Survey No.



W.P.No.1989 of 2023

182/5A, 182/5B lands measuring Acre 1.07.3 /4 in Survey No. 182/2C, 188/4, 190 land measuring Acres 0.24.1 /2 cents in Survey No. 54/8 and 54/7 and land measuring an extent of 0.06 cents in Survey No.54/13 of Kanchayanayakanpatti Village, Kadayampatti Taluk, within the sub Registration District of Omalur and in the Registration District of Salem West and quash the same and further direct the second respondent to complete the registration of the sale deed dated 03.11.2022 executed by the petitioner if it is otherwise found to be in order.

For Petitioner : Mr.R.Sreedhar

For Respondents : Mr.Yogesh Kannadasan, SGP

ORDER

This writ petition has been filed challenging the refusal check slip issued by the second respondent and direct the second respondent to complete the registration of the sale deed dated 03.11.2022 executed by the petitioner.

2. It is the case of the petitioner that the petitioner is a minor and his grand father owned an immovable properties and the same have been settled in his favour on 26.03.2019. Since the minor is aged about 15 years, in order to pursue his studies, the sale of property is became necessary. Accordingly, the petitioner has decided to sell his property. When the petitioner presented the sale deed on 03.11.2022 with the second respondent, the same was refused on



W.P.No.1989 of 2023

the ground that the petitioner has to obtain necessary permission from the Court to sell the property. Challenging the said refusal check slip, the petitioner has filed the present writ petition before this Court.

3. The learned counsel for the petitioner submitted that the second respondent has refused to register the sale deed on the ground that the property is owned by minor. As there is no bar under the Registration Act to register the minor property through the natural guardian. The learned counsel further submitted that the sale of the property belonging to the minor is not void and it is voidable, at the instance of the minor. When the parties are entering into a contract knowing very well about the provision of law and taking risk. The registering authority cannot impose a condition to the petitioner to obtain a permission from the concerned Court.

4. Mr.Yogesh Kannadasan, learned Special Government Pleader takes notice on behalf of the respondents.

5. Heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing on behalf of the respondents and



W.P.No.1989 of 2023

perused the materials available on record.

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6. It is an admitted fact that the petitioner is the minor and he is an absolute owner of the subject property. On behalf of the petitioner, his father being a natural guardian, had executed a sale deed. It is also an admitted fact that when the sale deed is presented for registration, the second respondent has refused to register same on the ground that he has to obtain a permission from the Court to sell the minor's property. According to the petitioner, the Registrar has no power to refuse to register the document.

7. For better appreciation, Section 19-A of the Registration Act is extracted hereunder:

19-A. Refusal to register- Notwithstanding anything contained in this Act, the registration officer shall refuse to register any document presented to him for registration unless such document is accompanied by a true or photostat copy thereof.

7.a. Section 20 of the Registration Act deals *power of refusal where the documents containing interlineations, blanks, erasures or alterations etc.,*

A perusal of Section 21 of the Registration Act would show



W.P.No.1989 of 2023

that the only ground on which registration can be refused is if the document does not contain a description of such property sufficient to identify the same.

7.b. Whereas in the present case, the document has been executed by the father as a guardian of the minor and there were sufficient details available to identify the property. Though it appears to be a minor's property, it is relevant to extract Section 8 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as 'The Act'):

8 . Powers of natural guardian.- *(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.*

Section (2) shows that the natural guardian shall not, without the previous permission of the court,- (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor or (b) lease any part of such property for a term exceeding five years or for a term.

Section 8(3) makes it clear that any disposal of immovable



W.P.No.1989 of 2023

WEB COPY

property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

8. Therefore, the sale of the property belonging to the minor is not totally prohibited. Such sale is only voidable at the instance of the minor after attaining majority and such sale be ignored within a period of three years, after he attained majority. Such being the position, merely because the Court permission is required under Section 8(2) of the Act that very document itself cannot be refused to be registered.

9. Such view of the matter, it is risk of purchaser dealing with such property without permission from the Court as required under Section 8 of the Act. Such being a position, since the sale of any property belonging to minor is only voidable as the issue is between the purchaser and the seller, Registrar has no power to refuse to register such document.

10. Such view of the matter, the registering authority cannot refuse to register the document and accordingly, the impugned order passed by the second respondent is set aside and this writ petition is allowed and the second respondent is directed to entertain the sale deed which was executed by the



W.P.No.1989 of 2023

petitioner, after receipt of necessary stamp duty and registration charges. No costs. Consequently, connected miscellaneous petition is also closed.

27.01.2023

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To

1. The Inspector General of Registration,
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Chennai.

2. The Sub Registrar,
Office of the Sub-Registrar,
Omalur, Salem.
Salem District.



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W.P.No.1989 of 2023

N.SATHISH KUMAR, J.

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