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W.P.No.6042 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6042 of 2023

Minor Rakshan
Rep. by his mother and Natural Guardian
Mrs.Ponmani D/o. Subramanian Kattunayakan
No.387/3, Mettukadu
Chellapillaikuttai
Muthunaiakkanpatti
Salem District – 636 304.

... Petitioner

Vs.

1.The Inspector General of Registration
Registration Department
No.100, Santhome High Road
Santhome
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 for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Refusal Check Slip vide Refusal Number : RFL/Omalur/16/2023 issued by the second respondent in so far it relates to



refusal of the Sale Deed dated 07.02.2023 presented by the petitioner directing him to obtain an order from the Court to sell the immovable property measuring Acre 3.43 $\frac{1}{4}$ cents in Survey No.162/3A, 141/3 Sellapillaikuttai Village, Omalur 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 07.02.2023 executed by the petitioner if it is otherwise found to be in order.

For Petitioner : Mr.R.Sreedhar

For Respondents : Mr.D.Ravichander
Special Government Pleader

ORDER

The impugned refusal check slip, refusing the claim of the writ petitioner to register the Sale Deed dated 07.02.2023 is under challenge in the present writ petition.

2. The petitioner states that he is a minor and his grand father owned an immovable property and the same have been settled in his favour on 17.11.2017. Since the minor is aged about 8 years, in order to pursue his studies, the sale of property became necessary. Accordingly, the petitioner has decided to sell his property. When the petitioner presented the sale deed



on 07.02.2023 before the 2nd respondent, the same was refused on the ground that the petitioner has to obtain necessary permission from the Court to sell the property. Thus, the petitioner is constrained to move the present writ petition.

3. The learned counsel for the petitioner made a submission that the 2nd 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 minor's property through the natural guardian. He further contends 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 is taking risk, the registering authority cannot impose a condition to the petitioner to obtain a permission from the concerned Court.

4. The relief sought for in the present writ petition is similar to the relief sought for by the writ petitioner in a writ petition in ***W.P.No.1989 of 2023 [Minor Jagadeesh Vs. The Inspector General of Registratrion]***, which was decided by this Court on 27.01.2023.



WEB COPY

W.P.No.6042 of



5. The relevant paragraphs of the said order are extracted hereunder :

“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



WEB COPY

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power of refusal where the documents containing interlineations, blanks, erasures or alterations etc.,

“A perusal of Section 21 of the Registration Act would show 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 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 petitioner, after receipt of necessary stamp duty and registration charges. No costs. Consequently, connected miscellaneous petition is also closed.”



6. In view of the fact that the case of the petitioner is also similar to that of the case (cited *supra*), the petitioner is also entitled to the relief claimed. Accordingly, impugned order passed by the 2nd respondent is set aside and this writ petition is allowed and the 2nd respondent is directed to entertain the sale deed, which was executed by the petitioner, after receipt of necessary stamp duty and registration charges. No costs.

12.06.2023
(2/2)

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

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Registration Department
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Santhome
Chennai.

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S.M.SUBRAMANIAM, J.

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