



WEB COPY



C.M.A.No.1319 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.06.2023**

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1319 of 2023

V.Nalini

Repreented as mother and natural guardian
for hier minor sons

1.T.V.Chandresh

2.T.V.Yogesh

... Appellant

PRAYER:- This Civil Miscellaneous Appeal has been filed under Section 47 of the Guardians and Wards Act, 1890, praying for set aside the judgment and decree passed in H.M.G.O.P.No.8 of 2022, dated 12.08.2022 on the file of the Principal District Judge at Tiruvallur.

For Appellant : Mr.G.V.Sridharan

J U D G M E N T

The above captioned Civil Miscellaneous Appeal has been filed challenging the order passed by the learned Principal District Judge, Tiruvallur in H.M.G.O.P.No.8 of 2022, dated 12.08.2022. The petitioner

1/5



C.M.A.No.1319 of 2023

WEB COPY

had filed a petition under Section 8(2) of Hindu Minority and Guardhianship Act, 1956 to appoint herself as guardian of her two minor children and grant permission to her to sell the petition schedule mentioned property.

2. The Learned Judge after taking evidence in the said petition allowed the petition and directed the petitioner to deposit 2/3rd of the sale consideration, namely Rs.28,22,132/- (Rupees Twenty Eight Lakhs Twenty Two Thousand One Hundred and Thirty Two only) out of Rs.42,33,200/- (Rupees Forty Two Lakhs Thirty Three Thousand Two Hundred only) in the name of the minor wards in any Nationalised Bank till the date of the two minor children attaining majority.

3.The Learned counsel appearing on behalf of the appellant would submit that the appellant had produced the loan account statement issued by the ICICI Bank, which discloses that the said schedule mentioned property was mortgaged and there is a loan amount of Rs.26,10,400/- (Rupees



C.M.A.No.1319 of 2023

Twenty Six Lakhs Ten Thousand and Four Hundred only) due to the Bank.

Therefore, the learned counsel would submit that the direction to deposit a sum of Rs.28,00,000/- (Rupees Twenty Eight Lakhs only) cannot be complied with. The learned counsel submitted that the value of the property has to be calculated after deducting the loan amount.

4. There is force in the submission made by the learned counsel for the appellant. It is seen from the order passed by the learned Judge that the appellant had marked Ex.P7, the copy of the Memorandum of Deposit of Title Deed executed by the appellant's husband in favour of ICICI Bank. Ex.P9 is the loan account statement issued by the ICICI Bank. In such circumstances, the actual value of the asset in the hands of the appellant and her two minor sons would be the Sale consideration minus the loan amount. Therefore, the appellant cannot be expected to deposit a sum of Rs.28,22,132/ (Rupees Twenty Eight Lakhs Twenty Two Thousand One Hundred and Thirty Two only) as directed by the learned Judge. Hence, the appeal is disposed of with the following directions:



C.M.A.No.1319 of 2023

WEB COPY

(a)The direction to deposit a sum of Rs.28,22,132/- is set aside and the matter is remanded back to the learned Principal District Judge, Tiruvallur.

(b)The appellant is further directed to produce proof for the actual amount due under the mortgage as on date, before the learned Judge.

(c)Thereafter, the learned Judge may direct the appellant to deposit 2/3rd of the amount derived after deducting the loan amount from the sale consideration in the name of the minor children and pass such other order as deemed fit.

5.With the above directions, the above captioned Civil Miscellaneous Appeal is disposed accordingly. No costs.

03.07.2023

gba

Index : Yes/ No

Speaking order: Yes/ No

Neutral Citation: Yes/ No



WEB COPY



C.M.A.No.1319 of 2023

SUNDER MOHAN,J.

Gba

C.M.A.No.1319 of 2023

03.07.2023