



A.S.(MD).No.361 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD).No.361 of 2023

V.Abirami

... Appellant

Vs.

Nil

... Respondent

PRAYER: The Civil Miscellaneous Appeal is filed under Section 47 of the Guardian and Wards Act, against the order of the Principal District Judge, Tiruchirapalli in G.W.O.P.No.267 of 2019, dated 28.07.2021.

For Appellant : Mr.D.Ramesh Kumar

J U D G M E N T

The challenge has been made for the order of the Principal District Judge, Tiruchirapalli in G.W.O.P.No.267 of 2019, dated 28.07.2021, refusing to grant permission to the petitioner to sell the minor share in the second item of the petitioner's house property.



A.S.(MD).No.361 of 2023

WEB COPY

2. The case of the petitioner is that she is the mother of the minor boy and his father Balaji died leaving behind the petitioner and the minor son as legal heirs. The property originally belonged to one S.Somu, the grandfather of the minor and the petitioner also has $\frac{1}{2}$ share in the property and the minor has $\frac{1}{4}^{\text{th}}$ share and the remaining $\frac{1}{2}$ share will go to Muthaiyan, S/o. Somu. However, the said Muthaiyan is mentally retorted person. In this regard, the petitioner was appointed as guardian and permission also granted by this Court to sell $\frac{1}{2}$ share in the property. Therefore, permission has been sought for to sell $\frac{1}{4}^{\text{th}}$ share of the minor in the house property, which is situated in a dilapidated condition. However, the learned District Judge, after appointed the petitioner as natural guardian of the minor, refused to grant permission to sell the property on the ground that no details have been given by the petitioner.

3. The learned counsel appearing for the appellant/petitioner would submit that the petitioner was already appointed as guardian for the mentally retorted person in M.H.O.P.No.7 of 2018, to sell his $\frac{1}{2}$ share in the same property. However, the trial Court has refused to grant permission to the petitioner to sell $\frac{1}{4}^{\text{th}}$ share of the minor.



WEB COPY

4. Now, the point arise for consideration in this appeal is whether the petitioner is entitled to sell the minor share in the suit property?

5. Admittedly, it is not the property of the minor and the 1/4th share of the minor has been derived from the grandfather and remaining 3/4th share belong to one Muthaiyan and the petitioner. That being the position, merely on technicalities dismissing the application is not proper. The 1/4th share sought to be sold is only an house property. When the Court itself has granted permission to the petitioner to sell 1/2 share of the Muthaiyan in the building, refusing to grant permission to the petitioner to sell the remaining 1/4th share is without any logic and even the permission granted by the Court to sell 1/2 share of the other co-owner viz., Muthaiyan itself will not be worked out. Admittedly, the petitioner's second item is only a small house and it is also in a dilapidated condition.

6. In such a view of the matter, this Court is of the view that interest of the minor should be safeguarded, since he is having 1/4th share and permission should be granted to the petitioner on condition that the entire sale consideration shall be deposited in the minor's name till he attains majority or



A.S.(MD).No.361 of 2023

the petitioner can purchase any other property in the name of the minor from the sale consideration. Admittedly, this is only a minor share from the ancestral property and the minor has only an undivided share. Such being the position, as per Section 12 of the Hindu Minority and Guardianship Act, 1956, no guardian is required to be appointed for the minor in respect of such undivided interest.

7. Such being the position, this Court is of the view that the interest of the minor in the undivided share is permitted to be sold on condition that the sale proceeds either be deposited in the National Bank till the minor attains majority or any other property could be purchased in the name of the minor.

8. With the above observation, this Civil Miscellaneous Appeal is allowed. No costs.

12.04.2023

akv

To

The Principal District Judge,
Tiruchirapalli.



WEB COPY



A.S.(MD).No.361 of 2023

N.SATHISH KUMAR,J.

akv

C.M.A.(MD).No.361 of 2023

12.04.2023