



C.M.A(MD)No.876 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.(MD)No.876 of 2023

and

C.M.P(MD)No.12439 of 2023

Minor C.Arul Vijay,
S/O.Chandrasekar,
Rep. by his Guardian and Mother,
Saranya

... Petitioner/Appellant

Vs.

Nil

... Respondent/Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 47 of Guardian & Wards Act r/w Section 8 of Hindu Minority & Guardianship Act, against the fair and decreetal order, dated 30.11.2022 made in G.W.O.P.No.13 of 2022 on the file of the Principal District Court, Karur.

For Appellant :Mr.R.Devaraj

J U D G M E N T

This Civil Miscellaneous Appeal is filed challenging the order of the learned Principal District Judge, Karur, dated 30.11.2022, made in G.W.O.P.No.13 of 2022.



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2. G.W.O.P.No.13 of 2022 was filed by the petitioner minor C.Arul Vijay, represented by his mother C.Saranya to sell $\frac{1}{2}$ share of the minor C.Arul Vijay and pass such other reliefs.

3. As per the petition averments, this property was purchased by the petitioner's father one Chandrasekar for himself and on behalf of the minor son Arul Vijay for a sum of Rs.15,90,000/-. The brother of Chandrasekar by name Manickanathan has also purchased another portion of the property. Subsequently, he sold his lands. Subsequent to the sale, there is no proper way available to reach the property purchased by the petitioner and his father. Therefore, the petitioner/appellant's father has also sold his $\frac{1}{2}$ share to one P.V.Maheswar.

4. In the said circumstances, the petitioner's mother, taking into consideration of the fact that there is no access to the property of the petitioner, had chosen to sell the property of the petitioner to P.V.Maheswar. A sale agreement was executed for selling the petitioner's $\frac{1}{2}$ share for Rs.10,00,000/-. A sum of Rs.6.50,000/- was received as advance. In the said circumstances, the petition was filed under Section 8 of the Hindu Minority and Guardianship Act, 1956.



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5. After considering the oral and documentary evidence produced before the trial Court, the trial Judge dismissed the petition stating that when the natural guardian of the petitioner ie., his father is alive, the petition filed by the petitioner's mother Saranya, is not legal; and having immovable property is more beneficial than selling the property and investing the money in fixed deposit.

6. When the matter is taken up for hearing today, the learned counsel appearing for the appellant submits that this appeal may be remanded to the trial Court for giving opportunity to the appellant to make suitable amendment ie., substituting the appellant's father in the place of his mother for representing the appellant. He also prayed for deleting the observation made in Paragraph No.8 of the order of the trial Court that possession of immovable property is more beneficial than selling the property and depositing money in fixed deposit. The learned counsel appearing for the appellant has also brought to the notice of this Court that the appellant's father V.Chandrasekar has purchased a property worth Rs.10,07,500/- in the name of the minor appellant on 03.05.2023 to show that he is interested in the welfare of the minor appellant.

7. This Court finds that when the father of the appellant/petitioner, namely the natural guardian is alive, the petition filed by the mother seeking



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permission to sell the property is not legal. However, taking into consideration the lie of the property with no access, this Court is of the view that there is a valid ground for selling the property.

8. In the said circumstances, the order of the learned Principal District Judge, Karur in G.W.O.P.No.13 of 2022, dated 30.11.2022, is set aside and the petition in G.W.O.P.No.13 of 2022, is remanded to trial Court for giving an opportunity to substitute the appellant/petitioner's father in the place of the appellant/petitioner's mother and for disposal in accordance with law.

9. The learned Principal District Judge, Karur, is directed to give opportunity to the appellant/petitioner to make suitable amendment, produce evidence and to decide the case on merits and in accordance with law.

10. In the result, this Civil Miscellaneous Appeal is allowed.
No Costs. Consequently, connected Miscellaneous Petition is closed.

04.10.2023

pm

Index:Yes/No

NCC:Yes/No



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To,

1. Principal District Court,
Karur.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN, J.

pm

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