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WP.No.14918 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.14918 of 2024 & WMP.No.16183 of 2024

Minor Josith

Rep. by his mother and Natural Guardian

Gowri

.. Petitioner

Versus

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

2. The Sub Registrar,
O/o.the Sub Registrar,
Ayothiya Pattinam, Salem.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to call for the records pertaining to the Refusal Check Slip vide Refusal number. RFL/ayothiya Pattinam/5/2024 issued by the second respondent in so far it relates to refusal of the Mortgage Deed dated 05.02.2024 presented by the petitioner directing petitioner to obtain an order from the court to mortgage the immovable property measuring an extent of 900 Sq.ft. Survey No.123/14 Valasaiyur Village Salem Taluk within the Sub-Registration District of Ayothiya Pattinam and in the Registration District of Salem West and further direct the second respondent to complete the registration of the Mortgage Deed dated 05.02.2024 executed by petitioner if it is otherwise found to be in order.



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For Petitioner : Mr.R.Sreedhar

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

With the consent of both sides, this Writ Petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed to quash the Refusal Check Slip vide Refusal number. RFL/ayothiya Pattinam/5/2024 issued by the second respondent in so far it relates to refusal of the Mortgage Deed dated 05.02.2024 presented by the petitioner and direct the second respondent to complete the registration of the Mortgage Deed dated 05.02.2024 executed by petitioner.

3. Heard learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.



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4. The learned counsel for the petitioner submitted that the second respondent has refused to register the mortgage 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.

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

6. Heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing on behalf of the respondents and perused the materials available on record.

7. It is an admitted fact that the petitioner is a minor and he is the absolute owner of the subject property. On behalf of the petitioner, his mother being a natural guardian, had executed a mortgage deed. It is also an admitted



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fact that when the sale deed is presented for registration, the second respondent has refused to register same on the ground that she 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.

8. 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.

8.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 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.*

8.b. Whereas in the present case, the document has been executed by the mother 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.

9. Therefore, the mortgage of the property belonging to the minor is not totally prohibited. Such mortgage is only voidable at the instance of the minor after attaining majority and such mortgage 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.



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10. In such view of the matter, it is risk of mortgagee dealing with such property without permission from the Court as required under Section 8 of the Act. Such being a position, since the mortgage of any property belonging to minor is only voidable as the issue is between the mortgagee and the mortgagor, the registering authority has no power to refuse to register such document. In view of the above substantive provisions of law, the registering authority cannot refuse to register the document.

11. 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 register the mortgage deed which was executed by the petitioner, after receipt of necessary stamp duty and registration charges. No costs. Consequently, connected miscellaneous petition is closed.

11.06.2024

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Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No



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To,
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No.100, Santhome High Road, Santhome, Chennai.
2. The Sub Registrar,
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N. SATHISH KUMAR, J.

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