



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1152 of 2024

1.R.Govindan @ Govindaraj

2.G.Vachala

..Appellants

.vs.

NIL

..Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 47 of the Guardian and Wards Act, 1890, to set aside the fair order and decreetal order dated 20.04.2023 passed in GOP No.33 of 2023 on the file of the Principal District Court, Cuddalore District, Cuddalore.

For Appellant : Mr.D.Baskar

JUDGMENT

This civil miscellaneous appeal has been filed against the order passed by the learned Principal District Judge, Cuddalore District in GOP No.33 of 2023, dated 20.04.2023, dismissing the petition filed by the appellants seeking for permission to sell the subject property which stands in the name of their son who was a minor and to deposit the sale money as directed by the Court.

2.Heard the learned counsel for the appellants and carefully perused the



materials available on record. This Court also carefully went through the order passed by the Court below.

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3.The subject property situated at Kurinjipadi Panchayat Union, Cuddalore District was originally owned by the 1st appellant. He executed a registered Settlement Deed in favour of his minor son Gopinath on 16.03.2011 which was registered as Document No.522 of 2011 and settled the property in favour of his son.

4.The property did not fetch any income, since it was a vacant land and it was far away from the residential area. The appellants were also under constant fear that someone may encroach upon the property, since they were living far away from the property. Hence, it became very difficult for the appellants to maintain the property. As a result, they wanted to sell this property and utilize the sale proceeds for providing good education to their son Gopinath. In short, they wanted to sell the subject property considering the welfare of the minor.

5.It is under these circumstances, the appellants filed a petition under the relevant provisions of the Guardians and Wards Act, 1890, before the Court below seeking for permission to sell the property and to deposit the money as per the directions of the Court.



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6. The Court below rejected the petition mainly on the ground that the minor boy had discontinued his education and there was nothing to show that he was continuing his education. That apart, the date of birth of the minor boy was shown as 17.04.2009 in the Transfer Certificate given by the School and whereas, the date of birth was recorded as 12.03.2010 in the Birth Certificate. The Court below thought that there was discrepancy in the date of birth that was relied upon and this fact was put against the appellants.

7. The Court below also found that the appellants have not established that they are incurring expenses for maintaining the property or any attempt was made to encroach upon the property. In the light of these reasons, the Court below rejected the petition. Aggrieved by the same, the present appeal has been filed before this Court.

8. The appellants have established the fact that the property was originally owned by the 1st appellant and he had settled the property in favour of the minor in the year 2011 out of love and affection. If really the appellants are not concerned about the welfare of the child, in the first place, there was no necessity for the 1st appellant to settle the property in favour of his son.

9. The reasons that have been assigned by the Court below for rejecting the



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petition filed by the appellants, are too hyper technical and the same does not establish the fact that the sale is done against the interest and welfare of the minor.

10.The prime duty of the Court is to see if the sale is being made for the welfare of the child and small discrepancies in the date of birth of the minor child, does not really take away the object with which the sale is made. In fact, the appellants had also issued public notice calling for objections and no objections were received from any quarters. The appellants want to utilize the sale proceeds for the education of the minor and they are willing to deposit the money as directed by the Court.

11.This Court finds that there is absolutely no material to show that the property is sold against the interest and welfare of the minor boy. The minor got the property from his father who settled his property in the name of the minor and therefore, there is no reason to conclude that the sale of such a property is done against the welfare of the minor. The order passed by the Court below suffers from illegality and infirmity and the same requires the interference of this Court.

12.In the light of the above discussion, the order passed by the Principal District Judge, Cuddalore District in GOP No.33 of 2023, dated 20.04.2023, is hereby set aside. The appellants are permitted to sell the subject property for the best



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price and the sale proceeds shall be deposited in a fixed deposit taken in the name of the minor Gopinath till he attains majority. The interest earned from the fixed deposit shall be utilized entirely for the welfare and upkeep of the minor Gopinath. On attaining majority, the beneficiary can utilize the sale proceeds towards his higher education and to meet his needs.

13.In the result, this civil miscellaneous appeal stands allowed in the above terms. No Costs.

07.06.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Principal District Court, Cuddalore District, Cuddalore.



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N. ANAND VENKATESH., J

SSR

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