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C.M.A. No.463 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.463 of 2021

K.Subramanian

.. Appellant

vs.

1.J.Arul Dass

2.L.Jeyaraman

3.Malliga

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule (ja) of the Code of Civil Procedure, 1908 against the order passed in E.A. No.36 of 2007 in E.P. No.12 of 2007 in O.S. No.7 of 2004 dated 16.04.2008 on the file of the Additional District Judge, Puducherry at Karaikal.

For Appellant : Mr.R.Natarajan

For Respondents : Mr.Sai Krishnan

JUDGMENT

This appeal has been filed by the appellant/plaintiff/decreed holder, aggrieved by the order dated 16.04.2008 passed by the Additional District Judge, Puducherry at Karaikal in E.A. No.36 of 2007 in E.P. No.12 of 2007 in O.S. No.7 of 2004.

2.The first respondent/obstructor had filed an Obstruction Petition



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in E.A. No.36 of 2007 in E.P. No.12 of 2007 in O.S. No.7 of 2004 under Order XXI Rules 97 & 101 of C.P.C. claiming that despite having 1/3rd share in the suit schedule property, the Trial Court had erroneously passed a judgment and decree dated 31.03.2004 in O.S. No.7 of 2004 granting the relief of specific performance in favour of the appellant/plaintiff/decreed holder against the respondents 2 and 3/judgment debtors.

3.According to the first respondent/obstructor, when the alleged agreement of sale was entered into between the respondents 2 and 3/judgment debtors and the appellant/plaintiff/decreed holder, he was a minor. According to him, the third respondent, who is his mother, had acted as his guardian under the alleged agreement of sale with the appellant. Under the agreement of sale, his 1/3rd share in the suit schedule property is agreed to be sold. The first respondent/obstructor disputes that there was an agreement of sale entered into between the respondents 2 and 3/judgment debtors and the appellant/plaintiff/decreed holder. He has stated in his application that he was aware only about the loan transaction between the respondents 2 and 3/judgment debtors and the appellant/plaintiff/decreed holder and was not aware about the Sale Agreement, which resulted in the passing of exparte decree for specific



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performance in favour of the appellant/plaintiff/decreed holder against the respondents 2 and 3/judgment debtors on the ground that without Court permission obtained under Section 8 of the Hindu Minority and Guardianship Act, 1956 the respondents 2 and 3/judgment debtors are alleged to have entered into the agreement of sale in respect of the suit schedule property in favour of the appellant/plaintiff/decreed holder. Therefore, according to him, the sale of his 1/3rd share under the agreement of sale is void as no Court permission was obtained.

4.E.P. No.64 of 2004 was filed by the appellant/plaintiff/decreed holder seeking to execute the decree of specific performance granted in his favour in O.S. No.7 of 2004. In the said Execution Petition, the Executing Court executed the Sale Deed in favour of the appellant in accordance with the specific performance decree passed in O.S. No.7 of 2004. Thereafter, the appellant/plaintiff/decreed holder filed E.P. No.12 of 2007 seeking for delivery of possession from the respondents 2 and 3/judgment debtors. In the said Execution Petition, E.A. No.36 of 2007 was filed by the first respondent/obstructor under Order XXI Rules 97 & 101 of C.P.C. since according to him, the decree passed in O.S. No.7 of 2004 will not bind him as the appellant/plaintiff/decreed holder did not obtain



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Court permission to sell his 1/3rd share in the suit schedule property.

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5. Admittedly, he was a minor, when the alleged agreement of sale is said to have been executed between the respondents 2 and 3/judgment debtors and the appellant/plaintiff/decreed holder. By the impugned order dated 16.04.2008 in the Obstruction Application filed by the first respondent/obstructor, the Trial Court has allowed the said application on the ground that the sale agreement entered into between the respondents 2 and 3/judgment debtors and the appellant/plaintiff/decreed holder does not bind the first respondent/obstructor in respect of his 1/3rd share in the suit schedule property since he was admittedly a minor on the date of execution of the alleged sale agreement and further no Court permission was obtained by the respondents 2 and 3/judgment debtors, who are the first respondent's/obstructor's parents, to sell the first respondent's/obstructor's 1/3rd share under Section 8 of the Hindu Minority and Guardianship Act, 1956.

6. In the counter affidavit, filed before the Executing Court in E.A. No.36 of 2007, the appellant/plaintiff/decreed holder has not disputed the fact that the first respondent/obstructor is having 1/3rd share in the suit schedule property as the suit schedule property was purchased only in the names of all the respondents, the first respondent, being the son and the



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respondents 2 and 3 being his parents.

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7.It is admitted by the appellant/plaintiff/decreed holder that no Court permission was obtained under Section 8 of the Hindu Minority and Guardianship Act, 1956 to sell the first respondent's/obstructor's share in the suit schedule property as admittedly, the first respondent/obstructor was a minor on the date of execution of the alleged agreement of sale. However, the appellant/plaintiff/decreed holder had contended that the first respondent/obstructor was aware of the sale agreement and the sale is also only in his beneficial interest. The respondents 2 and 3/ judgment debtors remained exparte in E.A. No.36 of 2007 and they have also remained exparte in the suit as well as in the earlier Execution Petition filed in E.P. No.64 of 2004 as well as in the subsequent Execution Petition in E.P. No.12 of 2007 filed for delivery of possession, in which E.A. No.36 of 2007 was filed. Under the impugned order in E.A. No.36 of 2007 filed by the first respondent/obstructor, the Executing Court has allowed the said application by holding that the first respondent/ obstructor is having a valid ground to obstruct the delivery of possession since he is having 1/3rd share in the suit schedule property.

The Executing Court has held that the appellant/plaintiff/decreed holder



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has no right to get delivery in respect of 1/3rd share of the first respondent/ obstructor.

8.It is an admitted fact as seen from the counter affidavit filed by the appellant/plaintiff/decreed holder in E.A. No.36 of 2007 that the first respondent/obstructor was having 1/3rd share in the suit schedule property. In the alleged agreement of sale entered into between the respondents 2 and 3/judgment debtors and the appellant/plaintiff/ decreed holder, the third respondent, who is the mother of the first respondent/ obstructor, had acted as a guardian for the first respondent/obstructor.

9.Admittedly, the first respondent/obstructor was a minor on the date of the alleged agreement of sale. The suit schedule property is owned by all the respondents and the Sale Deed stands in their names. Therefore, it is clear that each of them is having 1/3rd share in the suit schedule property. The minor's interest was represented by his mother (third respondent), who had acted as a guardian in the alleged agreement of sale and had signed on behalf of the first respondent/obstructor in the alleged agreement of sale. Since the first respondent/obstructor was a minor on the date of the alleged agreement of sale and he is a Hindu, the



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Hindu Minority and Guardianship Act, 1956 applies. Necessarily, as per Section 8 of the Hindu Minority and Guardianship Act, 1956, the natural guardian of the minor cannot sell minor's share in the suit schedule property without permission of the Court.

10.It is made clear in Section 8 of the Hindu Minority and Guardianship Act, 1956 that any disposal of immovable property by a natural guardian, without obtaining Court permission, is voidable at the instance of the minor or by any person claiming under him. In the instant case, the minor, who is aggrieved by the alleged sale of his share in the suit schedule property, on attaining majority, has filed E.A. No.36 of 2007 under Order XXI Rules 97 and 101 of C.P.C. in E.P. No.12 of 2007. Since the alleged sale agreement in which the first respondent's/obstructor's share was involved and is voidable agreement insofar as the first respondent/obstructor is concerned, the first respondent/obstructor, who was a minor on the date of the agreement of sale, has rightly exercised his power to set aside the sale by filing an application under Order XXI Rules 97 and 101 of C.P.C. in E.A. No.36 of 2007 before the Executing Court, obstructing their delivery of possession in favour of the appellant/plaintiff/deed holder insofar as his 1/3rd share in the suit



schedule property is concerned.

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11.Learned counsel for the appellant/plaintiff/decreed holder, in support of the appellant's/plaintiff's/decreed holder's contention that the impugned order is erroneous, has relied upon the following authorities:

a)Kehar Singh (dead) through Legal representatives and others vs. Nachittar Kaur and others reported in 2018 (14) SCC 445;

b)R.Manoj Kumar vs. S.Durairaj and another reported in 2024 (3) CTC 473.

12.The aforesaid decisions have no applicability for the facts of the instant case. In the aforesaid decisions, the Hon'ble Supreme Court as well as this Court has considered a case involving a HUF property, whereas, in the case on hand, it is a property, where minor is having separate 1/3rd share in the suit schedule property and he is not a coparcener as in the case involving the aforesaid decisions relied upon by the learned counsel for the appellant/plaintiff/decreed holder. When it is made clear that under Section 8 of the Hindu Minority and Guardianship Act, 1956, the share of the minor in a property can be alienated by his or her natural guardian only after obtaining Court permission and any alienation without Court permission can be challenged by the minor on attaining majority, such sale agreement entered into in respect of the



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minor share, without Court permission is voidable. Rightly exercising his power, the first respondent/obstructor has filed E.A. No.36 of 2007 and the Executing Court questioning the exparte decree passed against him as he was admittedly a minor on the date of the alleged agreement of sale.

13.Learned counsel for the first respondent/obstructor has relied upon a judgment of the Hon'ble Supreme Court in the case of **Panni Lal vs. Rajinder Singh and another reported in 1993 (4) SCC 38**, which also reiterates the aforementioned proposition that Court permission is absolutely necessary to sell the minor's individual share in the property as per provisions of Section 8 of the Hindu Minority and Guardianship Act, 1956. Even though the first respondent/obstructor has not filed any application to set aside the exparte decree for specific performance granted in favour of the appellant/plaintiff/decreed holder, the Executing Court under Order XXI Rules 97 and 101 of C.P.C. is having the power to decide all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application filed under Order XXI Rule 97 or Rule 99 C.P.C. and there is no necessity for the first respondent/obstructor to file a separate suit.

Order XXI Rule 101 of C.P.C. reads as follows:



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'101.Question to be determined.-All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.'

14.For the foregoing reasons, the Executing Court, under the impugned order passed in E.A. No.36 of 2007, has rightly allowed the application filed by the first respondent/obstructor under Order XXI Rules 97 and 101 of C.P.C. There is no error committed by the Executing Court in allowing the application filed by the first respondent/obstructor.

15.In the result, there is no merit in this appeal and the same stands dismissed. It is clarified that in respect of the remaining 2/3rd share, belonging to the respondents 2 and 3/judgment debtors, is



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concerned, the decree passed by the Trial Court in O.S. No.7 of 2004

dated 31.03.2004 shall stand confirmed and the appellant/plaintiff/decreed

holder is empowered to execute the decree in respect of 2/3rd share of the

suit schedule property against the respondents 2 and 3/judgment debtors.

No costs.

03.07.2024

vga

To

1.The Additional District Judge, Puducherry at Karaikal.

2.The Section Officer,
V.R. Section, High Court, Madras.



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ABDUL QUDDHOSE, J.

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