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W.P.No.29483 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.29483 of 2018

M.Snega
Minor aged 12 years,
Represented by her Mother and
Natural Guardian, M.Pramila,
W/o.Late. G.Mathivanan,
Door No.3, Nethaji Street,
Nehru Nagar, Erkanberry,
Chennai – 600 118.

...Petitioner

-Vs-

1.The Inspector General of Registration,
Office of the Inspector General of Registration,
Santhome, Chennai.

2.The District Registrar,
No.3, Bhagat Singh Road,
Madhavaram, Chennai – 600 060.

3.The Sub-Registrar,
Madhavaram,
Chennai – 600 060.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, to call for the records of the third respondent, in the check-slip dated 12.02.2018 and quash the same and further direct the third respondent to register the Mortgage Deed dated 09.02.2018 executed by the petitioner



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(M.Pramila) on behalf of minor daughter M.Snega – the petitioner in favour of T.Premkumar, and pass such further orders.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Mr.K.Yogesh Kannadasan
Special Government Pleader

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent, in the check-slip dated 12.02.2018 and quash the same and further direct the third respondent to register the Mortgage Deed dated 09.02.2018 executed by the petitioner (M.Pramila) on behalf of minor daughter M.Snega – the petitioner in favour of T.Premkumar.

2. It is the case of the petitioner that all the house and ground being New Door No.16, Old Door No.2, Nethaji Street, Nehru Nagar, Erukancherry Chennai – 600 118, comprised in S.No.113/4 part of Erukancherry Village, measuring 2514 sq.ft., belonged to her father, Mr.G.Mathivanan. He had absolutely settled the same in favour of his daughter, M.Snega vide a Deed of Settlement on 29.09.2008 registered as Doc.No.7648 of 2008 at the SRO Sembium and he himself was the guardian. The father of the petitioner died



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on 18.01.2018. Now the natural guardian wanted to mortgage the minor daughter's property for the welfare of the minor. The mortgage deed dated 09.02.2018 was presented for registration before the third respondent and the same was refused by passing a check slip for refusal of the registration of the Mortgage Deed. Aggrieved by the same, the petitioner has approached this Court by way of filing this writ petition.

3. Learned counsel for the petitioner submitted that the third respondent has refused to register the sale 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.

4. A counter affidavit was filed on behalf of the third respondent dated 22.12.2023.

5. It is an admitted fact that the petitioner is the minor and she is an



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absolute owner of the subject property. On behalf of the petitioner, her mother being a natural guardian, had executed a sale deed. It is also an admitted fact that when the sale deed is presented for registration, the third 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.

6. 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

6.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.



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6.b. Whereas in the present case, the document has been executed by the father 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.

7. Therefore, the sale of the property belonging to the minor is not totally prohibited. Such sale is only voidable at the instance of the minor after



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attaining majority and such sale be ignored within a period of three years, after she 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.

8. Such view of the matter, it is risk of purchaser dealing with such property without permission from the Court as required under Section 8 of the Act. Such being a position, since the sale of any property belonging to minor is only voidable as the issue is between the purchaser and the seller, Registrar has no power to refuse to register such document.

9. Such view of the matter, the registering authority cannot refuse to register the document and accordingly, the impugned order passed by the third respondent is set aside and the third respondent is directed to entertain the sale deed which was executed by the petitioner, after receipt of necessary stamp duty and registration charges.

In the result, the writ petition stands allowed with the above observation and direction. No costs.



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Index: Yes/No

Speaking/Non Speaking order

To

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J.SATHYA NARAYANA PRASAD, J.

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