



*C.M.A(MD)No.1319 of 2023*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.01.2024**

CORAM

**THE HON'BLE MRS.JUSTICE S.SRIMATHY**

**C.M.A(MD)No.1319 of 2023**

P.Kannaki Priya

... Appellant

Vs.

NIL

... Respondent

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 47 of the Guardian and Wards Act, 1890, against the order with regard to part of the findings made against the appellant in the judgment and decree order, dated 11.08.2023, passed in H.M.G.O.P.No.145 of 2023 on the file of the III Additional District Judge at Tirunelveli.

For Appellant : Mr.N.Saravanan

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**JUDGEMENT**

This Civil Miscellaneous Appeal is preferred against the order passed in H.M.G.O.P.No.145 of 2023 on the file of the III Additional District Judge, Tirunelveli.



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2. The appellant has filed this petition seeking permission to sell the immovable property situated in T.S.Nos.653 and 657, Block No.8, T.S.Ward No.11, Ward No.6. The appellant's husband is working as a Coolie and the appellant is a house wife. The property mentioned in the petition was gifted to the appellant through her mother. The appellant has sought permission to sell the property in order to give better education to the children. Considering the case of the appellant / petitioner, the Lower Court has declined the permission to sell the property and directed the appellant / petitioner to mortgage the property. Aggrieved over the same, the present Civil Miscellaneous Appeal is filed.

3.The learned Counsel appearing for the appellant relied on the judgment rendered in C.M.A.No.2395 of 2017, dated 08.08.2017, in the case of ***Vimala and another Vs. Sankar***, wherein this Court has held as under:

*“3. The learned District Judge has rejected the petition on the ground that the value of the land would increase multi fold, when the minors attaining majority. The 2nd petitioner/father of*



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*the minors has admitted that he wants to sell the minors' property to repay his loans. This observation of the learned District Judge is based on erroneous understanding of the averments made in paragraph No. 6 of the affidavit filed in support of the petition. In Paragraph No. 6 of the affidavit filed in support of the petition, the petitioners have only stated that the loan borrowed by the 2<sup>nd</sup> petitioner for the purpose of his business has been spent for the education expenses. Once the appellants are ready to sell the property for a stated consideration and have undertaken to deposit the entire sale consideration in a fixed deposit in the name of the minors, the apprehension of the learned District Judge is in my considered opinion is baseless. Therefore, the appeal still stands partly allowed and the appellants are permitted to sell the property of the minors to the respondent Mr.Sankar for a consideration of Rs.89,27,100/- [Rupees Eighty Nine Lakhs Twenty Seven Thousand One Hundred Only]. The said sum of Rs.89,27,100/- [Rupees Eighty Nine Lakhs Twenty Seven Thousand One Hundred Only] shall be deposited in a fixed deposit for a period of ten years in any Nationalized Banks and the fixed deposit receipt along with the copy of the sale deed executed in favour of the respondent Mr.Sankar shall be produced before the District Court, Tiruppur, within a period of eight weeks, from the date of execution of the sale deed. Subject to the above, the appellants are permitted to sell the property of the minors. No Costs."*



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4. The contention of the appellant before this Court is since the property is only one cent, mortgage will not be viable and it is difficult to protect the land as well, therefore, the decision of selling the property was taken by both the appellant as well as her husband. The minor is entitled to 1/3<sup>rd</sup> share in the property. The first daughter is a major who is studying in college and she is also having a share.

5. Therefore, this is Court is setting aside the order passed by the Lower Court and is directing the appellant to deposit the share of the minor (1/3<sup>rd</sup>) in an interest accruing account and the appellant shall utilize the rest of the amount for education purposes. With the above said direction, the Civil Miscellaneous Appeal is allowed as stated supra. No costs.

**24.01.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No

Tmg

***Note: Issue order copy on 23.02.2024.***



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1. III Additional District Judge,  
Tirunelveli.
2. The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SRIMATHY, J.**

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