

S.A.No.101 of 2025

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED :20.02.2025

CORAM

**THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI**

S.A.No.101 of 2025

Tamilarasi

...Appellant

Vs

1.Vasantha  
2.Raja Ram  
3.Tamilarasan  
4.Divya

... Respondents

**PRAYER:** Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree of the learned Principal District and Sessions Judge, Kallakurichi in A.S.No.34 of 2024 dated 27.08.2024, reversing the judgement and decree delivered by the learned Additional Subordinate Court, Kallakurichi in O.S.No.66 of 2015, dated 29.02.2024.

For Appellant : Mr.A.G.Rajan



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## **JUDGMENT**

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The appellant has filed this Second Appeal against the judgment and decree dated 27.08.2024 passed in A.S. No. 34 of 2024 on the file of the Principal District and Sessions Court, Kallakurichi, reversing the judgment and decree passed by the learned Additional Subordinate Judge, Kallakurichi in O.S. No. 66 of 2015 dated 29.02.2024.

2. Heard, Mr.A.G.Rajan, learned counsel for the appellant and perused the material available on record.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the original suit.

4. The appellant/plaintiff filed a suit for specific performance against four defendants (respondents herein) before the Additional Subordinate Court, Kallakurichi. After hearing both sides, the learned trial Judge granted a decree for specific performance in favour of the plaintiff. Aggrieved by the said judgment, the defendants preferred an appeal in A.S. No. 34 of



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2024. The first appellate Judge, after analyzing the evidence on record, allowed the appeal, set aside the findings of the trial Court, and dismissed the suit holding that it was devoid of merit.

5. Challenging the reversal of findings, the plaintiff has preferred this Second Appeal. The learned counsel for the appellant contends that the plaintiff had proved his readiness and willingness before the trial Court and also established the existence of a valid sale agreement between the defendants and the plaintiff. However, the learned first appellate Judge erroneously concluded that since the agreement included the minor's share without obtaining proper permission, the 1st defendant (mother of the minor children) had no authority to enter into the sale agreement on behalf of the minors, rendering the agreement void.

6. The first appellate Judge held that the 1st defendant failed to comply with Sections 8(2) and 8(3) of the Guardians and Wards Act, and therefore, the agreement concerning the minor's share is void. Consequently, the agreement as a whole cannot be enforced through

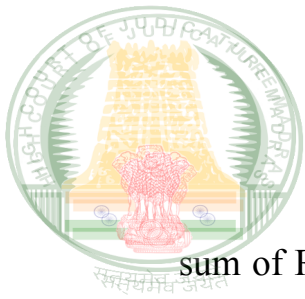


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specific performance. The appellate Court further noted that since there was no alternative prayer for refund, no relief could be granted to the plaintiff. Accordingly, the suit was dismissed.

7. The learned counsel for the appellant further argued that the 1st defendant entered into the sale agreement for herself and on behalf of her minor children for their welfare, and that the minors have not raised any objection. Hence, the sale agreement is valid. The learned first appellate Judge erroneously rejected the claim for specific performance, holding that the minors are not inclined to proceed with the agreement and that, as per Section 8(3) of the Guardians and Wards Act, the 1st defendant failed to obtain necessary permission from the Court to sell the minor's share, which is illegal and liable to be set aside.

8. As per the defence of the respondents/defendants, the 1st defendant contended that the property originally belonged to her husband, who died intestate, leaving behind the 1st defendant and her minor children (D2 to D4) as legal heirs. Out of family necessity, the 1st defendant borrowed a



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sum of Rs. 2,50,000/- and, as a customary practice, agreed to return double the amount (i.e., Rs. 5,00,000/-). She executed the sale agreement merely as security for the loan and never intended to sell the property. She further contended that the actual value of the property was over Rs. 30 lakhs and that the lesser amount mentioned in the agreement was only for the purpose of the loan transaction.

9. The facts reveal that the suit property belonged to the deceased husband of the 1st defendant by way of purchase. After his demise, the 1st defendant and her minor children each became entitled to 1/4th share in the suit property. According to the plaintiff, the 1st defendant entered into the sale agreement on behalf of the minors and for their welfare. However, the 1st defendant denied any intention to sell the property and claimed that she was compelled to execute the agreement as security while borrowing a loan from the plaintiff's husband.

10. It is admitted that defendants 2 to 4 are minors and that their shares were also included in the agreement. However, no prior permission



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was obtained by the 1st defendant from the Court to enter into such an agreement on behalf of the minors, as required under Section 8(3) of the Guardians and Wards Act.

11. The trial Court relied upon the decision reported in **2009(1) HLR 282, Smt. Bhagyamma and Others v. Smt. Ningarama and Others**, which held that a mother as a guardian would not be required to seek permission of the Court to deal with the minor's property. However, the learned first appellate Judge rightly relied on Section 8(1) of the Guardians and Wards Act, which reads:

*"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."*

*In the decision reported in **Darbara Singh v. Kariminder Singh and Others**, AIR 1979 P&H 2015, it was held:*

*"The provisions of sub-section (1) of section 8 of the Act make it expressly clear in unqualified terms that no personal covenant of the guardian shall be binding on the minor. This*



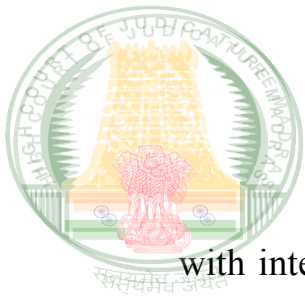
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*means that even if a guardian enters into a contract for the benefit of the minor, such a contract would be voidable at the minor's instance."*

12. Therefore, without the prior permission of the competent Court, a guardian cannot deal with the minor's property. In this case, such permission was not obtained by the 1st defendant. Even assuming the agreement was otherwise valid, the inclusion of minor's share without proper authority renders it unenforceable.

13. Hence, the learned first appellate Judge rightly set aside the trial Court's judgment and refused to grant relief including the refund of the advance, and this Court finds no ground to interfere with such findings. Accordingly, the appeal is dismissed as devoid of merits.

14. However, on perusal of the written statement, it is seen that the 1st defendant has admitted to borrowing a loan of Rs. 2,50,000/-, though there is no proof of repayment of the entire loan. Therefore, the 1st defendant is directed to repay the admitted loan amount of Rs. 2,50,000/-



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with interest at the rate of 12% per annum from the date of the agreement till the date of realization, within a period of four months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

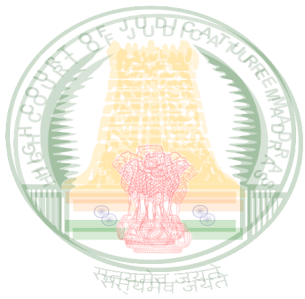
**20.02.2025**

Index : Yes/No  
Neutral Citation : Yes/No  
Speaking/Non Speaking order

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To

1. The Additional Subordinate Judge, Kallakurichi.
2. The Principal District and Sessions Judge, Kallakurichi.
3. The Section Officer, VR Section, High Court of Madras.



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**T.V.THAMILSELVI, J.**

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