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SA No. 448 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-06-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 448 of 2023 and
CMP.No.13533 of 2023**

Velmurugan

..Appellant(s)

Vs

1. Vijayakumar
2. Selvi
3. Rathinavel
4. V.T. Namachivayam,
5. Chandhira

..Respondent(s)

Prayer: Second appeal is filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the Judgement and Decree dated 23.02.2023 made in AS.No.10 of 2022 on the file of the III Additional District and Sessions Court, Cuddalore, Vridhachalam modifying the Judgement and Decree dated 30.09.2021 made in OS.No.143 of 2009 on the file of the Principal Subordinate Judge, Vridhachalam.

For Appellant(s):

Mr.C.Munusamy

For Respondent(s):

R1 And R2 - Insufficient Address
R3 & R4-served- No appearance
R5 - Unclaimed

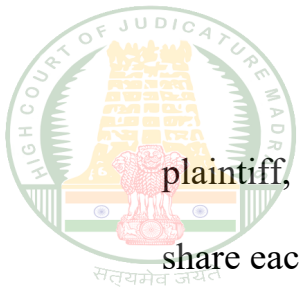
JUDGMENT

The unsuccessful second defendant is the appellant. The respondents 1 and 2 filed a suit for partition seeking their one-third share each in the suit property. The suit was decreed by the trial court by granting one-third share



each in all items of the suit property. Aggrieved by the same, the defendants preferred an appeal in AS.No.10 of 2022 on the file of the III Additional District and Sessions Court, Cuddalore, Vridhachalam. The first appellate court partly allowed the appeal by setting aside the decree for partition in respect of item 5, 6 and 9. The first appellate court affirmed the findings of the trial court with regard to items 1 to 4, 7 and 8. The second defendant is the purchaser of item 1 to 4. Therefore, aggrieved by the judgment and decree passed by the first appellate court, the second defendant has filed the second appeal. The present second appeal is confined to item 1 to 4 of the suit properties.

2. According to the respondents 1 and 2/plaintiffs, the suit item 1 to 4 was purchased in the name of first plaintiff when he was minor on 07-02-2003. In the said sale deed, minor first plaintiff was represented by his father, first defendant herein. It is the specific case of the plaintiffs that the first defendant is not entitled to sell the property of the minor first plaintiff without obtaining court permission. The first defendant sold the property to second defendant without obtaining court permission and the sale consideration was not utilised for the benefit of the minor first plaintiff. It is also stated that in these circumstances, the first plaintiff stopped his studies and has been working as coolie. It is also stated that the first defendant is leading a wavered life with extramarital relationship. The various averments made in the plaint with regard to other items of the suit properties are irrelevant as the second appeal is confined to item 1 to 4. Though the properties stands in the name of the first



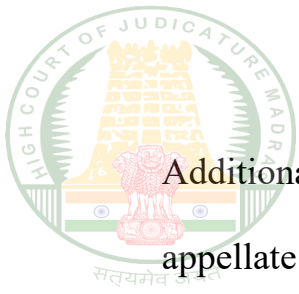
plaintiff, the suit was filed confining the right of the plaintiffs' to one-third share each.

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3. The appellant/ second defendant filed a written statement and claimed that suit items 1 to 4 were purchased by first defendant on his own earning in the name of first plaintiff. It is also stated that in the sale deed executed by first defendant in favour of second defendant, it was clearly recited that sale was effected for the purpose of meeting education expenses of the first plaintiff. Therefore, according to the second defendant, the first defendant sold the property to second defendant for the benefit of minor first plaintiff and the said sale is binding on the plaintiffs. On these pleadings, the second defendant sought for dismissal of the suit.

4. Before the trial court, the first plaintiff was examined as PW1 and one Senthamizhselvan was examined as PW2. On behalf of the plaintiffs, 13 documents were marked as Ex.A1 to Ex.A13. The second defendant was examined as DW1 and three other witnesses were examined as DW2 to DW4. 19 documents were marked on the side of defendants as Ex.B1 to Ex.B19.

5. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the sale effected in favour of second defendant in respect of minor's property without obtaining permission from the Court was invalid and hence, decreed the suit by granting a decree for partition of one-third share each in favour of plaintiffs. Aggrieved by the same, the defendants 2 to 4 filed an appeal in AS.No.10 of 2022 on the file of III



Additional District and Sessions Court, Cuddalore, Vridhachalam. The first appellate court affirmed the findings of the trial court in so far as item 1 to 4, 7 and 8 of the suit properties are concerned and dismissed. The first appellate court allowed the appeal in respect of items 5, 6 and 9 of the suit properties. We are not concerned with those items as this second appeal was filed only by the second defendant, who claims right over items 1 to 4 of the suit properties.

6. The learned counsel of the appellant vehemently contended that the suit items 1 to 4 were sold by first defendant in his capacity as guardian of minor first plaintiff for the benefit of plaintiffs. Therefore, the said sale is binding on the plaintiffs. The learned counsel also by taking this court to the recital in Ex.B1, sale deed that item 1 to 4 of the suit properties were sold for meeting family expenses and education expenses of the first plaintiff. The learned counsel relied on the judgment of this Court in ***Elango Vs Poongodi and others reported in (2001) 1 MLJ 254.***

7. It is seen from the typed set of papers that suit items 1 to 4 were purchased in the name of minor first plaintiff represented by his guardian, first defendant under Exhibit A1 dated 07-02-2003. Therefore, it is clear that the suit properties were purchased in the name of first plaintiff and the same is minor's property. When the properties purchased in the name of minor, presumption arises that the same is purchased for his benefit. Therefore, the courts below rightly treated it as the minor's property. There is no evidence available on record to suggest that the suit properties were not purchased for the benefit of



minor first plaintiff. In such circumstances, I agree with the findings rendered by the courts below that suit item 1 to 4 were minor properties.

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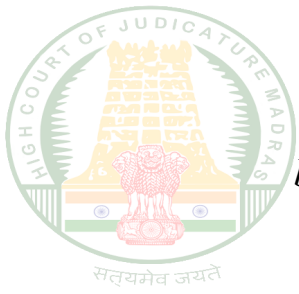
8. It is settled law that in view of Section 8 of Hindu Minority and Guardianship Act, 1956, a natural guardian shall obtain permission of the court for selling minor's property. In the case on hand, admittedly, the father of the first plaintiff namely the first defendant sold the property under Exhibit A2 dated 22.10.2007 to second defendant without obtaining any permission from the Court.

9. Section 8 of Hindu Minority and Guardianship Act, 1956 reads as follows:-

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 realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) 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 extending more than one year



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beyond the date on which the minor will attain majority.

(3) 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 by any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in the case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof; (b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and (c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

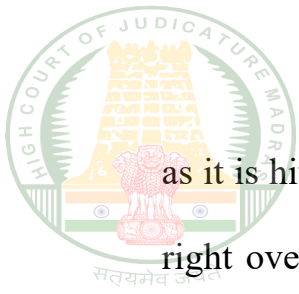


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(6) In this section “court” means the city civil court or a district court or a court empowered under section 4A of the Guardian and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

10. In view of Section 8 (2) and (3) of the said Act, any alienation by natural guardian without obtaining court permission is voidable at the instance of minor. In the case on hand, the first plaintiff was born on 28.02.1991. The birth certificate has been marked as Ex.A7 to establish the same. He attained majority on 28.02.2009. The present suit has been filed on 03.12.2009 well within the period of three years from the date of attainment of majority. By filing a suit claiming right over the suit property, the first plaintiff avoided sale transaction entered into by the first defendant which is voidable one.

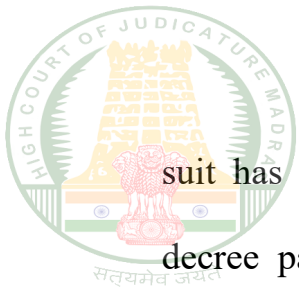
11. The Courts below, by taking into consideration Section 8 of the Hindu Minority and Guardianship Act, 1956, rightly came to the conclusion that the sale deed executed by first defendant in favour of second defendant was voidable one and the same was avoided by the plaintiffs. Once we come to the conclusion that Exhibit A2, sale deed in favour of second defendant is not valid



as it is hit by Section 8 of the said Act, the appellant is not entitled to claim any right over the property and the plaintiffs are entitled to decree for partition as prayed for. The said conclusion reached by the courts below is based on proper application of Section 8 of the Hindu Minority and Guardianship Act, 1956.

12. It is also pertinent to mention that the appellant also filed a suit seeking declaration of title in respect of the suit property and consequential injunction in OS.No.21 of 2016 and the said suit was jointly tried along with the present suit in OS.No.143 of 2009. The trial court, by a common judgment, decreed the suit filed by the respondents 1 and 2 and dismissed the suit filed by the appellant.

13. Challenging the common judgment and decree passed by the trial court, the appellant herein filed two appeals in A.S.No.10 of 2022 and A.S.No.11 of 2022. A.S.No.10 of 2022 has been filed challenging the decree passed by the trial court in the partition suit filed by the respondents 1 and 2. A.S.No.11 of 2022 has been filed challenging the dismissal of the declaration suit filed by the appellant. Both the appeals were disposed of by the first appellate court by a common judgment and decree. The findings of the trial court with regard to item 1 to 4 were affirmed. The findings rendered by the courts below that sale deed executed by first defendant in favour of second defendant in respect of item 1 to 4 is hit by Section 8 of Hindu Minority and Guardianship Act, 1956 has attained finality as far as the suit filed by the appellant in OS.No.21 of 2016 is concerned. The first appeal decree in the said

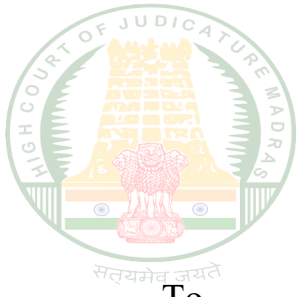


suit has not been challenged before this court. Therefore, the judgment and decree passed by the first appellate court in A.S.11 of 2022 affirming the findings of the trial court and negating the relief of declaration has attained finality and the same would operate as *resjudicata* against the appellant in maintaining the present second appeal. In view of the said reasons also, the appellant is not entitled to succeed.

14. In the light of the discussions made earlier, I do not find anything to interfere with the judgment and decree passed by the first appellate court as the second appeal does not involve any substantial question of law. Accordingly, the second appeal stands dismissed by affirming the judgement and decree dated 23.02.2023 in AS.No.10 of 2022 on the file of the III Additional District and Sessions Court, Cuddalore, Vridhachalam modifying the judgement and decree dated 30.09.2021 made in OS.No.143 of 2009 on the file of the Principal Subordinate Judge, Vridhachalam. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

03-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To
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1. The III Additional District and Sessions Court, Cuddalore, Vridhachalam.
2. The Principal Subordinate Judge, Vridhachalam.



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S.SOUNTHAR, J.

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