
(2010) 10 KL CK 0215
In the High Court Of Kerala
Case No : M.F.A. No. 45 of 2010

Naizy Neema

APPELLANT

Vs

Mary Tauro and Prasida Agustin

RESPONDENT

Date of Decision : 14-10-2010

Acts Referred:

Citation : (2010) 10 KL CK 0215

Hon'ble Judges : R. Basant, J; M.L. Joseph Francis, J

Bench : Division Bench

Advocate : M.C. Ratnakaran, for the Appellant; No Appearance, for the Respondent

Judgement

R. Basant, J.—Appellant is the mother of a minor child, by name, Alex Tauro, born on 03.11.2000. The father of the minor child expired on 31.05.2004. The appellant/mother is the legal guardian of the minor child. An item of property was purchased by the father and mother of the minor child in their joint names. Both of them had half rights each in that property. After the death of the father of the minor child on 31.05.2004, the minor along with his mother became entitled to the rights of the deceased father in the property. The mother wanted the said property to be disposed of. According to her, retention of this property was difficult and hence she took the decision to sell her as well as the minor's rights. There was an offer to purchase the property for an amount of Rs. 3,90,000/-. The mother of the minor child asserted that she had already purchased another item of property for residence along with the minor. In these circumstances, she wanted court's permission to dispose of the fractional rights of the minor in the property.

2. Before the court below, the mother of the child filed a proof affidavit. Exts.A1 to A3 were marked. The court below by the impugned order permitted the appellant/mother to dispose of the property. We extract below the operative portion of the order passed by the District Court.

In the result, the petition is allowed. Petitioner is permitted to dispose the petition schedule property i.e., 1.82 ares in R.S. No. 74/6 (O.S. 30/10) in Kodiyeri amsom Vayalalam desom in Thalassery Furka subject to the following conditions:

1) Petitioner shall make every endeavour to get maximum price for the petition schedule property.

2) After fixing the proposed sale, petitioner shall produce the draft sale deed for approval of this Court.

3) On sale of the property, minor's 1/4th share in the market value i.e., Rs. 97,500/- shall be deposited in fixed deposit in the name of minor in any of the Nationalised Bank at Thalasserry till his attaining majority and produce the FD Receipt before this Court within two months from the date of sale. So also petitioner shall convey 1/4th share in the property and the building stands in her name at present within three months from the date of conveyance of the property.

3. The appellant has come before this Court aggrieved by that part of the impugned order, which obliges her to convey 1/4th share in the property and the building standing in her name. According to the learned Counsel for the appellant such a condition was totally unnecessary. The appellant is willing to deposit the share of the minor in Fixed Deposit in a nationalised bank such that the principal amount along with interest can be released to the minor on attainment of majority. The direction to convey 1/4th share in a different property belonging to the appellant to the name of the minor is unnecessary and would involve needless and avoidable expenses. In these circumstances, it is prayed that the impugned order in so far as it imposes the said condition (underlined in the operative portion above) may be vacated.

4. We requested the counsel to explain the details. After discussions at the Bar, it is conceded that the father and mother of the minor child had half share each in the property. The half share of the father alone has come to the minor and his mother on the death of his father. As per the personal law applicable to the parties, one-third of the said half will go to the mother and 2/3rd of the said half go to the minor child. This means, the minor admittedly has one-third right over the entire property and not 1/4th right as shown in the impugned order (i.e. $\frac{1}{2} \times \frac{2}{3} = \frac{2}{6}$, ie. $\frac{1}{3}$). The learned Counsel for the appellant accepts that the actual share of the minor in the entire property is 1/3rd and not 1/4th. The learned Counsel submits that it has been agreed to sell the property for a total consideration of Rs. 3,90,000/- 1/3rd right belongs to the minor. He is entitled to an amount of Rs. 1,30,000/-. The appellant is willing to deposit the said amount in the name of the minor.

5. We are satisfied that if the share of the minor is deposited in court and it is ensured that the said amount along with interest can be released only to the minor after attainment of majority, it is not necessary to impose the further

condition that the wife must transfer her 1/4th share in a different property to the name of the minor. The demands of protecting the welfare of the minor do not justify or warrant imposition of such a condition. That would only lead to unnecessary expenses. We are satisfied that the challenge raised to the above extent can be accepted subject to appropriate modification of the direction regarding the share of the sale consideration, to which the minor is entitled to and which is to be deposited.

6. In the result:

a) This appeal is allowed in part.

b) The direction in the impugned order that "the petitioner shall convey 1/4th share in the property and the building standing in her name at present to the name of the minor within three months from the date of conveyance of the property" is set aside and vacated.

c) The impugned order is modified as agreed and it is directed that the minor's 1/3rd share in the sale consideration of Rs. 3,90,000/- (Rupees Three lakhs ninety thousand only), i.e. an amount of Rs. 1,30,000/- (Rupees One lakh thirty thousand only) must be deposited in the name of the minor in any nationalised bank at Thalasserry within a period of two months from the date of the sale or within two months from this date.

d) That amount shall be retained in Fixed Deposit and shall be released to the minor on attainment of majority. If the amount has already been deposited, needless to say, credit shall be given to such amount, if any, deposited.