

(2010) 04 MAD CK 0255
In the Madras High Court
Case No : C.M.A. No. 937 of 2009

S. Sumyuktha and S. Rithanya (rep. by their mother S. Devi Subramaniam) APPELLANT

Vs

M. Ponnammal RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0255

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : V. Bharathidasan, for the Appellant; B. Dyaneswaran, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellants/petitioners against the order and decreetal order, dated 30.01.2009, made in G.W.O.P. No. 188 of 2008, on the file of the Principal Sub Court, Erode, praying to set aside the the said Order passed by the Principal Sub Court, Erode.

2. The short facts of the case are as follows:

The minor petitioners namely S. Sumyuktha and S. Rithanya, aged about about 16 years and 7 years respectively and daughters of Late. M. Subramanian, are residing along with their mother, S. Devi Subramanian, at Puduthottam, Vadugapatti Post, Arachalur Via, Erode Taluk. The mother of the minor petitioners has filed the above G.W.O.P. No. 188 of 2008, seeking permission to sell the property belonging to the minor petitioners, which is the schedule mentioned property of the petition. The schedule mentioned property is as follows:

Tiruppur Registration District, Sulur Sub-Registration District, Palladam Taluk, Karumathampatti Village, Patta No. 2280, G.S. No. 295, in this Punja Acres 5.20, in this

East of North-south Cart-track

West of properties described in A Schedule

North of lands leading in G.S. No. 294 and

South of lands leading in G.S. No. 297/2

within the said boundaries, an extent of Punja Acres 1.75 cents of land, which is in Punja hec.0.71.0, with common rights to use the roads, etc.,

3. The petitioner submitted that the father of the minor petitioners namely (Late) Subramanian, was carrying out business under the name and style of "Sivasakthi Textiles", at Somanur and that he was heavily indebted in his business career due to flexibility of market rates of the products. Under such circumstances, due to his heart-ailment, he died on 11.05.2006, leaving behind him, the present minor petitioners namely S. Sumyuktha and S. Rithanya, his wife S. Devi Subramanian and his mother Ponammal, the respondent herein are the only legal heirs of the deceased Subramanian.

4. After the demise of the said Subramanian, his wife Devi Subramanian and the minor petitioners herein and the respondent, who is the mother have jointly partitioned the properties left by the Late. Subramanian, by virtue of a registered Partition Deed dated 25.03.2008, registered as document No. 2929 of 2008, on the file of the Sub-registrar office at Sular. As per the registered partition deed, the minor petitioners were allotted the petition schedule mentioned property, which is the subject matter in the petition seeking permission of the Court to sell the above said property for the benefit of the minors.

5. After demise of the father of the minor petitioners, the said minor petitioners and their mother Devi Subramanian are residing at Vadugapatti Village, Erode Taluk, within the jurisdiction of the District Court, Erode. The petitioner submitted that the first minor petitioner is studying in first standard and the second minor petitioner is studying in second standard at Somanur at two different reputed schools and that they are brilliant in their academic studies. For their higher education and for their marriage in future, large funds will be required by the minor petitioners. Hence, the petitioners are seeking permission to sell the schedule mentioned property at a profitable rate and invest the money in fixed deposit, which will fetch interest. Now, the petition schedule mentioned property is lying idle without yielding any income. Moreover, nobody is available to the petitioners to look after agricultural work. Therefore, the petitioners pray before the Court for permission to sell the minors' property for the best possible price and thus render justice.

6. The respondent, Ponnammal, the paternal grandmother of the minors had filed a counter statement and duly admitted the contentions of the petitioners and was in consonance with the prayer of the petitioners and as such the respondent has prayed to pass orders in favour of the petitioners and render justice.

7. The learned Principal Sub-Judge, Erode after considering the contention of the

petitioners and counter statement of the respondent has passed order that the partition deed dated 25.03.2008, among the legal heirs of the (late) Subramanian, was registered on the file of the sub registrar office at Sulur. But, the petitioners have mentioned their residential address as Puduthottam, Vadugapatti Post, Arachalur (via), Erode District. The petition schedule mentioned property is situated within the Coimbatore District. As such, the petition has to be filed before the District Court, Coimbatore.

8. Further, the learned Judge pointed out that the land value will increase many fold in future and fetch better dividends when compared with the interest, which may be got on deposits after selling land. The learned Judge also opined that the minors may feel prejudiced, at a later point of time and feel that the said land had been sold at a loss and that if the said land had not been sold, it would have fetched them a higher sale consideration later on in their life. The learned Judge also opined that the minor petitioners after becoming majors may have different plans like construction of industry in the said land to facilitate growth of their career prospects. Further, the learned Judge pointed out in his order that the petitioners had not furnished the guideline value of the land and had also not furnished the copy of the sale deed of the adjacent property of the petition mentioned property to prove the land value. Hence, the learned Principal Subordinate Judge dismissed the petition in G.W.O.P. No. 188 of 2008, on 30.01.2009.

9. Challenging this order, the appellants/petitioners have filed the above appeal to set aside the order.

10. Learned Counsel appearing for the appellant argued that if the petition property is kept idle, it does not generate any income. If the property is sold and the sale proceeds are deposited in a bank, the minors would be able to receive interest on such deposit, which would aid them in their studies. The learned Counsel further argued that the minors have no source of income and all of them are depending upon their grandmother, who has also given her consent before the Trial Court by way of counter statement. The learned Counsel further argued that the learned Judge erred in his order stating that as the land value increases, the interest on deposits on such sale of land will not be proportionate and hence the petitioners would not be able to get adequate income. This has been decided by the learned Judge in an arbitrary manner without the support of any documentary evidence. The learned Counsel further pointed out that the minor petitioners are residing along with their grandmother at Erode. As such, the jurisdiction comes under the purview of the learned Trial Judge.

11. Learned Counsel appearing for the respondent argued that he has no objection to establish the case before the competent forum. Further, the learned Counsel pointed out that the permission sought by the appellant to sell the land is a bonafide one.

12. Considering the facts and circumstances of the case, scrutiny of findings of

the learned Principal Subordinate Judge, Erode and arguments advanced by the learned Counsel appearing on either side, this Court is of the view that the property situated at Tiruppur Registration District, Sulur Sub-registration District, Palladam Taluk, Karuthampatti Village, in G.S. No. 295, an extent of 1 Acre 75 Cents, comes under the territorial jurisdiction of Coimbatore District. This Court further views that jurisdiction is the first principle of law. As such, the petitioners/appellants have to approach proper forum for their remedy. As such, the order and decreetal order passed by the Principal Sub-ordinate Judge, Erode, in G.W. O.P. No. 188 of 2008, dated 30.01.2009 is confirmed, on jurisdiction point alone.

13. Therefore, the appellants are at liberty to approach the proper competent forum for their remedy. As soon as the appellants approach the proper Court that Court would decide the case on merits within a period of six months from the date of filing the permission petition, without following any discussion of this Court except jurisdiction point and without following the order of the learned Principal Subordinate Judge in his order passed in G.W. O.P. No. 188 of 2009, dated 30.01.2009, after framing necessary issues.

14. Accordingly, the above Civil Miscellaneous Appeal No. 937 of 2009 is disposed of and the order and decreetal order, dated 30.01.2009, in G.W.O.P. No. 188 of 2008, passed by the Principal Sub Court, Erode, is set aside. There shall be no order as to costs.