
(2017) 04 MAD CK 0249
In the Madras High Court
Case No : 1231 of 2015

S.R.Gurunathaprabhu

APPELLANT

Vs

Nil

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

Citation : (2017) 04 MAD CK 0249

Hon'ble Judges : R.Subramanian

Bench : SINGLE BENCH

Advocate : R.Subramanian

Final Decision : Allowed

Judgement

Aggrieved by the rejection of the application for permission to sell the "B" Schedule properties and to mortgage "A" Schedule property to enable him to discharge the debts incurred for the treatment of his wife, Saraswathi, who ultimately died of cancer, the appellant is before this Court.

2. The property as appended to "A" Schedule property in the original petition, was purchased by the said Saraswathi on 19.04.2004. The properties as appended to "B" Schedule property were purchased by the appellant and the deceased Saraswathi under a sale deed dated 19.11.2009. The said Saraswathi died leaving behind the appellant as well as two daughters, one of whom, is a minor. Therefore, insofar as the property shown in "A" Schedule, the appellant and his two daughters will have 1/3rd share and in the properties shown in "B" Schedule, the appellant has 4/6th share being a joint purchaser and the minor daughter will have 1/6th share. Claiming that he has spent more than Rs.95,00,000/- (Rupees Ninety Five Lakhs only) for treatment of his wife, Saraswathi and the appellant had incurred the debts, he sought for permission to sell "B" Schedule properties and he has also produced the original agreement of sale, dated 09.05.2015, between himself and one R.Kannan, son of V.Rajagopal, residing at No.2J/3, Poosari Street, Chinthamani, Tiruchirappalli - 620 002.

3. Though the learned Judge had found that the fact that the appellant has borrowed and spent money for his wife is true, the application came to be dismissed on the sole ground that the appellant has not undertaken to deposit the share of the minor daughter in Court. The learned Judge has extracted the proof affidavit as the appellant filed before the trial Court, which reads as follows:

"VERNACULAR MATTER OMITTED"

In view of the said submission, the learned Judge has dismissed the said application for permission to sell.

4. The learned Counsel for the appellant would submit that the same is the wrong statement made by his Counsel and he is also misled by his Counsel.

5. It is also stated that certain proceedings are pending as against the said Counsel before the criminal Court as well as Bar Council.

6. Be that as it may, the learned Counsel for the appellant would submit that his client is ready and willing to deposit the share of the minor daughter in any one of the nationalised banks till such time, she attains majority.

7. In the light of the said statement, I deem it fit to allow this Civil Miscellaneous Appeal and grant permission to the appellant to sell "B" Schedule properties as per the agreement of sale, dated 09.05.2015, produced as Ex.P.10 before the trial Court. The purchaser is directed to deposit 1/3rd of the sale proceeds towards the share of the minor in a Fixed Deposit in the name of the minor daughter represented by the appellant as guardian, for a period of five years in any one of the nationalised banks at Chennai and the receipt shall be produced before the trial Court. On such deposit, the appellant will be permitted to execute the sale deed on behalf of the minor daughter as guardian in respect of the "B" Schedule properties. Insofar as the second prayer for mortgage of "A" Schedule property is concerned, it is made clear that the mortgage can be made only to the extent of 2/3rd shares of the appellant and his major daughter for the purpose of borrowal.

8. With the above directions, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected civil miscellaneous petition is closed.