

T.K.Srinivasan Vs. Not Applicable

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Court : Chennai

Decided On : Jan-09-2014

Judge : P.R.Shivakumar

Appellant : T.K.Srinivasan

Respondent : Not Applicable

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

09. 01.2014 CORAM THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR
C.M.A.No.3279 of 2013 T.K.Srinivasan (aka) T.K.Srinivas Chari ..Appellant Civil
Miscellaneous Appeal under Section 8(5)(c) of the Hindu Minority & Guardianship
Act, 1956 (Act 32 of 1956) to set aside the fair and decreetal order made in
H.M.G.O.P.No.22 of 2013 dated 20.08.2013 by the Principal Judge, City Civil
Court, Chennai and grant permission to develop the 'B' schedule mentioned
property by executing/registering the sale deed or power of attorney or any other
deed in favour of Mr.P.Kruthivas, Director of M/s.Pushkar Properties (P) Ltd. or its
nominee(s) or assignee(s). For Appellant : Mr.N.R.Chandran, Sr. Counsel for
M/s.G.Vijayakumar - - - -

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the order of the learned Principal Judge, City Civil Court, Chennai dated 20.08.2013 made in H.M.G.O.P.No.22 OF2013 By the said order, which is challenged in the Civil Miscellaneous Appeal, the learned trial judge has dismissed the petition filed under section 8(2)(a) of Hindu Minority and Guardianship Act, 1956 seeking permission of the court to develop the property, in which a minor also does have a substantial interest.

2. The facts leading to the filing of the civil miscellaneous appeal are as follows: i) An extent of 2 grounds and 2132 sq.ft. (6932 sq.ft.) of land bearing plot No.95, 'C' type together with a building thereon bearing door No.39, East 2nd Cross Street, Shenoy Nagar, Chennai 600 040 belonged to one T.S.K.Chari, the father of the appellant herein, as he had purchased the same under a sale deed dated 04.09.1962 registered as document No.2391/1962 on the file of Sub Registrar, West Madras. The said T.S.K.Chari died intestate at Chennai on 22.01.1986 leaving behind him the following persons as his legal heirs:

1. T.K.Srinivasan (aka) T.K.Srinivas Chari (son)

2. Smt.Vydehi Chari (wife)

3. Smr.Pattammal Ramaswamy (daughter)

4. Smt.Uttara Gopalan (daughter) The appellant T.K.Srinivasan (aka) T.K.Srinivas Chari and his wife Rangashree Srinivas, do not have any biological child of their own and hence they adopted minor S.Shailasri under a registered Adoption Deed dated 24.09.1997. The said Adoption Deed came to be registered as document No.747/1997-98 on the file of the Sub Registrar, Jayanagar, Bangalore. ii) While so, all the direct legal heirs of Late T.S.K.Chari, effected a partition among themselves under a registered Deed of Partition dated 09.10.1992, registered as document No.5401/1992 on the file of the Sub Registrar, Anna Nagar, Chennai. The entire property left by T.S.K.Chari is described in petition Schedule 'A'. In the said property, an extent of 1 ground and 2130 sq.ft. (4530 sq.ft.) together with the building thereon forming the front portion of the door No.39, East 2nd Cross Street, Shenoy Nagar, Chennai 600 040 together with undivided = share in an

extent of 885 sq.ft. provided as a private common passage on the west of the above said land measuring 4530 sq.ft. came to be allotted to the share of T.K.Srinivasan (aka) T.K.Srinivas Chari, the appellant herein and his children and the said share was made subject to a life interest created in favour of Mrs.Vydehi Chari, the mother of the appellant herein. The said property allotted to T.K.Srinivasan (aka) T.K.Srinivas Chari and his children, subject to the life interest created in favour of Vydehi Chari, has been described in the petition schedule 'B' and the undivided = share in the common passage has been described in petition schedule 'C'. iii) According to the terms of the Partition Deed, in the petition 'B' schedule property, Shailasri became entitled to half share and the remaining half share belonged to the appellant herein, namely T.K.Srinivasan (aka) T.K.Srinivas Chari. Out of the said half share belonging to him, he executed a settlement deed gifting half of his share to his wife Rangashree Srinivas. Thus, in the petition 'B' schedule property, T.K.Srinivasan (aka) T.K.Srinivas Chari, Rangashree Srinivas and minor Shailasri have got , and = shares respectively. Smt.Pattammal Ramaswamy was not allotted any share in the property and in lieu of her share, she was paid a sum of Rs.1.00 Lakh. Smt.Uttara Gopalan was allotted the vacant land on the back portion measuring an extent of 1615 sq.ft. together with undivided = share in the common passage having an extent of 885 sq.ft. Smt.Vydehi Chari was content with being conferred with a life interest in the share allotted to the appellant herein and his children without any right of alienation. iv) Out of the property allotted to the appellant and his children, which is described in petition 'B' schedule, the appellant and his daughter minor Shailasri were entitled to equal share, of course subject to the life interest of Mrs.Vydehi Chari. The appellant, out of his half share in the petition 'B' schedule property, chose to settle 50% (subject to life interest of Vydehi Chari) on his wife Mrs.Rangashree Srinivas. Thus in the petition 'B' schedule property, appellant became entitled to , his wife became entitled to and minor Shailasri became entitled to =. All their shares are subject to the life interest of Mrs.Vydehi Chari. v) Contending that the building in the petition 'B' schedule property had become very old and dilapidated and that the co-owners wanted to develop it into a multi-storeyed building consisting of six apartments by entering into a Joint Development Agreement with the reputed builder by name M/s.Pushkar Properties Private Limited, with a view to enable

better enjoyment of the property by the co-owners which would be beneficial to the minor also, the appellant chose to file the said HMGOP on the file of the lower court under section 8(2)(a) of the Hindu Minority and Guardianship Act, 1956 for permission, so that the undivided share corresponding to the development made by the builder can be alienated, for which they would have the benefit of owning a pucca built up apartments. By the Joint Development Agreement, three apartments consisting of two flats in each apartment are proposed to be built up and the developer (builder) is to get two out of the six flats and the corresponding undivided share in the land.

3. The learned Judge of the lower court before whom evidence was led in the form of testimonies of PWS.1 and 2 and Exs.P1 to P10, declined the permission sought for and passed the impugned order dated 20.08.2013. The learned trial judge, chose to decline permission sought for based on his reasoning that no consideration had been mentioned in the petition for the sale deeds to be made in respect of the undivided share to the developer and that without any specific prayer and with a vague prayer, the permission had been sought for. As against the said order dismissing the HMGOP, the present civil miscellaneous appeal has been filed on various grounds set out in the grounds of appeal.

4. The point that arises for consideration in this appeal is as follows: ". Whether the trial court, without proper consideration of the pleading and evidence came to an erroneous conclusion that the proposed execution of sale deed in favour of the developer conveying undivided 1/3 share in the land therein was not in the interest of the minor and that hence the permission sought for could not be granted?."

5. Mr.N.R.Chandran, the learned Senior Counsel arguing on behalf of Mr.G.Vijayakumar, learned counsel on record for the appellant, argued that the court below adopted a wrong approach without considering the nature of the relief sought for by the appellant and came to an erroneous conclusion that the proposed transaction was not in the interest of the minor; that the order of the court below is a crippled non-speaking order exhibiting non-application of mind; that as per the partition deed, the minor was entitled to an extent of 2265 sq.ft. as an undivided share in the land, whereas if the development is made as per the

joint development agreement, she would get even an excess extent as an undivided share in the land, as her undivided share would be 2310 sqft; that the learned trial judge failed to note that in addition to getting an extent of 2310 sq.ft. as undivided share of land as against her entitlement of 2265 sq.ft., the minor would be conferred with the benefit of two apartments with the built up area of 4042 sq.ft. which would fetch more rental income and would definitely be in the best interest of the minor; that the court below failed to note the very fact that by entering into a Joint Development Agreement nothing would be lost by the minor and she is bound to gain more and that in fact no part of the minor's undivided share in the land will be conveyed to anybody. The learned Senior Counsel pointing out the benefits sought to be conferred on the minor, besides the other co-owners getting some benefit at the cost of giving up a portion of their undivided share in the land to the developer, was not properly appreciated by the learned trial judge, who blind-foldedly declined the permission without proper application of mind and without assigning sustainable reasons.

6. This court paid its anxious consideration to the above said submissions made by the learned senior counsel for the appellant.

7. The sale deed under which, the entire property came to be purchased by late T.S.K.Chari has been marked as Ex.P1. From Ex.P1, it is obvious that the land comprised in Survey Nos.56/3 Part and 59/2 Part bearing door No.95 of 'C' type in Shenoy Nagar, Aminjikarai having an extent of about 2 grounds and 2132 sq.ft. was purchased by T.S.K.Chari on 04.09.1962. Under the said sale deed the above said land with the house standing thereon bearing door No.95 was purchased by T.S.K.Chari. It is also obvious from Ex.P2-partition deed that the house that was present in the said property was on the front side and the backside was left vacant. On the death of T.S.K.Chari intestate, his wife Vydehi Chari, son T.K.Srinivasan (aka) T.K.Srinivas Chari and daughters Pattammal Ramaswamy and Uttara Gopalan became entitled to equal shares in the said property. Mrs.Vydehi Chari, the wife of the original owner came forward to give up her share in lieu of getting a life interest without any right of alienation in respect of the front portion of the property in which there was a building. Similarly, one of the daughters of late T.S.K.Chari, namely Pattammal Ramaswamy also gave up her

share after receiving a sum of Rs.1,00,000/- from the appellant. Accordingly, the property was divided into two parts, namely the front part consisting of 4530 sq.ft. with a building and the rear portion consisting of 1685 sq.ft. providing a common passage measuring about 885 sq.ft. on the west of the front portion. By the family arrangement incorporated in the partition deed, the appellant recognised the right of his minor adopted daughter and that was the reason why the front portion consisting of 4530 sq.ft. with a building thereon was allotted to the appellant T.K.Srinivasan (aka) T.K.Srinivas Chari and his children subject to the life interest of Mrs.Vydehi Chari.

8. Admittedly, the appellant and his wife did not have any biological child of their own and the adopted daughter minor Shailasri is given a right equal to that of the appellant by recognising her half share in the front portion, while the appellant accepted conveying of his right to the remaining half share in the front portion. The same is reflected in Ex.P6-Settlement Deed dated 07.06.2011, by which, the appellant settled 50% of his share in the front portion to his wife Rangashree Srinivas. Of course the measurements found in the sale deed and the partition deed seem to be approximate. There is a difference of 98 sq.ft. The sale deed itself refers to the extent as 2 grounds 2132 sq.ft. or there about. The partition deed refers to 4530 sq.ft. forming the front portion, 885 sq.ft. of common passage on the western side and 1615 sq.ft. forming the rear portion of the property. The total as per the partition deed comes to 7030 sq.ft. whereas 2 grounds 2132 sq.ft. will account for 6932 sq.ft. Thus, there is a difference of 98 sq.ft. The same is of no consequence because, it is not disputed by the appellant that in the petition 'B' schedule property measuring 4530 sq.ft. and undivided = share in the common passage of 885 sq.ft. the minor is entitled to get = share, whereas the appellant and his wife are entitled to share each. The corresponding extent of undivided = share in the common passage shall be 442.5 sq.ft. If it is added to the front portion of 4530 sq.ft. the total extent comes to 4972.5 sq.ft. Half of the same will come to 2486.25 sq.ft. we can round it to 2486 sq.ft. If the terms of the Joint Development Agreement marked as Ex.P7 are given effect to, the minor will get 4042 sq.ft. of built up area and 1/3rd undivided share in the total extent. The 1/3rd of the total extent of 6932 sq.ft. will come to 2310.66 sq.ft. If the total extent is taken as 7030 sq.ft., the 1/3rd will come to 2343.33 sq.ft. As per the partition, the minor shall be

entitled to 2,486 sq.ft. The difference shall be only 143 sq.ft. For the same, she will be getting two apartments with the total built up area of $2021 + 2021 = 4042$ sq.ft. No one can assume that the same shall not be beneficial to the minor. Absolutely there is no scope for holding that the proposed transaction would be detrimental to the interest of the minor. The minor is bound to derive more benefit. Therefore, as rightly contended by the learned senior counsel for the appellant, the learned trial judge has committed an error in simply rejecting the prayer made in the petition and declined the permission sought for by passing a crippled and non-speaking order, without even applying the mind to the merits of the proposed transaction. It shall be noticed that the proposed development is intended for the benefit of the minor and in no way the minor's interest shall stand sacrificed or diminished or compromised. The large benefit sought to be conferred on the minor by the proposed development, ought not have been denied by dismissing the petition seeking permission.

9. For the above said reasons, this court answers the question in favour of the appellant and hold that the learned trial judge committed a grave error in passing such a crippled and non-speaking order without application of mind rejecting the permission sought for. This court is of the considered view that the permission should be granted, as it shall be in the best interest of the minor.

10. Though the Joint Development Agreement was produced along with the petition, the appellant did not produce any sanctioned plan for the development of the property into a building consisting of the proposed apartments. When the same was put to the learned Senior Counsel for the appellant, plan showing the proposed construction along with the Certificate of Undertaking by the architect was produced for the perusal of this court. A perusal of the drawing, plan and the Certificate of Undertaking given by the architect shows that the proposed development was made as per the specifications found in the Joint Development Agreement marked as Ex.P7. Though this court comes to the conclusion that the permission sought for should be granted, while granting permission, this court has to ensure that the development (construction of the building) is made in accordance with and not in violation of the planning rules. Hence this court is of the view that permission to be granted should be subject to a rider that the

construction should be started only after getting a planning permission from the competent authority and the execution of the work should be in accordance with the sanctioned plan without any deviation. In this regard, the developer, namely Mr.P.Kruthivas, Director of M/s.Pushkar Properties Private Limited, has submitted an Affidavit of Undertaking to construct the building in strict compliance/adherence to the sanctioned plan and that they would not violate the Development Control Rules. The said undertaking is recorded. The said documents are directed to be kept in the bundle and shall form part of the record.

11. In view of the foregoing discussions, this court comes to the conclusion that the order dated 20.08.2013 made by the learned trial judge in dismissing the petition H.M.G.O.P.No.22 of 2013 is liable to be set aside and that the permission sought for in the HMGOP shall be granted recording the undertaking incorporated in the affidavit submitted by the developer and imposing a condition that the subject work should be commenced only after getting a planning permission from the competent authority and the execution of the same should be done in strict compliance with the sanctioned plan and the Development Control Rules; that the developer shall be bound for any deviation from the sanctioned plan or violation of the development control rules and that it shall be the duty of the developer to rectify any deviation, if inadvertently made by the developer, which may be pointed out by the authorities concerned. In the result, this appeal is allowed. The order of the learned Principal Judge, City Civil Court, Chennai dated 20.08.2013 made in H.M.G.O.P.No.22 of 2013 is set aside. The H.M.G.O.P.No.22 of 2013 shall stand allowed and permission to the appellant is granted to develop the Schedule 'B' property by executing/registering Sale Deed(s) or Power of Attorney(s) or any other deed(s) in favour of Mr.P.Kruthivas, Director of M/s.Pushkar Properties Private Limited or its nominee(s) or assignee(s) in respect of undivided 1/3rd share in the petition 'A' Schedule property. The undertaking incorporated in the affidavit submitted by the developer, namely Mr.P.Kruthivas, Director of M/s.Pushkar Properties Private Limited is recorded. The permission granted herein shall be subject to a condition that the subject work should be commenced only after getting a planning permission from the competent authority and the execution of the same should be done in strict compliance with the sanctioned plan and the Development Control Rules; that the developer shall be held responsible for any

deviation from the sanctioned plan or violation of the development control rules and that it shall be the duty of the developer to rectify deviation, if any, inadvertently made by the developer, which may be pointed out by the authorities concerned. . .2014 Index :Yes Internet :Yes asr To The Principal Judge City Civil Court, Chennai P.R.SHIVAKUMAR, J asr Pre-Delivery Judgment in C.M.A.No.3279 of 2013 09.01.2014

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