

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2015

CORAM

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

C.R.P.(PD)No.3599 of 2015
and M.P.No.1 of 2015

K.Thukkaram

... Petitioner/1st Defendant

Vs.

1. Ram Sakthi

2. K.Vittal

... Respondents/Plaintiffs

3. K.Pandurangan

... Respondent/2nd Defendant

* * *

Prayer : Civil Revision Petition has been filed under Article 227 of Constitution of India praying to set aside the order dated 17.02.2015 passed in I.A.No.1520 of 2013 in OS No.5658 of 2012 on the file of the III Assistant City Civil Court, Chennai.

* * *

For Petitioner : Ms.S.P.Arthi

For Respondents : Mr.R.Chandrabose Chelliah for
RR 1 & 2

ORDER

The revision petitioner herein is the first defendant in O.S.No.5658 of 2012 on the file of the III Assistant Judge, City Civil Court, Chennai. The second defendant in O.S.No.5658 of 2012 is the brother of the revision petitioner. The first plaintiff is the sister and the second plaintiff is the brother. The second plaintiff is of unsound mind, which is not in dispute.

2. The first plaintiff was appointed as a next friend and guardian to represent the second plaintiff in O.S.No.5658 of 2012 by the Trial Court by an order dated 17.02.2015 in I.A.No.1520 of 2013 in O.S.No.5658 of 2012. This revision petition is against the aforesaid order.

3. Heard both sides.

4. It is not in dispute that the third respondent herein, who is the second defendant, in O.S.No.5658 of 2012 remained exparte before the Trial Court. Hence, no notice is necessary to the third respondent.

5. The issue is as to whether the Trial Court is correct in appointing the first respondent herein, who is the first plaintiff in O.S.No.5658 of 2012, as next friend and guardian to the second plaintiff/second respondent herein, who is of unsound mind.

6. According to the revision petitioner, though the revision petitioner is willing to act as a next friend and guardian to the second respondent herein, who is the second plaintiff, the same is not acceptable to the first respondent and hence, the issue to be decided is as to whether who shall represent the second respondent before the competent Trial Court.

7. The learned counsel for the revision petitioner submitted that in view of the order dated 05.10.2012 in I.A.No.2387 of 2012 in O.S.No.13587 of 2009, the order dated 25.09.2013 in I.A.No.11802 of 2013 in O.S.No.13587 of 2009 and the order dated 09.02.2015 in I.A.No.15949 of 2013 in O.S.No.13587 of 2009 rejecting the applications of the first respondent herein to appoint her as next friend and guardian to the second respondent, the order dated 07.02.2015 in I.A.No.1520 of 2013 in O.S.No.5658 of 2012 appointing the first respondent as next friend and guardian to the second respondent is bad and illegal.

8. I am in agreement with the submission made by the learned counsel for the revision petitioner that three different Judges passed the aforesaid three different orders rejecting the applications of the first respondent herein to appoint her as next friend and guardian to the second respondent herein in another suit, namely, in O.S.No.13587 of 2009. The same is not considered by the IV Assistant Judge, City Civil Court, Chennai, who is in charge of the Court of the III Assistant Judge, while passing the orders in I.A.No.1520 of 2013 in O.S.No.5658 of 2012. Hence on this ground alone, the impugned order is liable to be interfered with.

9. The learned counsel for the first respondent has relied on the judgment of the Gujarat High Court in Keshavlal Muljibhai Patel V. Minor Sharda, reported in I (9186) DMC 159 and submitted that the first respondent herein is not disqualified to represent the second respondent as next friend and guardian.

10. In my view, the said judgment cannot be applied to the facts of this case, particularly, as I have stated that three different Judges on three different occasions passed orders rejecting the applications of the first respondent to appoint her as next

friend and guardian to the second respondent and those orders attained finality. Hence, the same should have been considered by the learned III Assistant Judge, City Civil Court, Chennai, while deciding the applications filed by the first respondent to appoint her as next friend and guardian to the second respondent in O.S.No.5658 of 2012.

11. For the aforesaid reasons, the impugned order is set aside and the matter is remanded back to the III Assistant Judge, City Civil Court, Chennai, to decide the matter in I.A.No.1520 of 2013 in O.S.No.5658 of 2012 afresh as per law.

12. This civil revision petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
The III Assistant City Civil Court,
Chennai.

copy to: The Registrar
City Civil Court, Madras

C.R.P. (NPD) No.3599 of 2015
and M.P.No.1 of 2015

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