

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4652 of 2015

and

M.P.No.1 of 2015

1.Dhanaraj Chowdry
2.Ashokkumar Chowdry

.. Petitioners

Vs

1.Jayabal
2.J.Krishnaveni

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 12.08.2015 made in I.A.No.491 of 2014 in O.S.No.650 of 2007 on the file of the IV Additional District Court, Coimbatore.

For Petitioners : Mr.C.Veeraraghavan

ORDER

The Civil Revision Petition is filed against the order dated 12.08.2015 made in I.A.No.491 of 2014 in O.S.No.650 of 2007 on the file of the IV Additional District Court, Coimbatore.

2.The petitioners as plaintiffs filed a suit in O.S.No.650 of 2007 for specific performance on the basis of the sale agreement dated 25.06.2004

directing the defendants to execute the sale deed in favour of the plaintiffs after receiving the balance sale consideration. The property originally belong to one Kudlu V.Marudhachalam Chettiar. After his death, his two sons viz., M.Jagadeesan and M.Jayapaul succeeded the property. In respect of ½ share of Jagadeesan, he executed a sale deed and since the said Jayapal is an insane person, he entered into a sale agreement. Since the sale deed has not been executed the petitioners have filed a suit for specific performance and appointing Jagadeesan as guardian. The second defendant filed a written statement and contested the suit. Thereafter the wife of the said Jagadeesan filed an application to appoint herself as guardian for the insane person the first defendant. That application was allowed. She filed another written statement. Now the daughter of Jayapaul filed another application in I.A.No.491 of 2014 to recognize herself as guardian for Jayapaul and to receive the additional written statement. The Trial Court after hearing both sides has allowed the application. Against which, the present Civil Revision Petition has been filed by the petitioner/plaintiffs.

3.Learned counsel for the petitioners submitted that already two written statements have filed and hence there is no necessity to file a fresh additional written statement. That factum was not considered by the Trial Court. He further submitted that already plaintiffs were examined, P.W.1 to

P.W.4 were examined, they were also cross examined and documents Exs.A1 to A4 were marked. At this juncture, this application has been filed for removal of Jagadeesan from the guardianship and then only Nithyaraj can be appointed as guardian. But the guardian was not appointed through the District Court and without considering the same, the Trial Court has allowed the application. Hence, he prayed for setting aside the order passed by the Trial Court.

4.At the time of admission, the argument of the learned counsel for the petitioner is heard in length.

5.It is not disputed that the suit property originally belong to Jayapaul who succeeded the suit property from his father Marudhachalam Chettiar and since the said Jayapaul is an insane person, he is in the custody of his brother Jagadeesan. The said Jagadeesan entered into a sale agreement on behalf of the insane person on 25.06.2004. In the written statement filed by the second defendant, he has not disputed the execution of the sale agreement. Subsequently the wife of Jagadeesan filed an application to appoint herself as guardian. That application was allowed and she was appointed as guardian. Thereafter she filed a written statement and a perusal of the same shows that nobody has been so far appointed as guardian for the insane person and also to his property through the Court of law, only in the proceedings alone they were

appointed as guardian. Without appointing guardian through the Court of law and without permission, the sale agreement has been entered into. So, the defence has been raised that Jagadeesan is not competent to deal with the property without permission of the Court. In such circumstances, merely because the third time written statement has been filed after the commencement of the trial will not take away the right of the defendants to take legal and substantial defence by way of filing additional written statement because it is well settled dictum of the Hon'ble Apex Court that without pleading no evidence can be let in. So, allowing the application for reception of written statement has no way take away the right of the petitioners/plaintiffs. Hence, I do not find any reason to interfere with the finding of the Trial Court and the impugned order passed by the Trial Court is hereby confirmed. Consequently, the Civil Revision Petition is hereby dismissed.

6. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

17.12.2015

Index: Yes/No
Internet: Yes/No
cse

R.MALA. J.,

cse

To

The IV Additional District Court, Coimbatore.

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