



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2015

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P (MD) No.2711 of 2015 (PD)

and

M.P. (MD) .No.1 of 2015

Jebi Victoria

.. Petitioner

Vs.

S.Vijayakar

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 15.10.2015 passed in I.A.No.279 of 2014 in I.D.O.P.No.26 of 2013 on the file of the I-Additional District Judge, Madurai and set aside the same and thereby allow the I.A.No.279 of 2014.

For Petitioner : Mr.K.Sekar
For Respondent : Mr.A.P.Athithan

ORDER

Memorandum of this Civil Revision Petition has been directed as against the fair and decretal order dated 15.10.2015 and made in I.A.No.279 of 2014 in I.D.O.P.No.26 of 2013 on the file of the learned I-Additional District Judge, Madurai.

2. The revision petitioner herein is the wife of the respondent. At the first instance, the revision petitioner had filed a petition in M.H.O.P.No.6 of 2013 under Sections 50, 52, 53 and 54 of the Mental Health Act, 1987, against one J.Swamidoss, who is none other than the father of the petitioner's husband Mr.S.Vijaykar @ Vijaykar Packiaraj on the following grounds:

"a) to hold inquisition into the mental condition of her husband Mr.S.Vijaykar @ Vijaykar Packiaraj;

b) to make an order appointing her as the guardian to care of her husband Mr.S.Vijaykar @ Vijaykar Packiaraj;

c) to appoint her as the manager of the estate of the mentally ill person Mr.S.Vijaykar @ Vijaykar Packiaraj, in respect of the scheduled mentioned property;



d) to restrain the respondent, Mr.J.Swamidoss from obtaining any documents from her husband Mr.S.Vijaykar @ Vijaykar in respect of the schedule mentioned property by means of a permanent injunction and to grant such other further reliefs deem which may deem fit in the circumstances."

3. That petition was resisted by the respondent therein, Mr.J.Swamidoss by filing his statement of objection and during the pendency of that petition another petition in I.D.O.P.No.26 of 2013 seems to have been filed by Mr.Vijaykar @ Vijaykar Packiaraj against the revision petitioner herein under Sections 10(ix) and (x) of the Indian Divorce Act, 1869, amended by Act 51 of 2001, seeking the relief of divorce on the ground of cruelty.

4. During the pendency of this divorce petition, the revision petitioner has taken out an interlocutory application in I.A.No.279 of 2014 under Order 32 Rule 2 of the Code of Civil Procedure, to strike off the petition in I.D.O.P.No.26 of 2015 from the file of the District Court, Madurai. This petition was resisted by the respondent Mr.S.Vijaykar by filing his counter statement. During the pendency of this petition, the learned I-Additional District Judge, Madurai has directed the respondent Mr.S.Vijaykar, to appear before the Medical Board vide his proceedings in D.No.4924/2015 dated 20.03.2015. In pursuance of his direction, the Director of Institute of Mental Health, Kilpauk, after examining the respondent has given his opinion dated 11.04.2015 in reference No.2669/HM4/2015 dated 11.04.2015. The learned I-Additional District Judge after hearing both sides and based on the informations given by the Director of Mental Health Department has proceeded to dismiss that petition in I.A.No.279 of 2014 on 15.10.2014 on the following grounds:

"1. the lunacy or otherwise of the respondent / petitioner is a fact in issue before this Court.

2.judicial enquiry regarding the lunacy or otherwise of the respondent/petitioner has not been conducted by this Court till date.

3.even if the respondent/petitioner is adjudged as lunatic this Court has powers to appoint a guardian during the pendency of the proceedings.

4.the primary duty of this Court, as per the provisions of Order 32 Rule 15 is to protect the interest of the insane person, this Court feels that this petition cannot be struck off at this preliminary stage."

4. Having been aggrieved by this order, now the petitioner therein, who is the wife of the respondent, has approached this Court with this revision.

<https://hcservices.courts.gov.in/hcservices> Mr.K.Sekar, learned counsel appearing for the revision petitioner and Mr.A.P.Athithan, learned counsel appearing for the respondent.



6. It is obvious to note here that both M.H.O.P.No.6 of 2013 as well as I.D.O.P.No.26 of 2013 are still pending before the learned I-Additional District Judge, Madurai. Under this circumstance, if anything is discussed by this Court, it may affect the cases of both parties, which are to be projected in the above said petitions. As afore stated, the learned trial judge has also pointed out that, ultimately if the respondent is found mentally ill person, the Court might have powers to appoint a guardian as envisaged under Order 32 Rule 15 of the Code of Civil Procedure, so as to protect the interest of the insane person.

7. Under these circumstances, this Court finds that the impugned order may be confirmed and the learned I-Additional District Judge, Madurai may be directed to dispose of the M.H.O.P.No.6 of 2013 as well as I.D.O.P.No.26 of 2013 simultaneously on merits within a time, which may be fixed by this Court. Further, the issue with regard to the mental health of the respondent is left open to both parties and both parties are at liberty to adduce oral and documentary evidences, in order to support their respective cases.

8. Accordingly, this Civil Revision Petition is disposed of and the impugned order is kept intact without any disturbance. The learned I-Additional District Judge, Madurai is directed to dispose of the M.H.O.P.No.6 of 2013 as well as the I.D.O.P.No.26 of 2013 within a period of four months from the date of receipt of a copy of this order, based on the opinion given by the Director, Institute of Mental Health, Kilpauk. The issue with regard to the mental health of the respondent is left open to both the parties. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The I-Additional District Judge, Madurai.

+1cc to Mr.K.SEKAR, Advocate Sr.No. 75997

+1cc to Mr.A.P.ATHITHAN, Advocate Sr.No. 75583

PJL

AA/GSV-AN/08.02.2016/3p-4c

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