

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

CRP.(PD).No.4623 of 2015
and M.P.No.1 of 2015

S.K.Ponnusamy

... Petitioner

Vs.

1.S.K.Sellamuthu
2.K.Venkatachalam
3.Pappayammal

... Respondents

Prayer:- Petition filed under Article 227 of the Constitution of India, praying to set aside the final order passed in I.A.No.54 of 2015 in O.S.No.425/2014 on the file of Principal District Munsif, Erode dated 01.07.2015.

For Petitioner : Mr.V.Balamurugane

For respondents : Mr.A.K.Kumarasamy

O R D E R

Heard the learned counsel appearing for the petitioner. Challenging the order passed in I.A.No.54 of 2015 in O.S.No.425 of 2015 dated 01.07.2015, for dismissing the petition filed under

Order 32 Rule 3, 4 and 151 of Civil Procedure Code, by the present petitioner to represent on behalf of his mother namely the 2nd defendant as a next friend, this Civil Revision Petition is filed.

2. The learned counsel appearing for the petitioner would submit that the petitioner viz., third party to the suit in O.S.No.425 of 2014 filed application in I.A.No.54 of 2015 under Order 32 Rule 3, 4 and Section 151 of Civil Procedure Code to permit him to represent on behalf of his mother viz., Pappayammal/2nd defendant for filing counter and to defend the case.

3. The first respondent/plaintiff filed suit in O.S.No.425 of 2014 for declaration of title in respect of the suit 'A' schedule properties and consequential permanent injunction. The 1st defendant/K.Venkatachalam has purchased a common 1/4th share from one Palaniappa Goundar and others. Since the 1st defendant was then minor, sale deed was obtained in the name of the 1st defendant through his natural guardian father Kittusamy Gounder. On 09.11.1973, one Pappayammal, the mother of the plaintiff has purchased the properties under a registered sale deed dated 09.11.1973 from Palaniappa Gounder and others. As per the plaint

averments, on 14.02.1983, the plaintiff and his brother viz., the 1st defendant Venkatachalam, jointly purchased the properties in S.F.Nos.249 and 252 from Thesiyappa Goundar and others and the sale deed is dated 14.02.1983. According to the plaintiff, there was an oral partition amongst the 1st defendant and the family of the plaintiff in respect of R.S.No.271. It is further averred that plaintiff filed the suit in O.S.No.843 of 2001 on the file of Principal Subordinate Court, Erode against one Kuppusamy Goundar, Pappayammal, Balasubramaniam, Malathi, S.K.Ponnusamy, Sasikanth and Vijayakanth for partition of the properties into 12 equal shares and allotment of one such share and 'C' Schedule properties were allotted to Pappayammal. It is further stated that the said Malathi has executed a registered settlement deed in favour of her father S.K.Sellamuthu/plaintiff under a registered settlement deed dated 04.10.2007. According to the plaintiff, 'A' schedule properties situated in R.S.No.271/2 is shown as 6th item in the settlement deed dated 04.10.2007. The plaintiff pledged the suit 'A' schedule properties for which he executed a memorandum of depositing the title deeds of the property for equitable mortgage. The plaintiff averred that he is the absolute owner of the suit 'A' schedule properties in R.S.No.271/1. Further, it is averred that the

1st defendant is disputing the right of the plaintiff over the suit 'A' Schedule properties and attempted to trespass into the suit 'A' schedule properties and hence sought for declaration that he is the absolute owner of the suit 'A' schedule properties and for consequential permanent injunction.

4. The learned counsel appearing for the petitioners submitted that in the suit in O.S.No.425 of 2014, the petitioner herein/S.K.Ponnusamy, who is the third party to the suit filed petition in I.A.No.54 of 2015 under Order 32 Rule 3, 4 and Section 151 of Civil Procedure Code, seeking permission to represent on behalf of his mother viz., the 2nd defendant as a next friend. After hearing both sides, the trial court, by order dated 15.07.2015, dismissed the said petition. In the petition seeking permission to defend the case on behalf of his mother, the petitioner/3rd party stated that his mother/Pappayammal is aged 80 years and lacks both mental and physical health and also affected by paralysis complications and she is unable to walk and speak properly.

5. Reiterating the averments made in the counter filed by the plaintiff/S.K.Sellamuthu and the 1st defendant, the learned counsel

appearing for the respondents submitted that the averments made in I.A.No.54 of 2015 are false and after hearing both sides, the trial court gave a finding to the effect that as per Order 32 of C.P.C., guardian can only be appointed for minor and unsound person and in the suit, 2nd defendant/Pappayammal appeared in court and she is not an unsound person and she is only an aged lady. As per Order 32 Rule 3 of C.P.C., representative can only be appointed for minor and unsound person. According to the learned counsel for the respondents, the finding of the trial court requires no interference of this court and thus prayed for dismissal of the present Civil Revision Petition.

6. Admittedly, the plaintiff S.K.Sellamuthu and the petitioner herein/S.K.Ponnusamy are the sons of 2nd defendant Pappayammal. The plaintiff filed suit for declaration of 'A' Schedule Property and in the said suit, the present petitioner as a third party filed petition under Order 32 Rule 3 and 4 of C.P., to represent his mother/2nd defendant. It is relevant herein to quote Order 32 Rule 3 and 4 C.P.C., as under:-

"Guardian for the suit to be appointed by court for minor defendant:

(1) Where the defendant is a minor, the court, on being satisfied of the fact of his minority, shall appoint proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed."

7. Admittedly at the time of enquiry, the 2nd defendant/Pappayammal appeared before the trial court and the trial court pointed out in its order dated 15.07.2015 that she is not an unsound mind lady and she is only an aged lady and also pointed

out that since there is a dispute with regard to the brothers namely the plaintiff and the present petitioner/S.K.Ponnusamy in respect of taking care of the mother, there is no necessity for appointment of the representative and thus dismissed the petition.

8. At this juncture, it is pertinent to note that the petitioner herein/3rd party has not filed any scrap of paper to show that the 2nd defendant/Pappayammal was affected by paralysis attack and she is taking treatment for her mental illness. In the absence of production of any document in support of the mental illness or physical complications suffered by the petitioner's mother, the contentions put forth by the learned counsel for the petitioner cannot be appreciated. The reasons assigned by the court below for not entertaining the petition filed under Order 32 Rule 3 and 4 of C.P.C., cannot be faulted with.

9. The reasons assigned by the court below are perfectly in order and therefore, this Court does not find any illegality or irregularity in the order dated 15.07.2015 in I.A.No.54 of 2015 passed by the court below.

R.MALA,J.

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10. In fine, the revision petition fails and the same is dismissed with cost of Rs.1000/- to the Chief Minister's Relief Fund. Connected M.P. is also dismissed.

07.01.2016

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To
The Principal District Munsif, Erode.

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