

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

**C.R.P.(P.D.) No.1648 of 2016 and**  
**CMP.No.8877 of 2016**

Kanagaraj

...Petitioner

Versus

1.Kumarasamy

2.Archana (Minor)

Rep. by her father/next friend 1st respondent

3.Vijayalakshmi

...Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 04.04.2016 passed in I.A.No.19 of 2014 in O.S.No.106 of 2008 on the file of the Additional Sub Judge, FAC, Puducherry.

For Petitioner : Mr.R.Muralidharan

For Respondents : Mr.R.Thiagarajan for R1 and R2

No appearance for R3

**ORDER**

The petitioner long after the institution of the suit for specific performance filed an application before the Trial Court for amendment and more particularly to make a statement to represent the minor as "father, guardian first petitioner" after deleting the statement made that he was the next friend. The application was dismissed by the learned Trial Judge. Feeling aggrieved, the unsuccessful petitioner in I.A.No.19 of 2014 in O.S.No.106 of 2008 on the file of the learned Additional Sub-Judge, Puducherry is before this Court.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The petitioner filed a suit in O.S.No.106 of 2008 against the respondents. The second respondent is the daughter of the first respondent. However, the first respondent was shown as the next friend of the minor. This was pointed out by the respondents on a later occasion and more particularly, during the time of cross examination of P.W.1. The petitioner immediately filed an application to correct the mistake.

4. The learned trial Judge dismissed the application primarily on the ground that guardian has to be appointed by the Court under Order 32 Rule 3 of the Code of Civil Procedure. Since there was no separate application filed by the petitioner under Order 32 Rule 3 CPC, the learned Judge dismissed the application for amendment.

5. There is no dispute that the petitioner impleaded the minor as a party to the suit. The first respondent was described as the next friend of the minor. In short, the minor was represented by the next friend. The fact remains that the first respondent is the biological father of the minor.

6. The petitioner realised the mistake only when he was cross examined by the respondents. The petitioner immediately filed an application for amendment.

7. The moot question is as to whether a separate application is necessary under Order 32 Rule 3 of CPC for appointment of a guardian in case the proposed guardian is the biological father.

8. Order 32 Rule (1) provides that suit by a minor shall be instituted in his name by a person who shall be called as the next friend. Rule 3 of Order 32 CPC provides that guardian for the suit must be appointed by the Court for minor defendant. The Section provides that in case the defendant is a minor and the Court, on being satisfied of the fact as to the minority, shall appoint a proper person to function as the guardian of the minor for the suit. Rule 4 of Order 32 CPC makes the position very clear. Rule 1 of Order 32 CPC is not applicable in case the proposed guardian is the biological father. The question of appointment of a guardian by the Court would arise only in case, there is no natural guardian. The provision makes it mandatory to issue notice to the father and if there is no father, to the mother before appointing a guardian by Court. Since biological father is the natural guardian, there is no need for appointment of a guardian for the minor by the Court by invoking Rule 3 of Order 32 CPC.

9. In the subject case, the petitioner wanted only an amendment of the plaint to describe the first respondent as the guardian of the second respondent. There is no necessity for filing an application under Order 32 Rule 3 of CPC for the said purpose. The respondents have no case that the first respondent is not the biological father of the second respondent. Such being the factual position, the learned Judge was not correct in dismissing the application filed by the petitioner for amendment.

10. The petitioner is so careless in drafting the petition inasmuch as the request was to declare the first respondent as "father, guardian first plaintiff" instead of first defendant. This shows the casual manner of drafting the petition. Even if the present petition is allowed, still the petitioner has to file another application for amendment. I do not want such a course now as it would delay the matter further.

11. The carelessness of the petitioner alone made him to file the application in I.A.No.19 of 2014 and ultimately, the present revision petition. The respondents were unnecessarily dragged to this Court on account of the negligence of the petitioner. The petitioner therefore must compensate the respondents.

12. In the result, the order dated 04.04.2016 is set aside. The application in I.A.No.19 of 2014 is allowed, subject to the condition that the

petitioner shall pay a sum of Rs.25,000/- (Rupees Twenty five thousand only) as cost to the minor through the first respondent. The cost amount shall be paid on or before 30 September 2016, failing which, the order passed by the Trial Judge would come into operation without any further reference to this Court. The petitioner on payment of the cost should be permitted to carry out the amendment. He should be permitted to describe the first respondent as the guardian of the second respondent.

The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

**12.09.2016**

Index:Yes/No

svki

To

The Additional Sub Judge, FAC,  
Puducherry.

**K.K.SASIDHARAN, J.**

(svki)

**C.R.P.(PD No.1648 of 2016**

**12.09.2016**