

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.09.2016**

CORAM:

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

C.R.P.(P.D.) No.2643 of 2016 and
CMP.No.13603 of 2016

N.Aanai Muthu

...Petitioner

Vs

1. Dhanalakshmi
2. Minor Nithish Kumar
(Represented by his mother and Natural guardian
Mrs.Kanagha Rathinam)

3.A.Thirupathivasan

4.Thaiyal Nayahi

5.Minor Renukadevi

6.Minor Durkadevi

7.Minor Manikandan

...Respondents

(Respondents 5 to 7 are represented by
their Court Guardian K.Partheepan,Advocate
District Munsif Court, Rasipuram)

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 15.02.2016 made in I.A.No.434 of 2015 in O.S.No.20 of 2010 on the file of the District Munisf Court at Rasipuram.

For Petitioner : Mr.P.Mathivanan

ORDER

The suit in O.S.No.20 of 10 was filed by Mrs.Kanagarathinam and Minor Nithishkumar, represented by Mrs.Kanagarathinam, for a decree of partition and separate possession of their share. The petitioner was arrayed as the first defendant in the said suit. During the currency of the suit, Mrs.Kanagarathinam died. Thereafter, the first respondent filed an application for appointing her as guardian of the minor. The learned trial judge having found that the proposed guardian would protect the interest of the minor appointed her as guardian, by order dated 15.02.2016. The said order is under challenge in this Civil Revision Petition.

2. The learned counsel for the petitioner contented that the first respondent has not produced any acceptable material before the Trial Court to prove that the minor is under her care and custody. Such being the factual position, the learned trial Judge was not correct in allowing the application and appointing the first respondent as guardian.

3. There is no dispute that the suit in O.S.No.20 of 2010 was filed by Mrs.Kanagarathinam, in her capacity as a sharer and in the capacity of biological mother of the minor Nithishkumar. The first plaintiff died during the currency of the suit. Thereafter, the first respondent filed an

application to appoint her as the guardian of the minor and to represent him before the Court. The first respondent is stated to be the sister of the mother-in-law of Mrs.Kanagarathinam.

4. While considering an application for appointment of guardian for a minor, the Court should be satisfied that the proposed guardian would protect the interest of the minor. In case, the application is filed by a third party, notice should be issued to the biological parents. In the subject case, the biological parents are no more. The first respondent filed the application on the ground that the minor is now under her care and custody and as such, she would be the best person to protect his interest.

5. The learned trial Judge was expected to consider as to whether the proposed party is a fit and proper person to represent the minor. There is no right conferred on the respondents in a matter of this nature to contest that the proposed party is not a fit person for appointment as guardian of the minor. It is for the court to take note of the factual matrix and decide one way or other with regard to the guardianship of the minor. The learned trial Judge considered the matter and exercised the discretion in a particular manner. It is not for

this Court to consider the matter independently and arrive at a different finding with regard to the guardianship of the minor. I am therefore of the view that there is absolutely no merit in the contention taken by the petitioner.

6. In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

09.09.2016

svki/vsi2

To

The District Munisf Court at Rasipuram.

K.K.SASIDHARAN,J.

(svki)

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