

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.608 of 2016

and

C.M.P.No.3225 of 2016

Mrs.S.Sasikala

... Petitioner

vs.

1.Mrs.Premakumari
2.Mrs.R.Saraswathi
3.Ms.Shanthakumari

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the VI Assistant Judge, City Civil Court, Chennai dated 16.12.2015 made in I.A.No.5729 of 2015 in O.S.No.1207 of 2015.

For Petitioner : Mr.V.Venkatasamy

For Respondents : Mr.G.Poonkundran for R1 and R2

ORDER

The respondents 1 and 2 have entered appearance through counsel and they are represented by counsel. The third respondent is stated to be a person of unsound mind. Hence this court is of the view that the civil revision petition can be disposed of on merit at the stage of admission itself. Accordingly, the submission made by Mr.V.Venkatasamy, learned counsel for the petitioner and by Mr.G.Poonkundran, learned counsel for respondents 1 and 2 are heard. The impugned order and other materials produced in the form of typed set of papers are perused.

2. The civil revision petition has been filed as against the order of the trial court appointing the second respondent herein, who is the second plaintiff in the original suit, as the guardian of the third respondent herein, who is the second defendant in the original suit. As such, the service of notice on the third respondent shall be impracticable and it will cause unnecessary delay.

3. The respondents 1 and 2 contend that the third respondent is a person of unsound mind and that the third respondent is under the care and custody of the second respondent. On the other hand, the revision petitioner contends that the third respondent is not a person of unsound mind. Under the said circumstances, the learned trial judge ought not to have ventured to appoint a guardian for the third respondent without subjecting the third respondent to medical examination to find out whether the third respondent is of unsound mind unable to defend herself in the suit warranting appointment of a guardian. The personal observation of the learned trial Judge may not be sufficient to hold the third respondent to be a person of unsound mind. Moreover, the respondents 1 and 2 herein figure as plaintiffs 1 and 2. One of the plaintiffs, namely second respondent herein/second plaintiff, intends to act as guardian for the third respondent herein/second defendant in the suit.

4. Appointment of a plaintiff as guardian for a defendant and a defendant as guardian for the plaintiff is against Order XXXII Rule 4 of CPC. Respondents 1 and 2 could have very well co-opted the third respondent as a co-plaintiff and filed the suit, in which event, the embargo provided under Rule 4 will not be attracted. Having chosen to array the third respondent as second defendant, the second respondent herein (one of the plaintiffs), ought not to

have come forward with the petition for her appointment as guardian for the third respondent herein/second defendant.

5. The learned trial judge, without considering the above said aspects, has chosen to pass the impugned order appointing the second respondent herein/second plaintiff as guardian for the third respondent herein/second defendant, who is stated to be of unsound mind. The order cannot stand the scrutiny of the court and the same deserves to be set aside.

Accordingly, the civil revision petition is allowed. The impugned order dated 16.12.2015 made in I.A.No.5729/2015 in O.S.No.1207/2015 appointing the second respondent herein as guardian for the third respondent in the suit, is hereby set aside. The said application shall stand dismissed. It shall be open to the respondents 1 and 2 herein/plaintiffs 1 and 2 to file a fresh petition for appointment of a proper person as guardian for the third respondent/second defendant. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

29.02.2016

Index : Yes/No
Internet : Yes/No
asr

To

The VI Assistant Judge, City Civil Court, Chennai

P.R.SHIVAKUMAR, J.

asr/-

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