

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.4358 of 2016

K. Sailaja

... Petitioner

Vs.

1. The State of Tamilnadu,
represented by its Secretary,
Department of Health and Family Welfare,
Secreteriat, Fort St. George,
Chennai 600 001.
2. The District Collector,
Kancheepuram District,
District Collector Office,
Kancheepuram.
3. The Tahsildar,
Tambaram Taluk,
Kancheepuram District.

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, thereby appoint the petitioner as a Guardian of Mr.R.Baskar at No.5, Sivam Enclave, Meenambal Street, 1st Lane, West Tambaram, Chennai 600 045 and to permit the petitioner to protect his interest, administer and in the event of necessity to sell the immovable property being land measuring 2922 sq.ft. comprised in Old Survey No.3751, R.S.No.623/6 as per Patta bearing No.C.A.No.432/1992-93, R.S.No.623/13 situated at new No.30, Old No.15, Iyemperumal Street, Royapettah, Chennai 600 014 within the Sub Registration District of Mylapore and Registration District of Central Chennai and to use the proceed towards treatment of the petitioner's husband Mr.R.Basker .

For Petitioner : Mr.M.P.Rajendran

For Respondents : Mrs.P.Rajalakshmi
Government Advocate

O R D E R

The Petitioner has come forward with this Writ Petition seeking for issuance of Mandamus to appoint the petitioner as a Guardian of her husband Mr.R.Baskar and to permit the petitioner to protect his interest, administer and in the event of necessity to sell the immovable property standing in the name of her husband and to use the proceed towards treatment of the petitioner's husband Mr.R.Basker .

2. It is the case of the petitioner that her husband is the owner of the property by virtue of three registered release deeds executed by his father, sisters and brother of her husband in favour of her husband for a valuable consideration. The petitioner is having two minor sons aged 15 years and 13 years respectively. On 10.8.2015, her husband met with an accident and got injured on his head and went into COMA stage. After undergoing various medical treatments, since there was no progress in his health condition, he was discharged on 16.10.2015 and since then, he has been kept at home and being taken care of by the petitioner by providing all his needs with due care and medical attention.

3. Hence the petitioner is seeking a direction from this court to appoint her as a guardian of her husband for the purpose of managing and selling the immovable property as her husband is stated to be in a condition of coma.

4. When the matter came up before this Court on 8.2.2016, this Court has passed the following order;

"6. Considering the facts and circumstances of the case, the submissions of the learned counsel for the petitioner and following the earlier order passed by this Court, in an identical matter, in W.P.No.28435 of 2015, the third respondent herein, namely, the Tahsildar, Tambaram Taluk is directed to visit the residence of the petitioner, satisfy himself with the condition of her husband and file a report within a period of two weeks from the date of receipt of a copy of this order. Such a report shall be filed by the third respondent by making due inspection of the residence of the petitioner along with the Government Medical Practitioner."

5. Accordingly, today, when the matter appears in the cause list, the 3rd respondent has filed a report dated 22.2.2016 along with the enclosures before this Court after making due

inspection on the petitioner's husband along with a medical practitioner. In the said report, it has been stated as follows;

"I, Dr.Gowthami, MD (General Medicine) working in Government Hospital, Tambaram, have examined the patient Thiru.R.Baskar, No.5, Sivam enclave Meenambal Street, 1st Lane, West Tambaram, Chennai 45. On 13.2.2016 at 5.30 p.m., this patient had a history of RTA while riding in Two Wheeler on 10th August 2015, had head injury, came to Chromepet Government Hospital then referred to Rajiv Gandhi Government General Hospital, Chennai. There they have filed as MLC patient and then shifted to private hospital. Patient is having altered conscious level since the accident till now. CT Brain was taken on 10.08.2015 in Kauvery Hospital, Mylapore (Private) showed intra cerebral haemorrhage with intra ventricular haemorrhage with diffused axonal injury. Patient was put on ventilator support and Ryle's Tube feeding. After then Tracheostomy done. Patient was advised Medicine and discharged with this condition and advised regular follow - up.

On examination of the patient now unconscious, thin built, and tachypnoeic, not responding to pain stimulus. Pupils bilaterally sluggish reaction to Light. Right Eye showed Exposure Keratitis. Patient is on tracheostomy tube ventilation. Limbs are flaccid, extended, hypotonic. Deep tendon reflexes present. Plantar reflex partial flexor response in both feet.

Opinion: Patient is in unconscious state since the accident with chronic cachexia."

6. In view of the above, there appears to be no dispute of facts. The petitioner's husband is in coma. Neither under the Mental Health Act nor under the Guardian and Wards Act, 1890, there is any provision for appointment of a guardian in such a situation. Though the petitioner could have approached the jurisdictional Civil Court by way of common law remedy, in view of the report of the 3rd respondent and the urgency expressed, coupled with the fact that there is no dispute on facts, this Court is inclined to consider the prayer sought by the petitioner.

7. Accordingly, while accepting the report of the 3rd respondent, it is hereby ordered that the petitioner is appointed as guardian of her husband Mr.R.Baskar, residing at No.5, Sivam Enclave, Meenambal Street, 1st Lane, West Tambaram,

Chennai 600 045 for the purpose of dealing with his immovable properties and also for the purpose of operating his bank accounts. It is made clear that this order is passed considering the peculiar facts and circumstances of the case and this order will not stand in the way of the legal heirs of the petitioner's husband questioning the transaction of the petitioner on behalf of her ailing husband.

8. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msr

To

1. The Secretary,
Department of Health and Family Welfare,
Secreteriat, Fort St. George,
Chennai 600 001.
2. The District Collector,
Kancheepuram District,
District Collector Office,
Kancheepuram.
3. The Tahsildar,
Tambaram Taluk,
Kancheepuram District.

+6cc's to Mr.Swaraj Associates, Advocate, S.R.Nos.11147 & 11148

JSV(CO)
CA(25/02/2016)

W.P.No.4358 of 2016

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