

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.229 of 2016
& C.M.P.No.1904 of 2016

Perumal .. Appellant/Petitioner

.. Vs..

Kanimozhi .. Respondent/Respondent

PRAYER:- Appeal filed under Section 47 of Guardians and Wards Act, 1890, to set aside the fair and final order passed in I.A.No.2228 of 2015 in G.O.P.No.202 of 2013 on the file of the Principal District Judge, Cuddalore, dated 13.10.2015.

For Appellant : Mr.S.Muthukrishnan

For Respondent : Mr.V.Balamurugane

JUDGEMENT

By consent of both the parties, the appeal itself is taken up for final disposal at the admission stage itself.

2.The order challenged in this appeal is one, rejecting an application filed by the appellant, who is the father-in-law of the respondent and paternal grand father of the minor under order 9 Rule 9 of Civil Procedure Code to restore the G.O.P.No.202 of 2013 which was dismissed for default on 07.03.2015.

3.Mr.V.Balamurugane, learned counsel appearing for the respondent would submit that the respondent is the widowed daughter-in-law of the appellant in this appeal, and she filed G.O.P.No.80 of 2013 on the file of the Principal District Court, Cuddalore, seeking to declare her as a guardian of the minor. Whereas, G.O.P.No.202 of 2013 was filed by the appellant seeking to appoint himself as a guardian for his minor child namely Nikhil.

4.Both the Original Petitions namely, G.O.P.No.80/2013 and 202/2013 were disposed of, by a common judgement dated 07.03.2015. The appellant filed I.A.No.2227 of 2015 seeking to set aside the ex-parte order in G.O.P.No.80/2013 and

I.A.No.2228/2015 seeking to restore the G.O.P.No.202/2013. Both the said Interlocutory Applications were dismissed.

5.As against the order in I.A.No.2227/2015 in G.O.P.No.80/2013, the appellant herein had filed the C.R.P.(NPD).No.372 of 2016. As against the dismissal order in I.A.No.2228 of 2015 in G.O.P.No.202 of 2013, the present appeal has been filed by the appellant.

6.It appears that C.R.P.(NPD).No.372/2016 was disposed of by this Court on 03.11.2016, wherein, this Court had set aside the order dismissing I.A.No.2227/2015 on 13.10.2015, and directed the Principal District Judge, Cuddalore to give an opportunity to the appellant to let in oral evidence, and thereafter, decide the matter afresh, after hearing both sides within a period of six weeks from the date of receipt of a copy of this order.

7. It is also stated by Mr.V.Balamurugane, learned counsel for the respondent, that the G.O.P.No.80/2013 which was restored and remitted by the order of this Court dated 03.11.2016 in C.R.P.(NPD).No.372/ 2016 is still pending, in view of the pendency of this appeal before this Court. In view of the above, this appeal has to be allowed and the order in I.A.No.2228/2015 dated 13.10.2015 will have to be set aside. The G.O.P.No.202/2013 filed by the father-in-law/paternal grand father which was dismissed on 07.03.2015 will stand restored. The learned Principal District Judge, Cuddalore shall hear both the G.O.P. Nos.80/2013 and 202/2013 together and dispose of the same, after affording an opportunity to the appellant herein to let in oral evidence as directed by this Court in the order dated 03.11.2016 made in C.R.P.(NPD).No.372/2016. Such proceedings shall be completed by the learned Principal District Judge, Cuddalore within a period of eight weeks from the date of receipt of a copy of this order. It is made it clear, that the appellant shall co-operate with the Court below for disposal of the Guardian Original Petitions as per the directions of this Court. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KP

To

The Principal District Judge,
Cuddalore.

Copy to

The Record Keeper, VR Section, High Court, Madras.

+1cc to MR.S.MuthuKrishnan, Advocate SR.No.53607

+1cc to Mr.V.BalaMurugane, Advocate SR.No.53697

C.M.A.No.229 of 2016

GJ(CO)
GN(04/08/2017)



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