

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.970 of 2011

Gayathiri

Represented by her father/guardian

S.M.Saminathan

.. Petitioner

Vs.

Jawahar

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 27.01.2011 made in I.A.No.94 of 2009 in un-filed H.M.O.P., on the file of the Sub-Court, Nagapattinam.

For Petitioner : Mr.R.Rajaramani

For Respondent : M/S.V.Balasubramanian
and Associates

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 27.01.2011 made in I.A.No.94 of 2009 in un-filed H.M.O.P., on the file of the Sub-Court, Nagapattinam.

2. The petitioner/wife is the respondent and respondent/husband is the petitioner in H.M.O.P.No.15 of 2011 on the file of the Sub-Court, Nagapattinam. The respondent filed the above H.M.O.P. for divorce on the ground that the petitioner is mentally ill person. The respondent filed I.A.No.94 of 2009 to appoint father or mother of the petitioner as guardian to conduct the case.

3. According to the respondent, the petitioner could not do the house hold work and could not take care of her child. Her parents only look after the petitioner and her minor child. The petitioner is in custody of her parents. The petitioner is unable to understand anything and could not conduct the case independently. Therefore, her father Swaminathan or mother Malathi may be appointed as her guardian.

4. The petitioner filed counter affidavit and denied all the averments made in the affidavit. The petitioner admitted that she is taking treatment for her depression. She further submitted that she is doing all her work independently and also looking after her minor son. Only due to torture and cruelty of respondent and his family

members, she was suffering from depression. The respondent and his family members are the followers of Kalki bagavan. They often conducted bajans in their house and during that time, they forced the petitioner to dance. When she refused to do the same, they used to beat her. The respondent and his family members demanded from the petitioner that the petitioner's father should sell all his properties and should give Rs.25,00,000/- to them. When the petitioner refused to accept the demand made by the respondent, they had thrown her out from the matrimonial home and filed the above H.M.O.P. with false averments stating that the petitioner is mentally ill person.

5. Before the learned Judge, respondent was examined as P.W.1 and one Dr.Rajaram was examined as P.W.2. The respondent marked two documents as Exs.P1 and P2. The petitioner did not let in any oral and documentary evidence and marked two documents as Exs.R1 and R2.

6. The learned Judge considering the averments made in the affidavit, counter affidavit, materials on record and evidence of P.W.2, held that if the application for appointment of guardian is

decided on merits, it would amount to decide the main H.M.O.P. itself. The learned Judge allowed the application appointing father of the petitioner as her guardian on the ground that the petitioner or her father did not get into the witness box to depose and draw adverse inference.

7. Against the order dated 27.01.2011 made in I.A.No.94 of 2009, the present civil revision petition is filed by the petitioner.

8. Heard both sides and perused the materials on record.

9. The learned counsel for the petitioner and respondent reiterated the averments made in the affidavit, counter affidavit, referred the evidence of P.W.2/Doctor and order of the learned Judge.

10. In view of the allegations made by the respondent that the petitioner is mentally ill person and incapable of taking care of herself independently, I directed the petitioner to appear before this Court. During her appearance, she answered all the questions put to her and spoke as a normal person. She has fair enough to admit

that sometimes she became depressive and explained that it is only due to the torture and cruelty caused by her husband and his family members.

11. The learned counsel appearing for the petitioner extensively referred to the evidence of P.W.2 filed in the typed set of papers and consideration of the same by the learned Judge. The learned Judge has accepted the evidence of P.W.2, who in his cross-examination deposed that at present, the petitioner has no suicidal tendency for the past four years, she is in a good mental condition, she comes alone for treatment and so a guardian need not be appointed to her. In spite of the same, the learned Judge has appointed the father of the petitioner as guardian only on the ground that the petitioner did not get into the witness box before the learned Judge. The said reasoning of the learned Judge is not valid and the learned Judge has committed irregularity in drawing adverse inference against the petitioner in spite of the evidence of P.W.2/Doctor.

12. In view of the above, order dated 27.01.2011 made in I.A.No.94 of 2009 is set aside. H.M.O.P. is filed in the year 2009,

numbered in the year 2011 and the learned Subordinate Judge, Nagapattinam, is directed to dispose the said H.M.O.P. on merits and in accordance with law, as expeditiously as possible in any event not later than three months from the date of receipt of a copy of this order, without being influenced by this order as well as the order passed in I.A.No.94 of 2009.

13. Accordingly, the Civil Revision Petition is allowed. No costs.

Index : Yes/No
Speaking/Non-Speaking Order
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31.07.2017

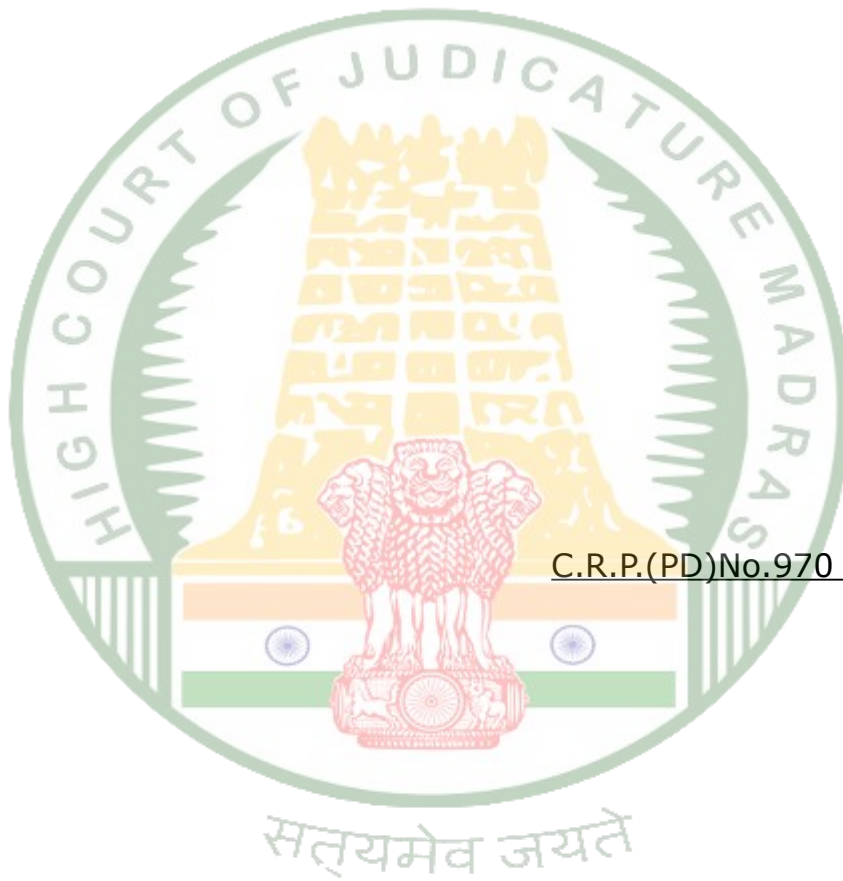
To

The Subordinate Judge, Nagapattinam. सत्यमेव जयते

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V.M.VELUMANI, J.

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