



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1353 of 2015

and

MP (MD) No.2 of 2015

S.Vijayarani

... Appellant/Respondent

Vs.

S.Muthukumar

... Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 76 of Mental Health Act, 1987, against the fair and decretal order dated 06.03.2015 made in M.H.O.P No.3 of 2009 on the file of the I Additional District Judge, Madurai.

For Appellant : Mr.S.M.Anantha Murugan

For Respondent : Mr.R.Aravindan

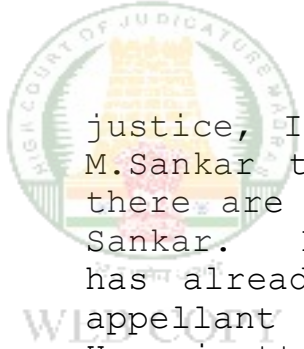
JUDGMENT

Heard the learned counsel on either side.

2.This appeal has been filed by the wife of M.Sankar, who is is the subject matter of these proceedings. The respondent herein is the father. The respondent filed MHOP.No.3 of 2009 before the I Additional District Judge, Madurai under Section 53 and 54 of Mental Health Act, 1987 for getting himself appointed as the guardian of the said Sankar on the ground that he is mentally ill and for managing the immovable properties. The learned Trial Judge found that the said Sankar is a mentally ill person and allowed the petition filed by the respondent herein by order dated 06.03.2015. Questioning the same, this appeal has been filed.

3.The parties were personally present before me. I enquired not only the respondent but also his son Sankar. I am of the view that the finding of the Court below that Sankar cannot manage his affairs on his own and that therefore a guardian ought to be appointed for him cannot be faulted. But the question is who has to be declared as the guardian. Admittedly, the respondent father is aged about 71 years. It is also admitted that Sankar has been residing only with his wife and son from the year 2005 onwards. The appellant got married to Sankar in the year 2000. The son Muthukumar was born to them and he is now studying in SBOA Metric & Higher Secondary School, Madurai in 12th Standard.

4.Though the appellant has not taken out any petition for appointing herself as the guardian to her husband and it is only the respondent father who has moved the Court, in the interest of



justice, I appoint the appellant as the guardian for her husband M.Sankar to manage the immovable properties. In the schedule, there are two items and both the items are in the name of said Sankar. But, it is admitted by the appellant that the first item has already been sold. The learned counsel appearing for the appellant submits that the second item bearing No.360 A, Haarvipatti, Madurai has only been leased out and not encumbered

5.The second item shall not be encumbered or sold without the permission of the Court. The said property shall be maintained for the benefit of the said Sankar. The appellant is presently working as a caretaker of disabled children in American College, Madurai. She shall arrange to leave her husband in the custody of his parents during the course of the every Saturday. She shall take him back in the evening of every Sunday to her house.

6.Since Sankar has been away from his parents for the last 12 years, it would not be in his interest and welfare to make him stay there for longer duration. It is open to the respondent to take out an appropriate application in this CMA, if any modification is required. The respondent father expresses his desire to attend the medical needs of his son. The learned counsel appearing for the appellant has absolutely no objection for the same. The appellant and the respondent ought to cooperate with each other and act in concert for the welfare of Sankar.

7.The order dated 06.03.2015 made in M.H.O.P No.3 of 2009 on the file of the I Additional District Judge, Madurai is modified in the above terms. This Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The I Additional District Judge, Madurai.
2. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai.

SKM

VB/SV/MMS/SAR1/24/11/2017/2P/3C

**C.M.A. (MD) No.1353 of 2015
and
MP (MD) No.2 of 2015
08.11.2017**