



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2017

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

C.R.P. (MD) Nos. 921, 922 and 923 of 2017 (PD)
and
C.M.P. (MD) No. 4039 of 2017

Lakshmi

.. Petitioner in all CRPs

Vs.

1. Periyasamy
2. Arunprasath
3. Rajaguru
4. Union Bank of India,
Sengunthapuram Branch,
Karur Town thro its Branch Manager.
5. Samiyathal (mentally retarded person)
W/o. Ramasamy,
D/o. Late. Marappa Gounder,
Represented by his guardian/daughter viz. R.Jeyanthi
D/o. Ramasamy,
Door No.675, Trichy Road,
Amudhapriya Bakkery,
Rajaji Nagar,
Singanallur, Coimbatore - 641 005. .. Respondents in all CRPs

Prayer : These three Civil Revision Petitions are filed under Article 227 of the Constitution of India to set aside the fair order and decretal order passed by the Principal Subordinate Judge, Karur in I.A.Nos.1057,1058 and 1059 of 2016 in O.S.No.137 of 2011, dated 24.01.2017.

For Petitioner
In all 3 CRPs

:: Mr.R.Chandrasekar

COMMON ORDER

The application in I.A.Nos.1057,1058 and 1059 of 2016 are taken out before the Trial Court by the revision petitioner herein seeking to set aside the first plaintiff as fifth defendant and to appoint a Court Guardian on the ground of un-sound mind.



2. These applications being rejected by the Trial Court, for the reason that the revision petitioner herein, who is the 2nd plaintiff has not substantiated her case by providing enough evidence.

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3. The learned counsel for the revision petitioner submitted that under Order 32 Rule 15 of CPC, during the pendency of a suit, if a person is in un-sound mind, an application can be made to the Court to appoint guardian to protect the interest of the said person of un-sound mind or the Court on enquiry finds that the said person suffers from mental infirmity, can appoint guardian as specified in Rule 1 to 14, except Rule 2(a) of Order 33 of CPC.

4. In this case, no doubt the revision petitioner has examined the Doctor, who claims to have given treatment to the first plaintiff, Samiyathal. But she has not produced any medical record to satisfy the Court below, that the said Samiyathal suffers from Mental infirmity, which prevents her from effectively defending her case on her own. Except the discharge summary and the ocular evidence of the Doctor, there is no sufficient record for the Court to arrive at a conclusion to declare the person as of un-sound mind. Hence the Trial Court has rightly dismissed the applications.

5. The learned counsel for the revision petitioner submitted that, since the ocular evidence of the Doctor explains the illness of the said Samiyathal and she is not able to take a decision on her own or capable to answer the question, it is sufficient for the Court to arrive at a conclusion that she is not a person of fit mind.

6. This Court is unable to accept the said submission, for the simple reason that if a Doctor, who is a specialised psychiatrist, had treated the patient, while summoning to give evidence about the mental health of his patient, he should have produced the medical records for the Court to arrive at a right conclusion.

7. The discharge summary, dated 16.06.2015, as such does not indicate that on the date of filing the application to transpose Samiyathal as 5th defendant and to appoint a Court guardian, she was suffering from serious mental infirmity, rendering her incapable of defending herself. At the most, the discharge summary indicates that the petitioner suffers from Paranoid Schizophrenia. Medical literatures, time and again, has emphasized that Paranoid Schizophrenia is a mental illness, which is curable by taking continuous medication. While so, if really the said Samiyathal suffers from mental illness, that should be proved by the Doctor with supporting documentary evidence, namely, medical record of Samiyathal. In the absence of supporting medical record,



declaring a person as mentally ill person itself is unjustified.

8. The Trial Court has rightly dismissed the applications and this Court finds no infirmity or illegality in the order passed by the Trial Court to interfere under Article 227 of the Constitution of India. Hence all the three Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petition in CMP(MD)No.4039 of 2017 stands closed. No Costs.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
The Subordinate Court,
Karur.

GK/MM

AE/JC/05.05.2017/3P/2C

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