

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD) No.4405 of 2013

Shanmugasundaram

...

Petitioner

Vs

1.Saraswathi

2.Sampoornam

3.Marayammal

4.D.Jagadambal

5.S.P.Nagaraj

6.Sampoornam

...

Respondents

[R4 to R6 brought on record as LRs
of the deceased first respondent viz.
Saraswathi vide court order dated
08/03/2018 made in CMP Nos.4976 &
4977 of 2018 in CRP No.4405/2013]

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 03.09.2013 made in I.A.No.829 of 2010 in O.S.No.457 of 2009 on the file of the Principal District Munsif Court, Erode.

For Petitioner : Mr.N.Manokaran

For Respondents : R1 - Died
No appearance for R2 & R3
Mr.K.Chella Pandian,
Senior Counsel for
Mr.M.Santhanaraman
for R4 to R6

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 03.09.2013 made in I.A.No.829 of 2010 in O.S.No.457 of 2009 on the file of the Principal District Munsif Court, Erode.

2. The petitioner is the third defendant, first respondent is the plaintiff and the respondents 2 & 3 are defendants 1 & 6 in the suit in O.S.No.457 of 2009 on the file of Principal District Court, Erode. The first respondent filed the above suit for declaration that the second respondent/first defendant is mentally retarded and insane person and to declare the release deed dated 24.03.2005 executed by the second respondent/first defendant in favour of the second defendant as void and unenforceable and consequently the settlement deed dated 07.01.2009 does not confer any title to the petitioner in respect of the share of the second respondent/first defendant and for permanent injunction restraining the second

defendant and petitioner from any manner alienating or encumbering the suit property.

2(a) The second defendant filed written statement on 22.03.2010 and the same was adopted by the petitioner/third defendant. The petitioner/third defendant also filed additional written statement on 29.06.2012. The first respondent filed I.A.No.829 of 2010 under Order 32 Rule 15 and Section 151 CPC for a direction to the petitioner herein to produce the second respondent/first defendant before the court to examine the second respondent/first defendant by the court as well as by the Medical Board headed by District Medical Officer attached to the Government Head Quarters Hospital, Erode to verify the mental condition of the second respondent. According to the first respondent, the second respondent was in the custody of the second defendant and after the death of the second defendant, she is in the custody of the petitioner and life of the second respondent is in danger.

2(b) The petitioner filed counter and contended that the application filed by the first respondent is pre-mature as the first respondent has already filed MHOP No.4 of 2009 on the file of the

Principal District Court, Erode. The application is liable to be dismissed for non-joinder of parties as legal heirs of the deceased second defendant are not impleaded. The second respondent is not in the custody of the petitioner but she is in the custody of Marayammal, third respondent herein. The second respondent has no property of her own and the MHOP filed by the first respondent for appointment of guardian before Principal District Court, Erode does not arise. There is no necessity to subject the second respondent to Medical Board to ascertain her mental condition.

2(c) The learned Judge, considering the averments in the affidavit, counter affidavit and that Marayammal, the third respondent herein/sixth defendant who is the mother of the petitioner was sought to be impleaded as respondent in application and after entering through counsel in the present application, she did not file any counter and she was set exparte, the MHOP No.4 of 2009 was dismissed as not pressed and the second respondent could not answer the questions put by the Principal District Judge, Erode when she was produced before the Court, allowed the application directing to send summons to the third respondent to produce the second respondent before the court on 17.09.2013 so as to refer her to the Medical Board, namely District Chief, Joint

Director of Medical and Rural Health Services, Government Head Quarters Hospital, Erode.

3. Against the said order dated 03.09.2013 made in I.A.No.829 of 2010 in O.S.No.457 of 2009, the present Civil Revision Petition is filed by the petitioner.

4. The learned counsel for the petitioner contended that the respondents 1 to 3 and defendants 4 & 5 are sisters. The petitioner is the son of the third respondent / sixth defendant. The first respondent has already filed MHOP No.4 of 2009 for appointing her or the respondents 4 & 5 as guardian of both person and property of the second respondent. While the said MHOP was pending, the first respondent has filed the suit and present application. In MHOP No.4 of 2009, the first respondent has filed I.A.No.1877 of 2009 for production of second respondent before the Court and after production, she was not referred to Medical Board. While MHOP No.4 of 2009 was pending, the present application for the same relief is not maintainable. The first respondent has filed application under Order XXXII Rule 15 CPC. The learned Judge erred in allowing the application by invoking Section 45 of Evidence Act. The said order is invalid. In MHOP, there is a report already filed and

one more report is not necessary. The court does not have any expertise to ascertain the mental condition of a person.

5. Pending Civil Revision Petition, the first respondent died and the respondents 4 to 6 who are the legal heirs of the first respondent were impleaded as respondents 4 to 6 in this Civil Revision Petition.

6. The learned Senior Counsel appearing for the respondents 4 to 6 who are the legal heirs of the first respondent contended that MHOP No.4 of 2009 is only for appointment of guardian for the second respondent. In the present case, the relief is for declaration that the second respondent is mentally retarded and insane person and for declaration that the release deed dated 24.03.2005 executed by the second respondent in favour of the first respondent as void and unenforceable and consequentially settlement deed dated 07.01.2009 does not confer any title to the petitioner in respect of the share of the second respondent herein. Before the Principal District Judge, Erode, the second respondent was produced but she could not answer the question put by the learned Judge. The learned Judge has recorded the demeanour of the second respondent. The second respondent was not referred to the Medical

Board and no opinion was obtained from the Medical Board. The first relief in the suit is for declaration that the second respondent is mentally retarded and insane person. The said issue can be decided only based on the report from the Medical Board attached to the Government Hospital. The life of the second respondent is in danger under the hands of the petitioner and the third respondent. MHOP No.4 of 2009 was dismissed as not pressed and the first respondent has produced certified copy of the petition in MHOP No.4 of 2009 and certified copy of the order in I.A.No.1877 of 2009 in MHOP No.4 of 2009 which are marked as exhibits P1 & P2. The learned Judge, only on considering these documents and other materials on record has rightly allowed the application and prayed for dismissal of the Civil Revision Petition.

7. Heard the learned counsel for the petitioner as well as learned Senior Counsel appearing for the respondents 4 to 6 and perused the materials available on record.

8. The contention of the learned counsel for the petitioner is that while MHOP No.4 of 2009 is pending, the present application is not maintainable. This contention is without merits. The learned Judge has taken note of the fact that MHOP No.4 of 2009 was

dismissed as not pressed by virtue of bar under National Trust Act 1999. The learned Judge also considered the fact that the second respondent was not produced before the Medical Board even though I.A.No.1877 of 2009 was allowed exparte on 01.02.2010. From this, it is clear that there is no report from the Medical Board with regard to the mental condition of the second respondent. The learned Judge has extracted the findings of the District Judge, Erode wherein it has been stated that when the second respondent was put question regarding her name, she did not answer but was laughing. Considering these facts, the learned Judge, invoking Section 45 of the Evidence Act has directed the third respondent to produce the second respondent before the court for referring her to the Medical Board i.e. District Chief, Joint Director of Medical and Rural Health Services, Government Head Quarters Hospital, Erode. It is pertinent to note that the first respondent has made averments that the life of the second respondent is in danger. Considering all the facts in entirety, the learned Judge has allowed the application by giving cogent and valid reason. There is no irregularity or illegality in the said order impugned in this revision warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs.

20.03.2018

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Index : Yes

Speaking / Non-speaking order

To

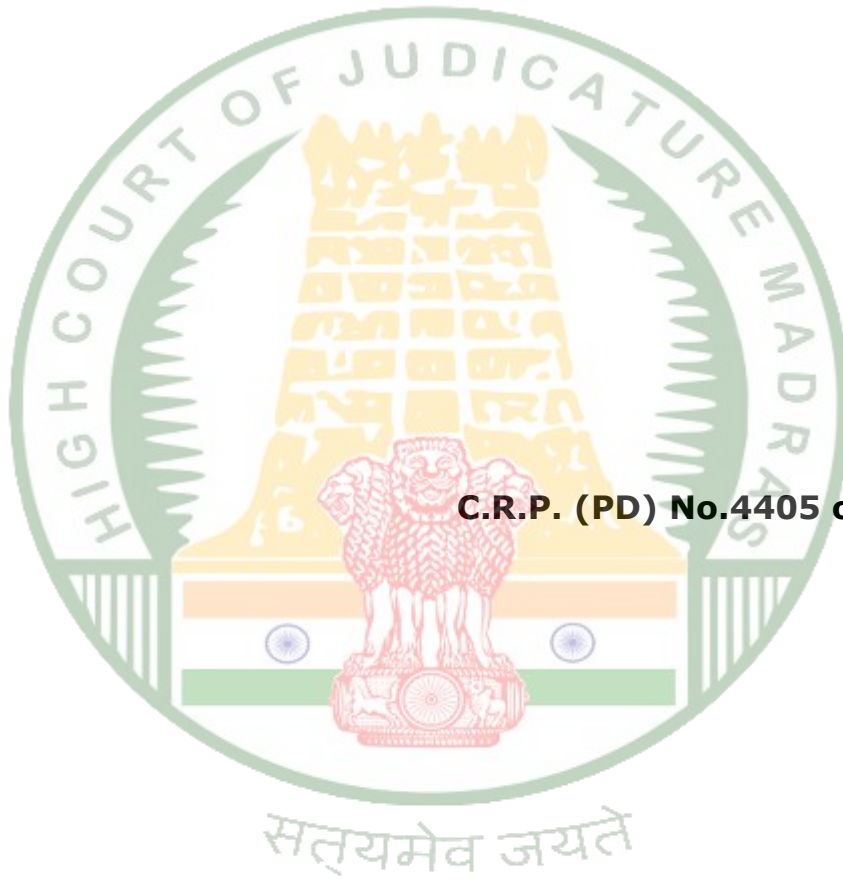
The Principal District Munsif Court,
Erode.



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V.M.VELUMANI, J.

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