



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD).No.196 of 2016 and
C.M.P.(MD)No.863 of 2016 & C.M.P.(MD)No.9991 of 2017

1. Ibram Ali
2. Mohammed Rabeek ... Petitioners/Respondents 1 & 2/
Defendants 1 & 2
Vs.

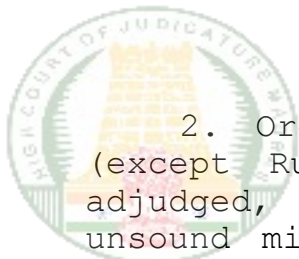
1. Abdulla
Through his next friend and wife
Fathima Beevi ... Respondent/Petitioner/
Plaintiff
2. Palkees Beevi
3. Mohammed Yousuf
4. Bowsi
(Notice to respondents 3 & 4
may be dispensed with, since
they were set ex-parte before
the trial Court) ... Respondents/Respondents 3,4&5/
Defendants 3,4 & 5

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision petition by setting aside the fair and decreetal order passed in I.A.No.369 of 2011 in O.S.No.110 2011 on the file of the learned Subordinate Judge, Aruppukkottai, dated 14.10.2015.

For Petitioners : Mr.T.Selvan
For R-1 : Mr.K.Guhan,
for Mr.V.Ramakrishnan.
For R-2 : Not known.
For R-3 & R-4 : Dispensed with.

O R D E R

The Revision petitioners are defendants 1 and 2 in O.S.No.110 of 2011 filed by the first respondent before the Subordinate Court, Aruppukkottai. It is a suit for partition. The suit has been instituted in the name of Abdullah through his wife and next friend Fathima Beevi. The said Abdullah has been described as a person of unsound mind. The Court below allowed I.A.No.369 of 2011 in O.S.No.110 of 2011 filed under Order 32 Rule 15 and Section 151 of C.P.C. The correctness of the said order is under challenge in this Civil Revision petition.



2. Order 32 Rule 15 of C.P.C., states that Rules 1 to 14 (except Rule 2-A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued. Hence, before passing an order allowing the next friend to sue in the name of such persons, the Court below must be satisfied with the fact of mental unsoundness or mental infirmity. Unless such satisfaction is recorded, permission cannot be given to the next friend to sue in the name of such persons.

3. In this case, the Court below has only stated that the said Abdulla has been admitted in a Home. There is no specific finding as regards the mental unsoundness or the mental infirmity of the said Abdulla. Such a finding will have to be arrived at after holding an enquiry in that regard. Since this without so being satisfied, the order has been passed by the learned Subordinate Judge, Aruppukkottai, in I.A.No.369 of 2011 in O.S.No.110 of 2011, dated 14.10.2015, the same is set aside.

4. The matter is remitted to the trial Court to hold a fresh enquiry so as to arrive at a specific finding in this regard. If the Court below comes to the conclusion that in view of the mental infirmity, the said Abdulla is not capable of protecting his interest, his wife Fathima Beevi shall of course be permitted to sue on his behalf.

5. With these observations and directions, the Civil Revision petition stands allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar (CS-I)

To

1. The Subordinate Judge,
Aruppukkottai.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1cc to Mr.T.Selvan, Advocate, SR.No.80740

+1cc to Mr.V.Ramakrishnan, Advocate, SR.No.80470

C.R.P. (MD) .No.196 of 2016 and
C.M.P. (MD) No.863 of 2016
& C.M.P. (MD) No.9991 of 2017