

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

**CIVIL REVISION PETITION No.5815 of 2017**

**ORDER:**

Heard learned counsel for the petitioner and the learned counsel for the first respondent.

2. The petitioner is the first defendant in O.S.No.717 of 2011 on the file of Principal Senior Civil Judge, Nellore. The suit was filed for partition and separate 1/4<sup>th</sup> share in the suit schedule property. In the said suit, the plaintiff filed I.A.No.839 of 2015 seeking appointment of guardian for defendants 2 and 3, who are minors, represented by defendant No.1, and when the said application was allowed by an order, dated 04.09.2017, the present Civil Revision Petition is filed.

3. The only allegation in the affidavit filed in support of the petition is that the first defendant is making hectic efforts to sell away the share of minors i.e., defendants 2 and 3, without obtaining permission from the Court. It is also stated that she filed I.A.No.828 of 2011 under Order XXXIX Rules 1 and 2 CPC seeking injunction from alienating the property and the Court below granted *ad interim* injunction. It is also her allegation that the first defendant is not representing the interest of defendants 2 and 3. She is alleging, by the averments in the written statement of the first defendant, that the first defendant is claiming the property exclusively to the detriment of interest of defendants 2 and 3 and in such a case, defendants 2 and 3 would be left without any money.

4. A counter-affidavit was filed on behalf of the first defendant stating that the allegations made in the affidavit are false and like a cow taking care of calves she has been taking care of her children with great cost. In fact, the children were shifted from Nellore to a

prestigious educational institution in Bangalore, where they were educated. The plaintiff and her husband are shedding crocodile tears. I.A.Nos.837 and 838 of 2015 are pending and hence, the question of appointment of guardian does not arise.

5. In spite of the said allegations, the trial Court passed the following order:

“Heard. Perused the record.

Sri B.Srinivasan, Advocate is appointed as Court guardian to represent the minors 2 and 3 represents in the place of 1<sup>st</sup> respondent to represent the minors 2 and 3 respondents. His fee is fixed at Rs.2,500/- (Rupees two thousand five hundred only) payable by the petitioner/plaintiff to the advocate/Court guardian directly under proper receipt. Issue proceedings accordingly.”

6. A perusal of the above order clearly shows that the contentions raised by parties are not at all considered and no reasons were assigned in the impugned order. In such circumstance, this Court is constrained to set aside the impugned order and remand the matter to the learned Principal Senior Civil Judge, Nellore, for passing appropriate orders in accordance with law.

7. Accordingly, the Civil Revision Petition is allowed setting aside the order, dated 04.09.2017, in I.A.No.839 of 2015 in O.S.No.717 of 2011 passed by the Principal Senior Civil Judge, Nellore, and remanding the matter to the Court below to dispose of the same in accordance with law, by duly giving reasons, after considering the averments made in the affidavit filed in support of the petition and the counter-affidavit filed by the respondents in the petition.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

**A.RAMALINGESWARA RAO, J**

**FEBRUARY 16, 2018**  
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**Date:16.02.2018**

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