

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.1381 of 2015

I.Jasmine Varma
Proposed Guardian, Djayabal Varma ... Petitioner

vs

1.Malini Dewan
2.Shanmugam ... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order in I.A.No.673 of 2005 in O.S.No.773 of 1997 dated 17.04.2012 on the file of the Principal District Munsif, Pondicherry.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : No appearance

ORDER

This Civil Revision Petition is directed against the fair and decretal order dated 17.04.2012 passed in I.A.No.673 of 2005 in O.S.No.773 of 1997 by the Principal District Munsif Court, Pondicherry.

2. Though the respondents' names are printed in the cause list, there is no representation for the respondents. Hence, this case is taken up for hearing.

3. The petitioner Jasmine Varma is the 1st defendant in suit. The said suit was filed by 1st respondent to declare the judgment and decree dated 04.08.1986 passed in O.S.No.456 of 1986 by the II Additional District Munsif, Pondicherry, vitiated by fraud and to declare the same as null and void and for other reliefs.

4. The petitioner Jasmine Varama was allegedly undergoing a treatment for Chronic Schizophrenia as an inpatient at Schizophrenia Research Foundation (India), North Main Road, Anna Nagar, (West Extn), Chennai and was admitted there.

5. Since, the petitioner Jasmine Varma (1st defendant) did not appear in person, she was called absent and the suit was decreed ex parte as prayed for with cost on 27.02.2001.

6. It was submitted that earlier the petitioner's cousin appeared to represent her as a Power of Attorney. It was contested by the respondents. Thereafter I.A.No.673 of 2005 was filed to

represent the petitioner by her husband D Jayabala Varma in O.S.No.773 of 1997.

7.I.A.No.673 was dismissed by the Court in the impugned order. Aggrieved by the same, the present Civil Revision Petition has been filed.

8.The paragraphs No.10 and 11 of the impugned order reads as follows:-

"10.On 18.10.2000, a Memo had been filed by the plaintiff/first respondent herein and thereby informed the Court that the first defendant was admitted in the Mental Hospital at Anna Nagar, Chennai. After receipt of the said Memo, this Court posted the matter for steps and for appearance of first defendant on 15.12.2000, the first defendant was called absent and set exparte. The suit was decreed as prayed for with cost on 27.02.2001.

11.Now, the present application is filed by the husband of the first defendant to record the mental status of the first defendant and to appoint him as guardian of his wife. First of all, as per section 53 of the Mental Health Act, this court has no jurisdiction to enquiry into the mental status of a person which is exclusively vested with the jurisdiction of District Court or with the Collector as the case may be."

9.The learned counsel for the petitioner relied upon the decision of this Court in **A.Manonmani vs A.Sivasubramanian** 2004 4 LW 131. Paragraphs No.12.3 to 13 read as follows:-

"12.3. The words employed in the legislature, namely persons who are found by the Court on enquiry to be incapable of protecting their interest when suing or being sued, found in Order 32 Rule 15 of the Code of Civil Procedure make it clear that a duty is cast on the Court to arrive at the finding whether on the pleadings or even in the absence of any pleading when it is brought to the notice of the Court by the evidence on record whether any persons is found by the Court, on enquiry to be incapable of protecting his or her interest, when suing or being sued, and such duty, in our considered opinion, is mandatory but not discretionary. Any deviation from the above rule would render Order 32 Rule 1 to 14 of the Code of Civil Procedure redundant, in as much as the Court is expected to be a guardian of interest of the minors and persons of unsound mind who are incapable of protecting their interest.

12.4. If the Court is satisfied that the defendant is either a minor or a person of unsound mind or a person incapable of protecting his or her interest when suing or being sued, a further duty is cast on the Court itself to decide who could be a proper person to be appointed as a guardian ad litem for an effective representation of the case on behalf of the a minor or a person of unsound mind.

13. As the above burdened obligation of the Court was not discharged and a specific finding with regard to the allegations about the unsound mind of one of the defendants by name Kamala has not been rendered by the learned single

Judge, without going into the various other contentions urged by the learned counsel for the appellant, we are inclined to set aside the judgment and decree of the learned Judge.”

10. From the above decisions, it is clear that mandatorily a person is required to be appointed as a guardian in case, a person is of unsound mind. In this case, the learned counsel for the petitioner further submits that even if the petitioner-husband is not appointed as her guardian, the Court may appoint any person as her guardian and therefore prays for interference at this stage.

11. I have considered the arguments of the learned counsel for the petitioner and perused the records.

12. There are conflicting interests that are discernible from a reading of the documents filed in the present Civil Revision Petition. On the one hand, the interest of the respondent in the suit property which was denied on an earlier occasion in O.S.No.456 of 1986 and that of the petitioner who is allegedly suffering from Schizophrenia. Though a copy of the judgment and decree passed in the said suit is not available, it appears it was a suit for specific performance filed by the petitioner/1st defendant.

13.The 1st respondent/plaintiff therefore filed O.S.No.773 of 1997 to declare the judgment and decree passed in the O.S.No.456 of 1986 as null and void. The suit was decreed ex parte on 27.2.2001.

14.Thereafter, after a lapse of almost 3 years, an affidavit was filed by petitioner's/1st defendant's husband under Order 32 Rule 1 of CPC to record that the petitioner/1st defendant was suffering from mental illness and to permit him to represent her interest in the above suit.

15.It appears that the relationship between the petitioner and her husband D. Jaya Bala Varma was also strained and the petitioner's husband had earlier filed an application before the Family Court for a direction against the mother, brother and sister of the petitioner to produce the petitioner before the said court for being admitted for treatment at Schizophrenia Research Foundation (India). However, the said application 20.01.2001 was dismissed by the Family Court. Thus, the petitioner has not been declared and unsound person.

16.A similar attempt was made to declare that the petitioner was incapable of representing herself as she was of unsound mind in I.A.No.673 of 2005 in O.S.No.773 of 1997. The said application was dismissed by the court in the impugned order on the ground that it lacked jurisdiction under section 53 of the Mental Health Act, 1987 and that only the District Court has jurisdiction to declare a person to pay of unsound mind.

17.The Mental Healthcare Act, 2017 has now replaced the Mental Health Act, 1987. Thus, on the date of this order, the Mental Health Act, 1987 is not in force. Be that as it may, it appears the grievance of the petitioner's husband D.Jayabala Varma requires to be addressed. Therefore, the court may appoint any neutral person as a guardian of the petitioner considering the fact that the petitioner's husband himself may not be actually living with the petitioner and that his relationship with the petitioner was strained.

18.Therefore, I am inclined to interfere in a limited way in this Civil Revision Petition. The Court below is directed to appoint an Advocate Commissioner to represent the interest of the petitioner

19.The petitioner's husband D.Jayabala Varma who had filed I.A.No.673 of 2000 in O.S.No.773 of 1997 shall pay for the expenses and the fee payable to the Advocate Commissioner to visit the petitioner and to give a report to the Court as to whether the petitioner was indeed undergoing any treatment for mental illness and if so, whether the petitioner requires any assistance?

20.If so, the court may thereafter decide as to whether the petitioner (the 1st defendant) requires further assistance under the mechanism provided under the Mental Healthcare Act, 2017. This exercise shall be carried out by the court provided the petitioner's husband D. Jay Bala Varma undertakes to defray the expenses in connection with the appointment of an Advocate Commissioner to visit the petitioner and give a report.

21.The Principal District Munsif Court, Pondicherry is directed to appoint as an independent guardian of the 1st defendant I. Jasmine Varma in I.A.No.673 of 2005 in O.S.No.773 of 1997.

22.The court may fix a reasonable time line for such exercise

<http://www.judis.nic.in> and complete the entire exercise within a period of six months from

date of receipt of a copy of this order. If required, the Court may also require the petitioner to be produced before the Court. Court may thereafter make an independent assessment of the situation and pass such orders which will subserve the interest of justice.

23. In view of the above discussions, I am of the view that the present Civil Revision Petition deserves to be allowed by setting aside the impugned order dated 17.04.2012 passed by the Principal District Munsif Court, Pondicherry in I.A.No.673 of 2005 in O.S.No.773 of 1997.

24. The present Civil Revision Petition is allowed with the above observations. No cost.

सत्यमेव जयते

19.06.2019

Index : Yes/No
Internet : Yes/No
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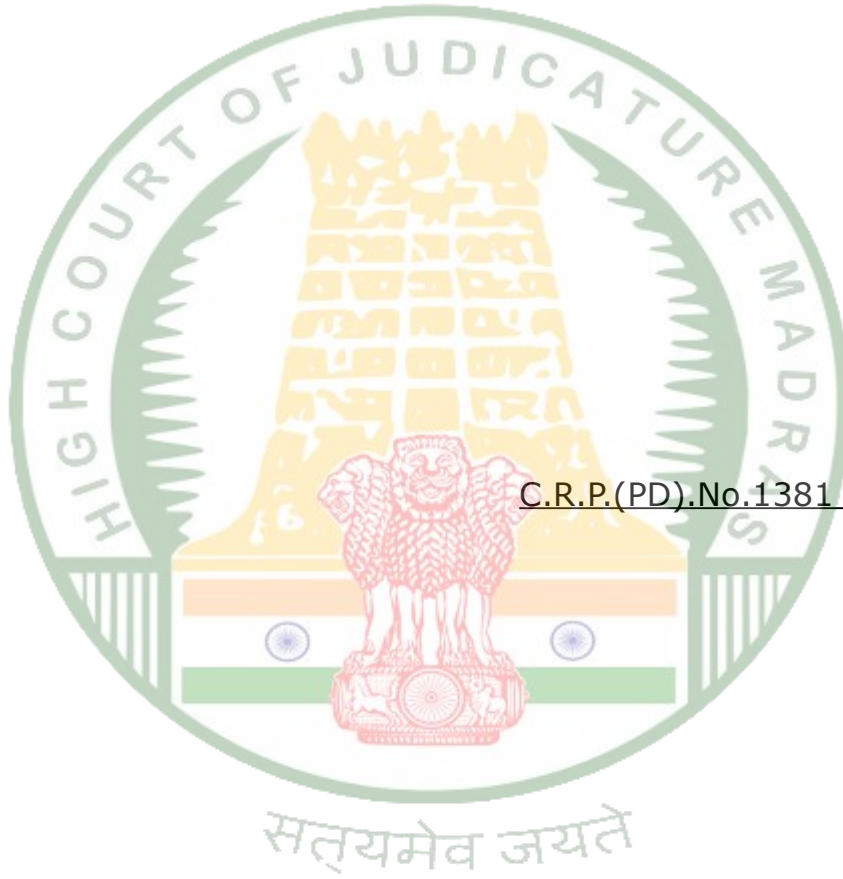
To

1. Principal District Munsif, Pondicherry.
2. The Section Officer, V.R. Section,
High Court, Madras.

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C.SARAVANAN, J.

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