

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.11.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(PD)No.1366 of 2014

and M.P.No.1 of 2014

R.Rajendran

..

Petitioner /
Plaintiff

versus

1.Vimala

2.R.Balakrishnan

3.J.Rajeswari

4.Baby (Mentally unsound person) ..

Respondents /
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 26.07.2012 made in I.A.No.407 of 2011 in O.S.No.529 of 2011 on the file of the learned Principal Subordinate Judge, Coimbatore.

For Petitioner : Mr.J.Franklin
For Respondent Nos.1 & 3 : No Appearance
For Respondent Nos.2 & 4 : Dismissed

ORDER

This Civil Revision Petition has been filed against the order dated 26.07.2012 made in I.A.No.407 of 2011 in O.S.No.529 of 2011 on the file of the learned Principal Subordinate Judge, Coimbatore.

2. The plaintiff in O.S.No.529 of 2011 on the file of the learned Principal Subordinate Judge, Coimbatore, is the petitioner herein.

3. Before the above referred Court, the petitioner / plaintiff has filed a suit as against the respondents / defendants, seeking the relief of partition and separate possession. When at the time of filing the plaint, he has stated that the 4th defendant, namely, Baby, is a person "unsound mind", represented by the Guardian appointment by the Court. Along with the plaint, he has filed an application in I.A.No.407 of 2011 under Order 32 Rule 3 of the Code of Civil Procedure, for the relief of appointing Court guardian to the 4th defendant.

4. After affording an opportunity to the respondents / defendants, the learned Principal Subordinate Judge, Coimbatore, by an order dated 26.07.2012, dismissed the application. Challenging the same, the petitioner is before this Court with the present Civil Revision Petition.

5. Today when the Civil Revision Petition is taken up for hearing, there is no representation on behalf of the respondents 1 and 3. However, the

learned counsel appearing for the petitioner / plaintiff is present and made a submission that, without conducting any proper examination, the learned Principal Subordinate Judge, Coimbatore, dismissed the application filed by the petitioner, which is erroneous in law.

6. Upon considering the arguments advanced by the learned counsel appearing for the petitioner, no doubt the application filed by the petitioner was dismissed by the learned Principal Subordinate Judge, Coimbatore, only on the following observations;

"The 4th defendant was examined, she is capable of understanding & answer the questions, put to her there is no need for appointing guardian. Petition is closed."

7. In this occasion, it is necessary to see Order 32 Rule 3(1) of the Code of Civil Procedure, which reads as follows;

"Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor."

8. Therefore, as per Order 32 Rule 3(1) of the Code of Civil Procedure, before appointing the Court guardian, the Court must satisfy with the fact of unsound mind having by the defendant. In this case, as per the impugned order, before dismissing the application filed by the petitioner, the 4th defendant [Baby] alleged to be the person of unsound mind was examined as C.W.1. During the time of examination, she has answered properly to the questions put forth by the Presiding Officer of the Court.

9. Only based on the answers given by the alleged mentally ill person, the learned Principal Subordinate Judge, Coimbatore, came to the conclusion that the alleged mentally ill person is not suffering from any unsound mind. Accordingly, the learned Principal Subordinate Judge, Coimbatore, has dissatisfied with the application filed by the petitioner and came to the conclusion that the 4th defendant is a normal person. Further, as per the law laid down under Order 32 Rule 3(1) of the Code of Civil Procedure, the learned Principal Subordinate Judge, Coimbatore, has acted upon and dismissed the petition. Therefore, there is no material irregularity in the impugned order passed by the Court below.

10. In the light of the above observations, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

28.11.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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To

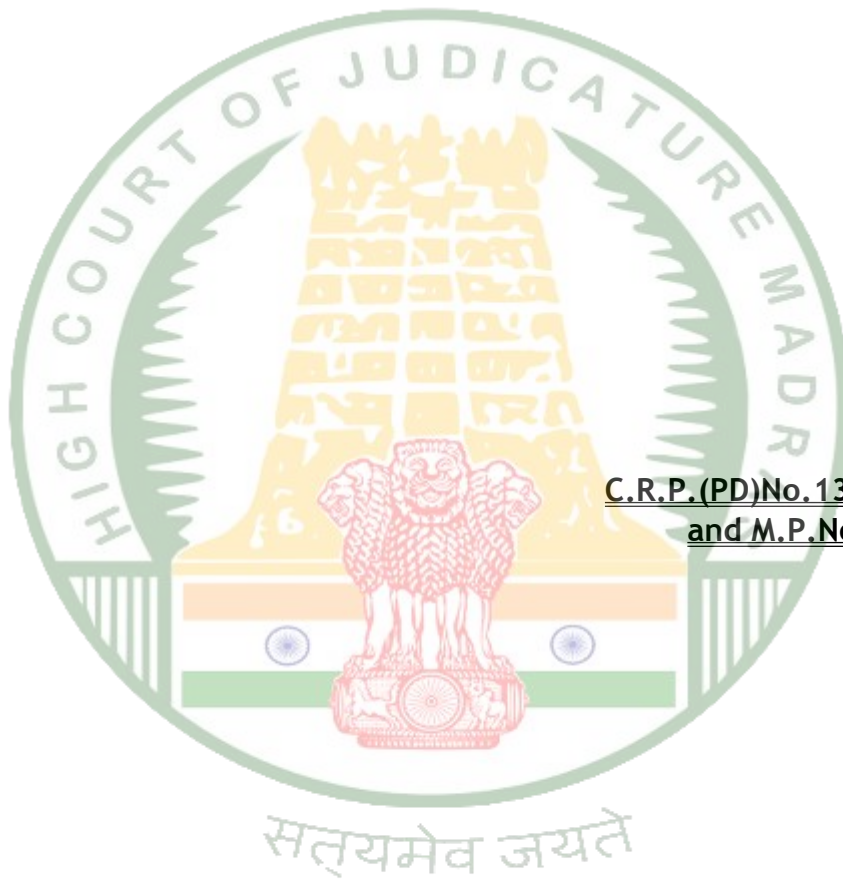
The Principal Subordinate Judge,
Coimbatore.



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R.PONGIAPPAN, J.,

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