IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM:

THE HONOURABLE Mr.JUSTICE V.SIVAGNANAM

C.R.P.PD.No.3873 of 2019
and
C.M.P.No.25577 of 2019

K.Shanmugasundaram .. Petitioner

Vs.

Saraswathi (died)

1. Nagaraj
2. D.Jagadhambal
3. D.Sampoornam
4. Sampooranam

Kuppayammal (died)

5. Arukkani
6. Chellammal
7. Marayammal .. Respondents

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Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated

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30.10.2019 made in I.A.No. 11 of 2019 in O.S.No. 457 of 2009 on the file of the learned Principal District Munsif Court, Erode by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manoharan
For Respondents : Mr.R.Karthikeyan

ORDER

This Civil Revision Petition has been filed to set aside the order in I.A.No.11 of 2019 dated 30.10.2019 in O.S.No. 457 of 2019 on the file of the Principal District Munsif Court, Erode.

2. The Revision Petitioner is the third defendant in the suit.

3. The suit is filed by the plaintiffs/respondents with a prayer for declaring the first defendant/Samboornam as mentally retarded and insane person and also with a prayer for declaring the release deed dated 24.03.2005 executed by the first defendant/Samboornam in favour of second defendant/Kuppayammal is void and unenforceable. The settlement deed dated 07.01.2009 does not confer any title to the third

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defendant (Revision petitioner) and also praying for permanent injunction against the defendants 2 & 3 not to alienate the suit property.

4. I.A.No.11 of 2019 in O.S.No. 457 of 2009 was filed by the third plaintiff/Jagadambal to appoint a next friend/guardian for the first defendant, since he was mentally insane person, which was also considered by the trial Court and after hearing the counsels for the parties, allowed the petition. Therefore, Mr.Rajagopal, learned counsel is appointed as a Court guardian to represent first defendant and also allowed payment of Rs.6,000/- by the first defendant.

5. Aggrieved by this order, the third defendant filed this Revision Petition.

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6. The learned counsel for the Revision Petitioner submitted that the trial Court has not properly considered the facts of this case and further submitted that the suit was filed to declare that the first defendant

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is mentally retarded and insane person. He further submitted that Civil Court has no Jurisdiction to declare a person an insane person, in view of Section 50 of Mental Health Act 1987. He further submitted that the case is posted for arguments. At that stage, this petition for appointment of guardian to the first defendant was filed and allowed, which is improper and unsustainable and retarded the grounds raised in the Civil Revision Petition and thus pleaded to set aside the order passed by the trial Court and to allow this Revision Petition.

7. The learned counsel for the respondent supported the order of the trial Court and further submitted that in a Civil case, Civil Court has the power to appoint guardian to an insane person. There is no illegality in the order of the trial Court and thus pleaded to dismiss the Revision Petition.

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8. I have considered submissions of the learned counsel for the parties and perused the records.

9. The Revision Petition is challenging the order of the trial Court in I.A.No. 11 of 2019 in O.S.No. 457 of 2009 appointing Court guardian to represent mentally insane person, first defendant/Sampoornam. On perusal of order of the trial Court, it is seen that it is recorded by the learned trial Judge that the case was reserved for Judgement. At that stage, this petition was filed for appointing Court guardian. It is recorded in paragraph 5 of the order, which reveals that till the decision is taken in the case, no Court guardian was appointed to the first defendant and he was represented by her elder sister/next friend Chellammal, who was the 5th defendant in the case. It is to be noted that the 5th defendant Chellammal did not express any willingness to represent the first defendant. Under these circumstances, the petition was filed under Order 32 Rule 15 of C.P.C. to appoint Court guardian in the trial Court.

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The 5th defendant was set exparte since she did not appear before the Court and contest the case.

10. Under these circumstances, a guardian has to be appointed to the first defendant to represent his case. The first defendant was placed for Medical test and result of the Medical test was filed before the Court in I.A.No.820 of 2010. The first defendant was produced before the Court and he was taken for Medical Test and he was placed under Medical observation from 21.08.2018 to 27.08.2018 and he was identified as mentally undeveloped person with mental growth ranging between 45% to 55% and to that effect, Certificate was given and marked as document No. 1. The trial Court considering the mental condition of the first defendant and next friend/5th defendant, who remained exparte, appointed Advocate Rajagopal as a Court guardian.

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11. The contention of the learned counsel for the petitioner that Civil Court has no Jurisdiction to declare a person as a mentally insane

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person is not relevant, for the purpose of conducting a civil case to represent mentally insane person civil court has power. The Civil Court appointed an Advocate to represent mentally ill person as per Order 32 Rule 15. The scope of enquiry is not the same as that under the Mental Health Act and the Court can appoint a guardian for conducting civil suit. Therefore, this Court finds no error in the order of the trial Court. The trial Court rightly appointed next friend/Court guardian to represent first defendant. I find no merit in the Revision Petition. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

09.12.2020

Index : Yes / No
kmm

To
The learned Principal District Munsif Court,
Erode.

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V.SIVAGNANAM, J.,

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