

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.3646 of 2018

and

C.M.P.No.20293 of 2018

1.Azhagu Sinthanantham Nainar @ Sinthanantham

2.Susila

3.Rajasekar

.. Petitioners

Vs.

Sumathi

.. Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 01.10.2018 in I.A.No.338 of 2017 in O.S.No.467 of 2017 on the file of the First Additional Sub Court, Villupuram by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.R.Karthik

ORDER

The defendants in O.S.No.467 of 2017 have come up with this Revision challenging the order appointing a guardian for the second plaintiff in the suit. The suit is laid by the plaintiffs, seeking damages against the defendants for various acts of harrasment and filing of criminal cases against the plaintiffs. In the suit, an application in I.A.No.338 of 2017 was filed to appoint the husband of the second plaintiff as the guardian since the second plaintiff is stated to be a mentally ill person. The trial court referred the alleged mentally ill person namely the second plaintiff for Examination by the Medical Board. The Medical Board after observing her for nearely 20 days from 20.07.2018 to 09.08.2018, during which period she was admitted in the Psychiatric O.P., concluded that the second plaintiff suffered mental disability of 60% and she has got a Bipolar disorder. However, when the second plaintiff was examined before the Court she was able to give proper answers to the questions posed by the learned counsel.

2.The main contention of the defendants in opposing this application is that the second plaintiff was not a mentally ill person and she

is capable of representing herself in the suit. It is also contended that the application has been filed only with a view to prevent her examination as a witnesses in the suit.

3.The trial court upon a consideration of the report of the Medical Board as well as the other material on record concluded that merely because the second plaintiff is able to give proper answers for the questions posed by the learned counsel, it cannot be concluded that she is not mentally ill and she does not require a guardian to represent her in the suit. The trial court gave its opinion based on the Medical evidence that was in the form of the report of the Medical Board and consequently the trial court allowed the application and appointed her husband as the guardian.

4.Heard Mr.N.Manoharan, in support of the Revision and Mr.R.Karthick, appearing for the respondents against the Revision.

5.Mr.N.Manoharan, learned counsel appearing for the petitioner would vehemently contend that the required avernments are not found in the

affidavit. Drawing my attention to Sub-rule 5 of Rule 3 Order 32 as amended by the Madras High Court, Mr.Manoharan would submit that the guardian must state that the guardian has no interest, in the matters in controversy in the suit, adverse to that of the mentally ill person. He would also contend that there is no such allegation in the affidavit filed in support of the application and the trial Court was not right in appointing the guardian, more so, when it had found that the alleged mentally ill person had given proper answers to the questions during examination in the Court.

6.In the affidavit filed in support of this application, there is a clear allegation that the proposed guardian, namely, the husband of the alleged mentally ill person / the first plaintiff in the suit does not have any adverse interest to that of the mentally ill person.

7.On the second contention, I find that the trial court had gone by the Medical Evidence that was made available. It is also seen from the order of the trial court that the mentally ill person was admitted in the Psychiatric O.P. for more than 20 days and only after such observation, the Medical

Board had given an opinion that she has got 60% mental disability.

8. I do not see any illegality or irregularity in the order of the trial court in accepting the Medical Evidence that was made available. Therefore, there is no reason to interfere with the order of the trial court. The Revision therefore fails and is accordingly dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

22.09.2020

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Internet: Yes/No

Index: Yes/No

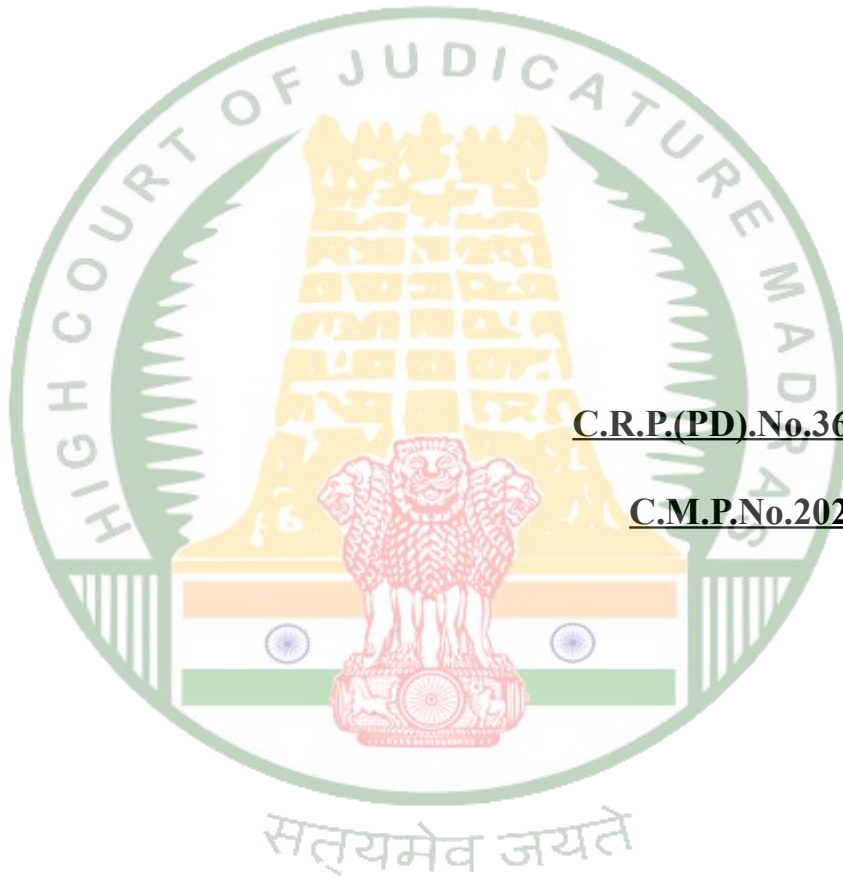
To

The First Additional Sub Court,
Villupuram.

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R.SUBRAMANIAN, J.

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