



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD) Nos.1344 and 1345 of 2012 and 1077 of 2013

and M.P(MD) .Nos.1 of 2012 & 1 of 2013

WEB COPY

C.R.P (MD) .No.1344 of 2012

1.Minor Mohammed Sheik Dawood

2.Minor Hameem ... Petitioners/Petitioners/Defendants 7 & 8

vs.

1.Kadar Ammal ... 1st Respondent/1st Respondent/Plaintiff

2.Rahim Sait

3.Sabiya Beevi

4.Minor Shiffana

5.Minor Sheik Jeebath

(Minor respondents 4 & 5 represented
by their mother and guardian, the
third respondent)

6.Sabila Mariyam ..Respondents 2 to 6/Respondents /
/Defendants 2 to 6

7.Shahul Hameed

8.Nasreen Banu

9.Moomina

10.Rahumathnisha

11.Jenifer ...Respondents 7 to 11/Respondents/
/Defendants 9 to 13

C.R.P (MD) .No.1345 of 2012

1.Minor Mohammed Sheik Dawood

2.Minor Hameem ... Petitioners/Petitioners/Respondents
/Defendants 7 & 8

vs.

1.Kadar Ammal ... 1st Respondent/1st Respondent/Petitioner/
Plaintiff

2.Rahim Sait

3.Sabiya Beevi

4.Minor Shiffana

5.Minor Sheik Jeebath

(Minor respondents 4 & 5 represented

by their mother and guardian, the third respondent)



6.Sabila Mariyam ..Respondents 2 to 6/Respondents 2 to 6
 Respondents /Defendants 2 to 6
 7.Shahul Hameed
 8.Nasreen Banu
 9.Moomina
 10.Rahumathnisha
 11.Jenifer ...Respondents 7 to 11/Respondents 7 to 11
 /Respondents /Defendants 9 to 13

C.R.P (MD) .No.1077 of 2013

1.Minor Mohammed Sheik Dawood
 2.Minor Hameem ... Petitioners/Petitioners/Defendants 7 & 8
 vs.

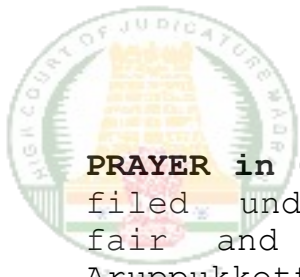
1.Kadar Ammal ... 1st Respondent/1st Respondent/Plaintiff
 2.Rahim Sait
 3.Sabiya Beevi
 4.Minor Shiffana
 5.Minor Sheik Jeebath
 (Minor respondents 4 & 5 represented
 by their mother and guardian, the
 third respondent)
 6.Sabila Mariyam ..Respondents 2 to 6/Respondents /
 Defendants 2 to 6
 7.Shahul Hameed
 8.Nasreen Banu
 9.Moomina
 10.Rahumathnisha
 11.Jenifer ...Respondents 7 to 11/Respondents/
 Defendants 9 to 13

(Since the suit against the respondents 3 to 9 and 11 has been
 remained exparte in the suit as well in the I.A notice to them
 may be dispensed with)

PRAYER in C.R.P (MD) .No.1344 of 2012: The Civil Revision Petition is
 filed under Article 227 of the Constitution of India, against the
 fair and decreetal order of the learned Subordinate Judge,
 Aruppukkottai passed in I.A.No.12 of 2012 in O.S.No.45 of 2008 dated
 15.02.2012.

PRAYER in C.R.P (MD) .No.1345 of 2012: The Civil Revision Petition is
 filed under Article 227 of the Constitution of India, against the
 fair and decreetal order of the learned Subordinate Judge,
 Aruppukkottai passed in I.A.No.13 of 2012 in I.A.No.215 of 2008 in
 O.S.No.45 of 2008 dated 15.02.2012.

<https://hcservices.ecourts.gov.in/hcservices/>



PRAYER in C.R.P (MD) .No.1077 of 2013: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order of the learned Subordinate Judge, Aruppukkottai passed in I.A.No.142 of 2012 in O.S.No.45 of 2008 dated 21.01.2013.

(In all the petitions)

For Petitioners : Mr.S.Parthasarathy

For Respondents : Mr.S.A.Ajmalkhan

COMMON ORDER

A certain Kathar Ammal, who is the respondent No.1 in this petition filed a suit for partition in O.S.No.45 of 2008 before the Sub Court, Aruppukkottai.

2.One of the brothers of the plaintiff was one Mohammed Rafi. He was no more even at the time when the suit was laid. His heirs are arrayed as the defendants 6 to 8. Of them, the defendants 7 and 8 were minors, aged about 10 years and 8 years respectively, at the time when the suit was laid in 2008. Therefore, the plaintiff had filed necessary application to appoint the mother (6th defendant) as the guardian to defend the interest of the minors in the suit. The trial court appointed the sixth defendant as a guardian of the defendants 7 and 8. She also filed a written statement for herself and for her two children.

3.Be that as it may, alleging that 6th defendant in her capacity as the guardian of minors has conceded that some of the properties pertaining which was the self acquisition of the deceased Mohammed Rafi as per title between the parties and alleging that she had dealt with some of these items against the interest of minor-defendants, the maternal uncle of the defendants 7 and 8 filed I.A.No.12 of 2012 to recall the order of the trial Court appointing the mother as a guardian. The same maternal uncle filed I.A.No.13 of 2012 to appoint himself as a guardian of the children. Vide impugned order dated 15.02.2012, both applications came to be dismissed. Challenging the same, the maternal uncle has moved this Court in C.R.P.(MD) Nos.1344 and 1345 of 2012. This Court however, did not order any stay of further proceedings of the suit.

4.In these circumstances, the trial of the suit commenced. The mother now filed a memo withdrawing her appointment as guardian of the minors. This created a situation where the minors' interest is needed to be protected by the Court. During hearing, it was represented on behalf of the revision petitioner that the prayer was made to the Court that the Court, as a guardian of the minors, ought



to protect the interest of the minors and appoint a court guardian , but that was rejected by the court.

5. In this scenario, on a different cause of action, the same maternal uncle had now filed I.A.No.142 of 2012 for appointing him as guardian for the minors. This came to be dismissed. Challenging this order, C.R.P.No.1077 of 2013 has been filed in which this Court has passed an order of stay of further proceedings in M.P. (MD).No.1 of 2013.

6. Heard both sides briefly.

7. Both minors have now become major and they are competent to defend the suit in their own right. Therefore, all these Civil Revision Petitions have become infructuous. Both minors shall appear before the trial Court on 10.10.2020 either in person or through their counsel. They are also entitled to file their separate written statement, if they are desirous. Since the matter is pending for considerable number of years, the trial Court must give top priority to the matter and try to dispose of the matter as expeditiously as possible subject to such Covid-19 regulation regarding running of the Court.

8. In the result, these Civil Revision Petitions are dismissed as infructuous. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM/msa

To

1. The Subordinate Judge,
Aruppukkottai

2. The Section Officer (2 copies)
V.R. Section, Madurai Bench of Madras High Court
Madurai.

+1cc to Mr. Parthasarathy, Advocate SR.No.16025
+1cc to Mr. S.A. Ajmalkhan, Advocate SR.No.16185

C.R.P. (PD) (MD) Nos.1344 and 1345 of 2012 and 1077 of 2013
and M.P(MD).Nos.1 of 2012 & 1 of 2013

04.09.2020