



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2020

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THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.R.P. (PD) (MD)No.1188 of 2014

and

M.P. (MD)No.1 of 2014

WEB COPY

T.Akila ... Petitioner/Petitioner/Respondent
Vs
C.Gunasekaran ... Respondent/Respondent/Petitioner

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order in I.A.No.268 (a) of 2012 in H.M.O.P.No.108 of 2012 dated 22.11.2012 on the file of Subordinate Judge, Nagercoil.

For Petitioner : Mr.P.T.Ramesh Raja
For Respondent : Mr.Gnanaguranathan

ORDER

This Civil Revision Petition has been filed by the respondent/wife against the order passed by the Subordinate Judge, Nagercoil, in I.A.No.268 (a) of 2012 in HMOP.No.108 of 2012 dated 22.11.2012.

2. The respondent herein has filed H.M.O.P.No.108 of 2012 on the file of the Subordinate Judge, Nagercoil, seeking divorce on the ground that the petitioner herein affected with mental illness. He also filed an application in IA.No.268 (a) of 2012 under order 32 Rule 3 and Section 151 of CPC to appoint her father as guardian for the petitioner herein. The learned Sub Judge, by the order dated 22.11.2012, has allowed the said petition. Aggrieved by the same, the respondent/wife has filed the present Civil Revision Petition.

3. Heard Mr.P.T.Ramesh Raja, the learned counsel appearing for the petitioner and Mr.M.Ganagurunathan, the learned counsel appearing for the respondent.

4. It is relevant to extract paragraphs 2 & 3 of the affidavit filed in support of the petition in I.A.No.268 (a) of 2012 in H.M.O.P.No.108 of 2012, which read thus:-

"2. I have filed the original petition seeking a decree for Divorce against the respondent, as she is suffering from mental illness and as such she is a minor, required to be represented by a guardian.

3. To safeguard the person of the respondent to conduct the proceedings, her father is a competent person to represent her cause in this matter."



5. The learned Sub-Judge has allowed the said petition by passing an one word order as "permitted". He has not stated any reason for allowing the said petition.

6. At this juncture, it would be relevant to refer to Order 32 Rule 15 of CPC, which reads thus:-

"15. Rules 1 to 14 (except Rule 2A) to apply to persons of unsound mind. - Rules 1 to 14 (except Rule 2A) shall, so far as may be, apply to persons adjudged before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued"

7. From the aforesaid provision, it is clear that there must be an adjudication with regard to the unsound mind of the parties and then only guardian can be appointed. In this case, the respondent herein has not produced any material before the Trial Court to show that the petitioner herein was an unsound mind person and she was not able to defend her case effectively. But, the learned Trial Court without applying its mind has mechanically allowed the said petition by passing one word order.

8. It is also relevant to refer to Order 32 Rule 3 of CPC, which reads thus :-

"3. guardian for the suit to be appointed by Court for minor defendant. -

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

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, [upon notice to the father or where



is no father or mother, to other natural guardian] of the minor, or where there is (no father, mother or other natural guardian], to the person in whose case the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

[4A] The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also]

(5) A person appointed under sub-rule(1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree].
"

9. From the reading of the aforesaid provision, it is clear that no order shall be made on any application for appointment of guardian unless a notice is served on the proposed guardian. In this case, the learned Trial Court has not sent any notice to the proposed guardian before allowing the said petition. Further, as per Order 32 Rule 4 (3) of CPC, no person shall without his consent in writing be appointed as guardian. So, on these grounds also the order passed by the Trial Court is not sustainable.

10. For the aforesaid reasons, the order passed in I.A.No.268 (a) of 2012 in HMOP.No.108 of 2012 on the file of the Subordinate Judge, Nagercoil, dated 22.11.2012, is liable to be set aside.

11. In the result, this Civil Revision Petition is allowed. The matter is remitted back to the Trial Court to pass an appropriate order by following the procedures prescribed under Order 32 Rules 3, 4 (3) and 15 of CPC, after giving opportunities to both the parties for adducing oral and documentary evidence. The parties are directed to bear their respective costs. Consequently, connected miscellaneous petition is closed.

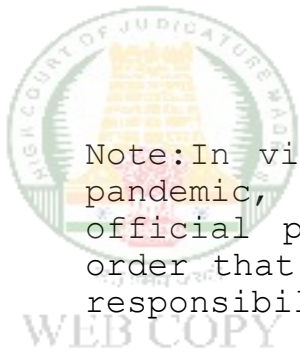
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Assistant Registrar (Writ)

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Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Subordinate Judge,
Nagercoil.

+1 CC to M/s.M. GNANAGURUNATHAN, Advocate (SR-18039[F]
dated 25/09/2020)

C.R.P. (PD) (MD)No.1188 of 2014

and

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DKS (CO)

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