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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1718 of 2010

Sathiya

.. Appellant

vs.

1.Sumathi

2.Dhanam

3.Govindammal

4.Palaniammal

5.Vennila

6.Thilagam

7.Manimegalai

8.Pettiammal @ Perumakkal

9.Jayavel

10.Krishnamoorthy

.. Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 76 of the Mental Health Act, against the order and decreetal order dated 09.02.2010 passed in L.O.P.No.76 of 2007 on the file of the Principal District Judge, Krishnagiri.

For Appellants : Mr.T.Panchatsaram

For Respondents : Mr.V.Srimathi
for RR4 & 5
Not ready in notice for
RR1 to 3, 6 to 10

O R D E R

The Fair and Decreetal order dated 09.02.2010 passed in L.O.P.No.76 of 2007 is under challenge in the present Civil Miscellaneous Appeal.

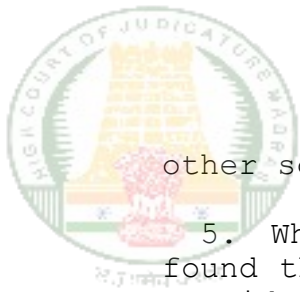


2. The petitioner is the appellant. The Lunatic Original Petition was filed to declare one Mr.Sivakumar as lunatic and appoint the petitioner as guardian.

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3. The contention of the appellant was that the said Sivakumar is the husband of the appellant. The marriage was solemnized on 07.07.1995. The respondents 1 to 7 are sisters of the said Sivakumar and the 8th respondent is the aunt of the Sivakumar. 9th respondent is the son of the 8th respondent and 10th respondent is the son-in-law of the 7th respondent. The appellant filed the petition on the ground that her husband/Mr.Sivakumar is mentally challenged man. As long as the parents were alive, they were taking care of the said Sivakumar. After the death of the parents, the appellant has taken care and he is with the custody of the appellant. It is stated that it is very difficult for the appellant to maintain herself and lunatic. Thus, it become necessary for filing the present appeal to appoint the appellant as guardian.

4. Certificate for personal property of the said Sivakumar was adjudicated by the trial Court with reference to the documents and evidence. The trial Court examined the documents and arrive a finding that the said Sivakumar/husband of the appellant filed various petitions and signed in the affidavit's. The trial Court further found that " the said Sivakumar himself filed a petition under Section 5 of Limitation Act to condone the delay of 206 days. The District Revenue Officer, Krishnagiri has passed an order in S.No.77/2A, against the said order, the said Sivakumar has filed a revision on 13.06.2005. Ex.P5 is the interim order passed by the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai on 13.06.2005. As per the documents produced by the petitioner and Ex.B2 and P5, it reveals that, the said Sivakumar need of treatment by reason of any mental disorder other than mental retardation. In Ex.C1, it is stated that, individual was diagnosed as moderate type of mental retardation. The said Sivakumar had been facing engaging himself in the litigation for the past 3 years. In all the litigation, the said Sivakumar himself filed written statement, counter and the delay condone petition. He himself has filed the suit before the District Munsif-cum-Judicial Magistrate Court at Poochampalli. In the above litigation, the petitioner herein has not filed any petition under Order 32 Rule 15 C.P.C before the said Court. The said Sivakumar is not a mentally ill person. He could not brought in the definition as contemplated under Section 2(1) of the Act. Further, the said Sivakumar answered all the questions put by the District Judge, Krishnagiri on 18.06.2009. If he mentally ill, he may find it difficult to answer the questions of particulars, but he intelligently answer question of various,



other sorts considering himself, his family."

5. When the District Judge himself asked the question and found that the said Sivakumar is not mentally retarded and after considering the various other documents and circumstances, the District Court arrived at a conclusion that the petitioner is not entitled for the relief and dismissed the petition, this Court is of the considered opinion that unless it is established beyond any pale of doubt that the person is a mentally retarded person, the declaration cannot be considered. In the present case, Mr.Sivakumar has filed many cases by signing affidavits and contested the case even before the District Judge and he answered all the questions asked by the District Judge in an intelligent manner. This being the factum, there is no reason to reverse the findings and consequently, the fair and decreetal order dated 09.02.2020 passed in L.O.P.No.76 of 2007 stands confirmed and consequently, Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

ssb

To

The Principal District Judge, Krishnagiri.

+1cc to Mr.V.Raghavachari, Advocate SR.No.13444

C.M.A.No.1718 of 2010

AK II(CO)
GMY(08/09/2021)