IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 19.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.(PD)No.572 of 2021
and
C.M.P.Nos.4820 & 4821 of 2021

Varatharaj
S/o.Vijaya ...Petitioner

Vs

1. Saraswathi
W/o.Palanisamy
(Rep. by guardian Kanagamparam)

Palanisamy (Deceased) ...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 04.02.2020 made in I.A.No.1161 of 2013 in O.S.No.134 of 2011 on the file of the District Munsif Court, Kangayam.

सत्यमेव जयते

For Petitioner : Mr.R.Prabakar

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O R D E R

This Civil Revision Petition has been filed to set aside the order dated 04.02.2020 made in I.A.No.1161 of 2013 in O.S.No.134 of 2011

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on the file of the District Munsif Court, Kangayam.

2. The petitioner herein is the second defendant and the respondent herein is the plaintiff in the suit in O.S.No.134 of 2011. The respondent herein and the first defendant/deceased are husband and wife, whose marriage was solemnized on 28.01.1974. Due to the matrimonial dispute, the respondent/plaintiff herein had filed a suit for maintenance against the first defendant in O.S.No.87 of 2005, which came to be decreed on 06.03.2008, wherein, a maintenance of Rs.750/- was awarded by the Court below, which is to be paid by the first defendant therein. The second defendant has been added as a party by the first defendant with an intention to defraud the plaintiff's charge over the suit property. Subsequently, the first defendant had transferred the entire suit property in the name of the second defendant with an intention to defeat the lawful charges over the suit property. Hence, the plaintiff had filed the suit in O.S.No.134 of 2011 seeking bare injunction not to transfer the suit property in any manner by suppressing the charges over the suit property. Thereafter, the first defendant had died and the respondent had suffered mental illness, due to which, she was represented by her guardian one Kanakambaram, who had filed I.A.No.1161 of 2013 seeking to appoint

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her as a guardian for the plaintiff. The second defendant therein had filed a counter in I.A.No.1161 of 2013 contending that the allegations of the plaintiff are false. It was further contented therein that no documents have been produced by the plaintiff to prove her mental illness and hence, the second defendant prayed for dismissal of the interlocutory application.

3. The learned District Munsif, Kangayam, after perusing the contention raised on behalf of both the parties, allowed the interlocutory application, stating that the plaintiff's guardian had produced the relevant documents to prove the mental illness of the plaintiff. Aggrieved against the same, the present civil revision petition has been filed by the second defendant before this Court.

4. The learned counsel for the petitioner would submit that the respondent/plaintiff is not suffering from any mental illness. The learned counsel further submitted that every record produced by the plaintiff's guardian has been falsely created to suit the convenience of the proxy litigant. It was further contented that the trial Court ought to have seen

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the certificate issued, wherein no authenticity of the issuing authority has been marked. The trial Court ought to have seen that the plaint has been presented on 29.03.2011 and as per the doctor's certificate issued, she was not insane, when the suit was instructed to be filed by her guardian. Hence, the learned counsel for the petitioner prays to allow this petition.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. On a perusal of the materials placed before this Court, it is seen that the suit in O.S.No.134 of 2011 was filed on 29.03.2011. Thereafter, the plaintiff's husband died. Due to the mental pressure suffered by her, she was not in a position to appear and depose before the Court and hence, she was represented by the natural guardian, who has filed the interlocutory application in I.A.No.1161 of 2013, which came to be allowed on 04.02.2020.

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7. Order 32 Rule 15 of CPC, specifically states that enquiry is mandatory to ascertain the mental state of mind of a person, before he or she if adjudged as unsound or mentally infirm**.** I am not in an agreement with the statement made by the learned counsel for the petitioner that the trial Court has not complied with the provisions of the rule. The trial Court has rightly perused the evidences and witnesses produced before it and has come to the conclusion that the plaintiff's disability had been proved and it would be appropriate for her to be represented by a guardian to proceed further in the matter. It is seen that the Doctor from the Department of Psychiatric had produced a certificate which shows that the plaintiff has more than 60 % of the mental illness and they have also stated that there will be no chances for improvement in her mental illness in the future. Hence, this Court does not find any merit in the present civil revision petition and also does not intend to interfere with the order passed by the trial Court.

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8. Accordingly, the order passed in I.A.No.1161 of 2013 in O.S.No.134 of 2011 on the file of the District Munsif Court, Kangayam is hereby confirmed. The civil revision petition stands dismissed. No

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costs. Consequently connected miscellaneous petitions are also closed.

19.03.2021

Index:Yes/No
Speaking order/Non Speaking order
sbn

To
The District Munsif Court,
kangayam.

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V.BHAVANI SUBBAROYAN, J.

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HIGH COURT OF JUDICATURE MADRAS
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