

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(PD).No.1018 of 2019

and

C.M.P.No.6728 of 2019

Mylsamy

S/o.Chinnasamy Gounder

... Petitioner

Vs.

1.Balasubramaniam

S/o.Late Krishnasamy Gounder

2.Maragatham

D/o.Late Krishnasamy Gounder

3.Jayalakshmi

D/o.Late Krishnasamy Gounder

4.Sadhasivam

S/o.Mylsamy Gounder

5.Arunachalam

S/o.Mylsamy Gounder

6.The Sub Registrar

Sub Registrar's Office

Palladam 641 664

Coimbatore District

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, seeking to set aside the fair and decreetal order passed in I.A.No.1 of 2019 in M.H.O.P.No.149 of 2014 dated 21.02.2019 on the file of the Principal District Judge, Coimbatore.

For Petitioner : Mr.E.K.Kumaresan
For Respondents : Mr.C.R.Prassanan for R1 to R3
Mr.M.N.Balakrishnan for R4
No Appearance for R5 & R4

ORDER

(The case has been heard through video conference)

Civil Revision Petition has been filed seeking to set aside the Fair and Decretal order passed in I.A.No.1 of 2019 in M.H.O.P.No.149 of 2014 dated 21.02.2019 on the file of the Principal District Judge, Coimbatore.

2.The 1st respondent in M.H.O.P.No.149 of 2014, now pending on the file of the Principal District Court, Coimbatore, is the Revision Petitioner herein. The Revision Petitioner is aggrieved by the order dated 21.02.2019 in I.A.No.1 of 2019.

3.I.A.No.1 of 2019 had been filed under 26 Rule 4A and Section 151 of C.P.C, seeking to appoint an Advocate Commissioner to determine the mental capacity of a lady called Kamalam and thereafter to file a report and also to provide assistance of the police authorities to the Advocate Commissioner.

4.It must be mentioned that M.H.O.P No.149 of 2014 had been filed under 53(3) of the Mental Health Act 1987, seeking to appoint the first petitioner therein as the lawful guardian of one Kamalam, D/o. Late. Venkatachalam Gounder with respect to her properties. It is claimed that the said Kamalam is unfortunately a mentally retarded lady. The fact whether she is actually suffering from any mental ailment has to be determined by the court and orders shall be passed in M.H.O.P. No.149 of 2014. She was aged 64 years as on date of M.H.O.P.No.149 of 2014. She must be 70 years of age as on date.

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5.It must also be stated that originally an Advocate Commissioner had also been appointed to examine the said Kamalam and he had filed a report

on 03.11.2015. Thereafter the Court had also addressed a letter to the Dean, Coimbatore Medical College on 26.04.2018 and the lady was also produced before the doctor and a report was given on 28.05.2018. Both the report of the Advocate Commissioner and the letter of the Dr.V.Ramya Mirunalini, the Civil Assistant Surgeon, Department of Psychiatry is still on the records of the Court and they have not been set aside or reopened for re-examination by any order of the Court. Objections to scrap the earlier report filed by the earlier Advocate Commissioner has also not been filed. The Doctor was also not examined as witness to verify as to the facts stated in the report.

6.Be that as it may, I.A.No.1 of 2019 later came to be filed by the petitioner in M.H.O.P.No.149 of 2014, seeking permission for appointment of a new Advocate Commissioner to examine the mental health of the said Kamalam in accordance with law with a further request to the Court to provide assistance of the police authorities to ensure that such examination is conducted.

7.Counter had been filed. The said I.A.No.1 of 2019 came up for

consideration finally on 21.02.2019, when the learned Principal District Judge, Coimbatore allowed the application. However, the assistance of police authorities was not granted by stating that police assistance was not required at that particular stage.

8.The main grievance of Mr.E.K.Kumaresan, learned counsel for the Revision Petitioner is that the procedure as contemplated under Section 50(2) of the Mental Health Act, 1987 had not been followed. The learned counsel would submit that the learned Principal District Judge, Coimbatore had not given any specific finding as to why a 2nd Advocate Commissioner should be appointed and as to why the earlier report should not be taken into consideration. As a matter of fact, the learned Judge overlooked the report of the doctor before directing the appointment of a 2nd Advocate Commissioner. Mr.E.K.Kumaresan lamented that the application had been allowed straightaway.

9.Mr.C.R.Prassanan, learned counsel for the respondent / the petitioner in M.H.O.P.No.149 of 2014 however supported the reasons given

by stating that the said Kamalam was always under the control of the Revision Petitioner herein and therefore there was every possibility of her being monitored and tutored and the earlier report should be rejected.

10.It appears from the affidavit filed in support of I.A.No.1 of 2019, that the main allegation raised is that the person produced for medical examination was an impersonator and the said Kamalam was never produced before the doctor.

11.Order XXXII of the Code of Civil Procedure gives the procedure and the manner to be adopted before determining any person as being mentally unwell. The learned Judge has failed to follow the procedure. In this case, the learned Principal District Judge, Coimbatore will have to examine the earlier report filed and must give a specific finding regarding its acceptability. The learned Judge should also give a specific finding with respect to the report of the doctor.

12.The Doctor who conducted the medical examination is the HOD of

Psychiatry and the said report cannot be overlooked by the learned Principal District Judge, Coimbatore without any reason. There must be a specific finding to this aspect.

13.It would only be appropriate that both the parties are given one more opportunity to re-argue the case before the learned Principal District Judge, Coimbatore. If either one of them feel it necessary to let in evidence, opportunity may also be given do so. Evidence would include not only any examination but also cross examination. A thorough enquiry must be made by the learned Principal District Judge, Coimbatore in I.A.No.1 of 2019, keeping in mind that the lady was already subjected to examination and putting her through another medical examination would only cause more mental agony. The learned Judge shall comply with the procedure as stated in the Mental Health Act, 1987 and in Order XXXII of C.P.C. and give a considered finding with reference to I.A.No.1 of 2019.

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14.Needless to point out that the learned Judge may also keep in mind the procedure followed earlier and should give a finding with respect to

report of the earlier Advocate Commissioner with reference to the mental capacity of Kamalam and thereafter come to a specific conclusion with respect to the orders to be passed in I.A.No.1 of 2019.

15.It is therefore only just that the order passed by the learned Principal District Judge, Coimbatore in I.A.No.1 of 2019 dated 21.02.2019 is set aside, with a request to re-examine the entire issue on the basis of the observations made above.

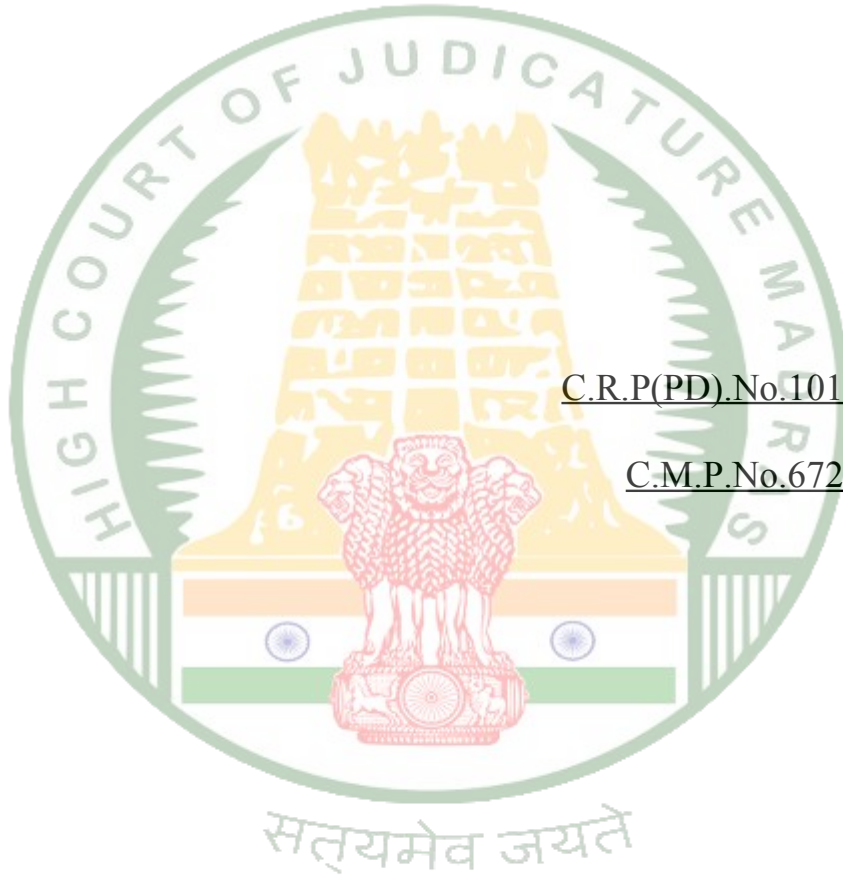
16.The Civil Revision Petition stands allowed, however, with a direction to the learned Principal District Judge, Coimbatore to once again take on record the petition filed in I.A.No.1 of 2019 for enquiry and proceed in accordance with law. Consequently, the connected miscellaneous petition is closed. No order as to costs.

17.06.2021

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To.
The Principal District Court
Coimbatore

C.V.KARTHIKEYAN, J.



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