

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2305 of 2017
C.M.P.No.12317 of 2017

Ezhilarasi

.. Appellant

vs.

1. State Bank of India,
Kullanchavadi Branch
by Branch Manager,
Having Office at
Vridhachalam Main Road
Kullanchavadi,
Kurinjipadi Taluk.

2. State Bank of India,
Neyveli Branch represented
by Branch Manager,
having office at
No.5, Museum Road,
Block-2, Neiveli.

.. Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 76 of the Mental Health Act, 1987, against the order and decreetal order dated 28.11.2016 passed in G.O.P.No.168 of 2013 on the file of the Principal District Judge, Cuddalore.

For Appellants : Mr.D.Baskar
for M/s.K.Grahalakshmi

For Respondents : No-appearance for RR1 & 2

O R D E R

The Fair and Decreetal order 28.11.2016 passed in G.O.P.No.168 of 2013 is under challenge in the present Civil Miscellaneous Appeal.

2. The learned counsel appearing on behalf of the appellant mainly contended that the treatment undergone by the husband of the appellant had been marked as Ex.P4 documents. Based on the said treatment undertaken by the husband of the appellant, the Court ought to have granted the relief as sought for in the petition filed by the appellant.

3. The appellant contended that the husband of the appellant cannot be controlled nor be produced. Therefore, in order to protect the money belonging to the husband, this petition was filed to declare him as mentally ill and further, to appoint the appellant as guardian.

4. A perusal of the impugned order reveals that all the documents filed by the appellant were considered by the trial Court. The trial Court in its findings has stated that Ex.P4 is the notebook of the treatment particulars of the husband of the appellant/Mr.Thanickachalam. The appellant herself admitted before the trial Court is that he is not in her custody and left from the house. As per the evidence of P.W.1, from the year 2004 onwards, her husband was affected by mental disorder. While in the year 2008, the Department of Education has relieved her husband from the office after attaining the age of superannuation. In spite of all these factors, the appellant had not examined any doctor who had given treatment to her husband and the appellant has not taken any steps nor had given any complaint before the Police to secure her husband/Mr.Thanickachalam. In the absence of any such evidence to establish that the husband of the appellant was mentally retarded person, it is not appropriate to declare him as mentally retarded person.

5. This Court is of the considered opinion that even under Section 3 of the Mental Health Care Act, 2017 determination of mental illness is enumerated. It is not sufficient to produce the treatment taken by a person. It is to be established before the Court of law that he is a mentally retarded person. In the absence of any such evidence, as rightly observed, it would be improper on the part of the Court to declare a person as mentally retarded. In the present case, the appellant has not produced any evidence. She has simply filed the nature of treatment undertaken by her husband. Though the husband of the appellant left the house, she has not chosen to file a police complaint in order to secure her husband. When these facts are considered by the trial Court, there are no materials to establish that the husband of the appellant is mentally retarded person. Thus, this Court do not find any perversity or infirmity as such with reference to the findings arrived. Consequently, the Fair and Decreeal order dated 28.11.2016 passed in

G.O.P.No.168 of 2013 stands confirmed and consequently, Civil Miscellaneous Appeal stands dismissed. No costs. Connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

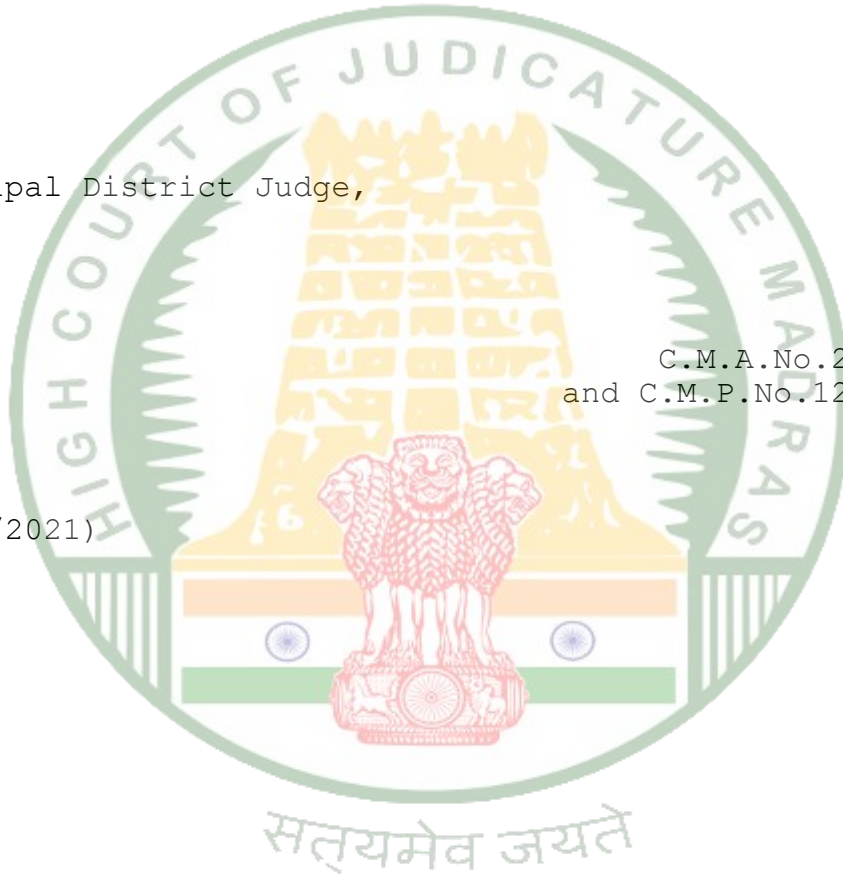
SSB

To

The Principal District Judge,
Cuddalore.

C.M.A.No.2305 of 2017
and C.M.P.No.12317 of 2017

AK-II(CO)
TE (23/04/2021)



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