

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

O.S.A.Nos.381 of 2018 and 122 of 2021
and
C.M.P.Nos.17337 of 2018 and 5612 of 2021

O.S.A.Nos.381 of 2018

1.R.Seshadri @ Papanna,
S/o.Late Ramanathan
Flat No.3, 1st Floor,
No.11, Sundararajan Street,
Abiramapuram, Chennai 600 018
presently residing at V.G.N.Platina,
Plot No.29, Flat No.2,
Ayyapakkam,
Thiruverkadu Main Road,
Chennai 600 077.

2.R.Shankaran,
S/o.Late Ramanathan,
V.G.N.Platina,
Plot No.29, Flat No.F2,
Ayyapakkam,
Thiruverkadu Main Road,
Chennai 600 077. Appellants

Vs

1.R.Kalyanaraman,
S/o.Late S.Ramanathan,
Flat No.2, Ground Floor,
No.11, Sundararajan Street,
Abhiramapuram,
Chennai 600 018.

2.Kalpagam Srinivas,
W/o.(Late) R.S.Srinivas,
No.2, Durga Colony,
4th Cross Street,
Rajakilpakkam,
Chennai 600 073.

3.Vimala Ganesan (Died)
W/o.(Late) S.Ganesan,
New No.8, Old No.10,
2nd Street, North Gopalapuram,
Chennai 600 082.

4.Saroja Srinivasan,
W/o.T.G.Srinivasan,
No.C1, 46/1,
Belvadi Apartment, 13th Cross,
8th Main Road, Malleshwaram,
Bangalore 560 003.

5.Vijayalakshmi Ramani,
W/o.(Late) R.G.Ramani,
Door No.G1 8/23,
Velan Flats, Plot No.44,
Majestic Colony,
Tiruppur Kumaran Street,
Valasarawalkkam,
Chennai 600 087.

6.G.Govindarajan,
S/o.S.Ganesan,
New No.8, Old No.10, 2nd Street,
North Gopalapuram,
Chennai 600 082.

7.G.Srinivasan,
S/o.S.Ganesan,
New No.8, Old No.10, 2nd Street,
North Gopalapuram,
Chennai 600 082.

[R6 and R7 (LRs of the deceased R3 viz., Vimala Ganesan) are suo motu impleaded as party respondents vide Court order dated 10.02.2020 made in OSA.No.381 of 2018 and CMP.No.17275 of 2018]

... Respondents

PRAYER :

Appeal filed under order 36 Rule 107 O.S.Rules R/W clause 15 of the Letters Patent to set aside the Judgment and Decree dated 26.07.2018 passed in c in Appln. No.5815 of 2014 in C.S.No.596 of 2014.

Appln.No.7257 of 2014: Praying that, to pass orders directing the 1st Respondent/1st Defendant R.Seshadri @ Papanna to be examined by a competent doctor or medical practitioner in regard to the mental health condition and or his physical health condition and submit a report to this Court at an yearly date for purposes of appointing a court guardian in Apln.no.5815/2014 in C.S.No.596/2014.

For Appellants : Mr.E.Vijayaraghavan

For Respondents : Mr.T.Mohan (for R1)
for Mr.Murali

Mr.T.Dhanasekaran (for R2 to R5)

O.S.A.Nos.122 of 2021

1.R.Seshadri @ Papanna,
S/o.Late Ramanathan
Flat No.3, 1st Floor,
No.11, Sundararajan Street,
Abiramapuram, Chennai 600 018
presently residing at V.G.N.Platina,
Plot No.29, Flat No.2,
Ayyapakkam,
Thiruverkadu Main Road,
Chennai 600 077.

2.R.Shankaran,
S/o.Late Ramanathan,
V.G.N.Platina,
Plot No.29, Flat No.F2,
Ayyapakkam,
Thiruverkadu Main Road,
Chennai 600 077.

... Appellants

Vs

1.R.Kalyanaraman,
S/o.Late S.Ramanathan,
Flat No.2, Ground Floor,
No.11, Sundararajan Street,
Abhiramapuram,
Chennai 600 018.

2.Kalpagam Srinivas,
W/o.(Late) R.S.Srinivas,
No.2, Durga Colony,
4th Cross Street, Rajakilpakkam,
Chennai 600 073.

3.Vimala Ganesan
W/o.(Late) S.Ganesan,
New No.8, Old No.10,
2nd Street, North Gopalapuram,
Chennai 600 082.

4.Saroja Srinivasan,
W/o.T.G.Srinivasan,
No.C1, 46/1,
Belvadi Apartment, 13th Cross,
8th Main Road, Malleshwaram,
Bangalore 560 003.

5.Vijayalakshmi Ramani,
W/o.(Late) R.G.Ramani,
Door No.G1 8/23,
Velan Flats, Plot No.44,
Majestic Colony,
Tiruppur Kumaran Street,
Valasarawalkkam,
Chennai 600 087.

... Respondents

PRAYER:

Appeal filed under order 36 Rule 107 O.S.Rules R/W clause 15 of the Letters Patent to set aside the Judgment and Decree dated 03.11.2017 passed in Appln.No.7257 of 2014 in Appln.No.5815/2014 in C.S.No.596 of 2014.

Appln.No.4957 of 2014: to appoint the Court guardian for the 1st Respondent/1st Defendant pending disposal above suit.

For Appellants : Mr.E.Vijayaraghavan

For Respondents : Mr.T.Mohan (for R1)
for Mr.M.Murali

Mr.T.Dhanasekaran (for R2 to R5)

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

O.S.A.No.381 of 2018 has been filed to set aside the Judgment and Decree dated 26.07.2018 made in Application No.7257 of 2014 in Application No.5815 of 2014 in C.S.No.596 of 2014.

2.O.S.A.No.122 of 2021 has been filed to set aside the Judgment and Decree dated 03.11.2017 made in Application No.7257 of 2014 in C.S.No.596 of 2014.

3.These Appeals have been filed against the orders of the learned single Judge, directing the 1st appellant viz., Mr.R.Seshadri @ Papanna to submit himself for assessment of his mental health as well as physical condition.

4.The 1st respondent filed Suit in C.S.No.596/2014, seeking the following relief:

"(a) Declaring that the deed of settlement dt.23.01.2014 (registered as document No.184/20014, SRO, Mylapore), executed by the 1st defendant R.Seshadri @ Papanna transferring the schedule mentioned property absolutely in favour of the 2nd defendant is void, invalid and unenforceable and not binding on the plaintiff.

(b) granting a decree of mandatory injunction directing the 2nd defendant to restore the custody of the 1st defendant R.Seshadri @ Papanna to the custody of the plaintiff for protecting and taking care of him as demanded in the plaintiff's letter dated 23.07.2014 sent to the defendants.

(c) granting a decree of permanent injunction restraining the 2nd defendant, his men, agents, servants and representatives from in any manner entering upon the schedule mentioned property an/or interfering with the possession and rights to the 1st defendant as owner of the same.

(d) granting a decree of permanent injunction restraining the 2nd defendant, his men, agents, servants and representatives from in any manner alienating or transferring the schedule mentioned property by a sale or otherwise to any third party.

(e) directing the 2nd defendant to pay the plaintiff the costs of the suit"

5.The appellants, 1st respondent and one deceased R.Viswanathan are the sons and the respondents 2 to 5 are the daughters of late Mr.Ramanathan, and Mrs.Venkatalakshmi. Till the death of their parents, the 1st respondent and his other three brothers were living as members of joint Hindu family at their father's property situated at No.11, Sundararajan Street, Abhiramapuram, Chennai 600 018. The 1st appellant viz., Mr.R.Seshadri @ Papanna, discontinued his school education while studying 2nd standard and during the life time of the parents, 1st appellant is under the care and protection of the parents because of his weak mental health condition and remained incapable of taking care of himself and protecting his interest. After the demise of the parents, the 1st respondent was taking care of the 1st appellant and a flat was given in the name of the 1st appellant for the purpose of source of income.

6.When the 1st respondent went to USA during the year 2013, he entrusted the custody of the 1st appellant to the 2nd appellant, during which time, it is alleged that taking advantage of 1st appellant's poor health condition, the 2nd

appellant obtained a settlement deed dated 23.01.2014, in respect of the suit property in his favour absolutely. Therefore, challenging the same C.S.No.596 of 2014 has been filed seeking the relief stated supra.

7.It is the contention of the respondents 2 to 5 that the 1st appellant is not a mentally competent person and he suffers from a mental deformity and is incapable of understanding what is happening around him and his mental ability is only that of 12 year old person and therefore, an application in Application No.7257 of 2014 has been taken out to examine the 1st appellant viz., R.Seshadri @ Papanna by a competent Doctor or medical practitioner in regard to his mental and physical health condition, for the purpose of appointing a Court Guardian. The said application has been allowed on 26.07.2018 by the learned single Judge.

8.Heard Mr.E.Vijayaraghavan, learned counsel appearing on behalf of the appellants; Mr.T.Mohan, learned counsel appearing on behalf of R1 and Mr.T.Dhanasekaran, learned counsel appearing on behalf of R2 to R5 and perused the records.

9.Though Mr.E.Vijayaraghavan, learned counsel would submit that the 1st appellant is mentally alright and he is capable of deciding what is good for him, when this Court examined the 1st appellant, even though he is looking alright, he is incapable of understanding what is happening around him. Moreover, pursuant to the orders passed by this Court on 03.11.2017, the 1st appellant was sent for examination about his mental health condition and the Medical Officer of Institute of Mental Health, Kilpauk, Chennai has filed an observation report dated 20.07.2018, which reads as follows:

"Mr.R.Seshadri @ Pappanna, accompanied by younger brother (Mr.Sankaran), was registered in IMH OP on 06.03.2018. Based on physical, clinical and psychological evaluation, his IQ is assessed to be 45, indicating moderate level of mental retardation. He was able to identify colours, able to say the utilities of common objects, manage his self care, cannot travel on his own and does not handle money. Psychometric assessment revealed moderate level of intellectual capacity and impairment in social and adaptive functioning. It is informed that the above said psychological evaluation was performed in the presence of both the counsels as directed by the Court."

From the above, it is very clear that the 1st appellant had got moderate level of intellectual capacity and impairment in social and adaptive functioning.

10. In Application No.7257 of 2014, the learned counsel appearing for the 1st appellant submitted that when the 1st appellant went to the hospital on 09.07.2018, the Doctor wanted him to get admitted in the hospital. Since he was not provided with proper bed and the basic facilities, he refused to get admitted in the Hospital and he is ready and willing to get admission, if the basic facilities are provided. Therefore, again on 26.07.2018, learned single Judge of this Court directed the 1st appellant to appear before the Head of the Department of Neurology at Rajiv Gandhi Government General Hospital, Chennai and further directed the Head of the Department, Department of Neurology, Rajiv Gandhi Government General Hospital, Chennai to conduct examination and submit a report directly to the Director of Institute of Mental Health, Chennai to complete the inquisition.

11. Thereafter O.S.A.No.381 of 2018 has been filed and status quo has been obtained on 27.09.2018. It is clear that order dated 03.11.2017 has already been acted upon and the 1st appellant was subjected for observation before the Medical Officer, Institute of Mental Health, Kilpauk, Chennai on 20.07.2018. Thereafter, by order dated 26.07.2018, this Court again directed the appellant to be admitted in the Rajiv Gandhi Government General Hospital, Kilpauk, Chennai in the Neurology Department, so as to enable the Doctors to examine the appellant about his mental health condition with further direction to the Rajiv Gandhi Government General Hospital to provide basic facilities like bed in any one of the wards in the Hospital. The relevant portion of the said order is extracted as follows:

"3. The learned counsel for Mr. Seshadri @ Papanna submitted that he was an aged person and was not provided with basic facilities to get admitted in the hospital. He is ready and willing to get admission, if the basic facilities are provided.

4. In such circumstances, the Head of the Department of Neurology at Rajiv Gandhi Government General Hospital, Chennai is directed to admit the patient in the Hospital by providing basic facilities like bed in any one of the wards in the Hospital.

5. Mr. Seshadri @ Papanna is directed to appear before the Head of the Department of Neurology at Rajiv Gandhi Government General Hospital, Chennai on or before 31.07.2018 and Head of the Department of Neurology at Rajiv Gandhi Government General Hospital, Chennai is directed to conduct examination, thereafter, submit a report directly to the Director of Institute of Mental Health, Chennai and the Director, Institute of Mental Health, Chennai to complete the inquisition and submit his report to this Court on or before 20.08.2018."

The learned single Judge of this Court by order dated 20.09.2018 again directed the Head of the Department of Neurology, Rajiv Gandhi Government General Hospital to provide his independent expert opinion on mental health, abilities and capabilities of the 1st appellant viz., R.Seshadri @ Papanna.

12.In such circumstances, the position of the 1st appellant would be revealed only on examination by an expert as directed by the learned single Judge and no prejudice would be caused especially, when the 1st respondent and other sisters are alleging that the 1st appellant is not mentally capable. Further, the observation report submitted by the Medical Officer also gives an opinion in that direction only. Therefore, the 1st appellant is directed to be appear before the Director, Institute of Mental Health, Kilpauk, Chennai, on or before 30.03.2021 and the Director can refer the 1st appellant to any other Specialists, if required, and after his assessment file a report before this Court.

13.With the above directions, these Appeals are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Post the Suit viz., C.S.No.596 of 2014 before the learned Single Judge on 29.04.2021.

Sd/-
Assistant Registrar(AD I)

//True Copy//

Sub Assistant Registrar

sai

To,
The sub Assistant Registrar,
Original side Section,
High Court of Madras 104.

2. The Director,
Institute of Mental Health, Kilpauk, Chennai

+1cc to Mr.T.Dhanasekharan, Advocate, S.R.No.17017

+1cc to Mr.V.Prabhu, Advocate, S.R.No.1739

O.S.A.Nos.381 of 2018 and 122 of 2021

CSR 22.03.2021