



CRP(PD)(MD)No.2465 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 15.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.2465 of 2017 and
CMP(MD) No.11681 of 2017

R.Samraj

... Petitioner

Vs

1.K.Thiravia Raj
2.T.Suseela

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 19.09.2017 passed in I.A.No.239 of 2017 in O.S.No.274 of 2016, on the file of the Subordinate Judge, Padmanabhapuram.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.R.Manimaran

ORDER

This Civil Revision Petition is filed as against the fair and decreetal order passed by the learned Subordinate Judge, Padmanabapuram in I.A.No.239 of 2017 in O.S.No.274 of 2016.



CRP(PD)(MD)No.2465 of 2017

2.The Interlocutory application in I.A.No.239 of 2017 in O.S.No.274 of 2016 was filed by the wife of the defendant before the Subordinate Judge, Padmanabhapuram as guardian/next friend that her husband/defendant is of unsound mind. The said application filed by the wife was dismissed by the trial that no supportive medical records were produced to show that the defendant was not able to defend the case properly. Aggrieved over the same, the wife filed this present Civil Revision Petition.

3.The learned counsel appearing for the petitioner submits that the petitioner is having medical document. But the trial Court disposed of the Interlocutory Application filed by her on the date of counter affidavit filed by the respondent herein itself, even without providing an opportunity to the petitioner to file the medical documents in support of her contention. He requests that if the matter is remanded back, the petitioner is prepared to produce the relevant medical records before the trial court and the petitioner is also inclined to take out an



CRP(PD)(MD)No.2465 of 2017

application under Order XXXII Rule 15 of Civil Procedure Code, for medical examination of the defendant. He also relied upon the judgment of this Court, in ***G.V.Lakshminayaranan and others Vs G.V.Nagammal and others*** reported in ***2007 3 CTC Page 1.***

4.Per contra, the learned counsel appearing for the respondents vehemently opposes the petition stating that the petition itself is not maintainable as the petition is filed by the wife of the defendant, namely, Nirmala on behalf of the defendant and the Court has not at all granted any leave to the petitioner to file a Civil Revision Petition. He further submits that the petitioner has failed to produce the necessary medical certificate at the time of filing of the application in I.A.No.239 of 2017, under XXXII Rule 12 of Civil Procedure Code and merely sought for the relief that the defendant is of unsound mind. According to the learned counsel for the respondents, in order to defeat the claim of the respondents/plaintiffs, this attempt is made by the defendant and his wife.



CRP(PD)(MD)No.2465 of 2017

WEB COPY

5.This Court considered the rival submissions made and also perused the records available on record.

6.The respondents/plaintiffs have filed the suit in O.S.No. 274 of 2016 before the Subordinate Court, Padmanabapuram for recovery of money from the defendant. Pending suit, the wife of the defendant filed an Interlocutory Application in I.A.No.239 of 2017 under Order XXXII Rule 12 for appointing her as the guardian/next friend for the unsound mind defendant. The said application was dismissed on the ground that the petitioner has not filed any supportive documents to substantiate that the defendant is of unsound mind. The apprehension of the respondents/plaintiffs is that if the defendant is declared as unsound mind, they may not be able to recover the money.

7.This Court entertained this Civil Revision Petition in the year 2017 and ordered notice and also granted an order of interim stay



CRP(PD)(MD)No.2465 of 2017

and therefore impliedly leave was granted at the time of admission itself.

The petitioner, now along with the application has also produced the medical records stating that her husband is of unsound mind. However, she failed to produce these medical certificates at the time of hearing in I.A.No.239 of 2017 and her grievance is that the said I.A.No.239 of 2017 was disposed of in a hurried manner without even providing an opportunity to the petitioner. But, the fact remains that the petitioner has come forward with certain medical documents stating that her husband is of unsound mind, who is facing the suit for recovery of money before the trial Court. Therefore, this court is inclined to allow this Civil Revision Petition and remand the matter back to the trial Court.

8. Accordingly, this Civil Revision Petition is allowed and the matter is remanded back to the trial Court enabling the petitioner to produce all the relevant medical records to show that her husband/defendant is of unsound mind. The petitioner/defendant shall also at liberty to file necessary application under Order XXXII Rule 15,



CRP(PD)(MD)No.2465 of 2017

seeking for medical examination of the defendant, who has to be declared as mentally unsound person. On filing of such application, the trial Court shall refer the defendant for medical examination to the nearest Government Hospital and shall ascertain the condition of the defendant and shall also dispose of the application as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. Since the suit is of the year 2016, the trial Court shall also conduct the trial and dispose of the suit at the earliest possible time. No costs. Consequently, connected Miscellaneous Petition is closed.

15.06.2022

Index : Yes / No.

Internet : Yes / No.

vrn

To

The the Subordinate Judge, Padmanabhapuram.



WEB COPY



CRP(PD)(MD)No.2465 of 2017

B.PUGALENDHI, J.

vrn

Order made in
CRP(PD)(MD)No.2465 of 2017

15.06.2022