



C.R.P.No.1199 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1199 of 2021

V.Praveenkumar

(Mentally unsound represented by his uncle
and guardian A.J.Palanisamy)

...Petitioner

Vs.

1.V.Shanthamani

2.V.Subash Chander

...Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decretal order dated 01.03.2021 passed in I.A.No.506 of 2019 in O.S.No.291 of 2019 on the file of the Principal District Judge, Tiruppur.

For Petitioner : Mr.Ramesh Kumar for Mr.C.Shankar
For Respondents : Mr.P.M.Duraiswamy for R1
R2 - Left

ORDER

The revision Petitioner, who is an unsound mind person has filed this petition through his maternal uncle, A.J.Palanisamy for the relief of partition and permanent injunction.



C.R.P.No.1199 of 2021

2. When the suit was filed, a Petition under Order XXXII, Rule 15 of CPC had been filed seeking to prosecute the suit on behalf of the person of unsound mind. Usually, the Petition under Order XXXII, Rule 15 CPC which is filed as interlocutory application in unnumbered suit, notice is sent to the Respondents and after the Respondents entered appearance and hearing their objections, the Court passes appropriate orders either granting permission or refusing permission. Only after hearing the enquiry, permission will be granted to number the suit. In this case, by inadvertence, interlocutory application under Order XXXII, Rule 15 CPC was numbered along with the suit as ordinary suit along with an interlocutory application seeking interim injunction against the Defendants. This was done by inadvertence of the Court.

3. When the Defendants entered appearance, they disputed the claim of the Petitioner under Order XXXII, Rule 15 CPC, therefore, the Petition in I.A.No.506 of 2019 seeking to prosecute the case on behalf of the person of unsound mind was dismissed. Since the suit was numbered and the interlocutory application for interim injunction was also numbered



C.R.P.No.1199 of 2021

along with the interlocutory application under Order XXXII, Rule 15 CPC, therefore, after hearing the enquiry interlocutory application under Order XXXII, Rule 15 of CPC I.A.No.507 of 2019 was dismissed. Along with that, the suit was also dismissed and the IA for interim injunction was also dismissed again by inadvertence. Therefore, the Plaintiff/Petitioner in I.A.No.506 of 2019 had approached this Court under Article 227 of the Constitution of India seeking to set aside the order of dismissal dated 01.03.2021 in I.A.No.506 of 2019 in O.S.No.291 of 2019 passed by the learned Principal District Judge, Tiruppur.

4.In cases of this nature, the suit will be numbered only after enquiry is heard in the interlocutory application under Order XXXII, Rule 15 CPC.

5.The learned Counsel for the revision Petitioner invited the attention of this Court to the concluding paragraph of the order of the learned Principal District Judge, Tiruppur, which reads as follows:-

“10) Since the plaintiff has claimed that the Petitioner is a mentally unsound personality, it is for him to establish the same.



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C.R.P.No.1199 of 2021

The Certificate of opinion issued by the medical panel of Australia was marked as Ex.P1. The said opinion was issued on 14.08.2013 and the said document has not been proved by examining the doctors, who have given their opinion or one of the doctor in the panel. It is the case of the plaintiff that the Petitioner is residing with him at 3A, Vinayaga Nagar, Sungam Bypass Road, Ramanathapuram Post, Coimbatore. But he has not come forward to undergo any consultation with any doctor to ascertain the present mental condition. Also, Thiru.A.J.Palanisamy has not produced the Petitioner before this Court to ascertain the mental condition of the Petitioner by the Court. The plaintiff has not come forward to examine any Doctor from India to prove the mental illness of the Petitioner through which he can elicit the current physical and mental status of the Petitioner. As rightly pointed out by the Respondents, the wife of the Petitioner, being a competent person to Act as a guardian of the Petitioner, was not added as a party in the Suit or in the interim application. Though it was stated on the side of the Respondents that the Petitioner is able to look after his person and official works and able to travel alone from abroad to India and he can perform his bank transactions independently, the said averments were not specifically denied on the side of the plaintiff. The present percentage of mental disability of the Petitioner if any has not been proved by the plaintiff by let in any oral or documentary evidence. Their only contention is that the confidence level of the Petitioner is now zero, but it may vary from time to time. If really the Petitioner is mentally ill as claimed by his maternal uncle, he has to reveal as to who has instructed him with regard to the filing of the suit. Also, Ex.P1 the medical opinion given by the panel of Doctors of Australia was issued on 14.08.2013, from which the Court could not arrive at a conclusion that the Petitioner is an unsound person and he is unable to take decision on his own and his confidence level is zero at present. Therefore, the Court is of the considered opinion that the Petitioner has not approached the Court with correct details and clean hands. Since the plaintiff has failed to establish the mental capacity of the Petitioner, he cannot be appointed as a guardian to the Petitioner. In this circumstances, the Court is of the considered opinion that this application is deserves to be dismissed.”



C.R.P.No.1199 of 2021

6.He would also invite the attention of this Court to the order dated 01.12.2020 passed in I.A.No507 of 2019, seeking injunction wherein, it was held as follows:-

“In the result, this petition is allowed and a temporary injunction is granted in favour of the Petitioner, restraining the Respondents from alienating the petition mentioned properties till the disposal of the suit. No costs.”

7.He would also invite the attention of this Court to the order made in O.S.No.291 of 2019 dated 01.03.2021 wherein, it was observed as follows:-

“I.A.No.506/2019, filed by Thiru.A.J.Palanisamy, to appoint him as guardian of the alleged unsound person Thiru.Praveen Kumar is dismissed on merits. Earlier the suit has been mistakenly numbered before deciding the I.A.No.506/2019. Hence, the suit is dismissed as infructuous”.

8.The learned Counsel appearing for the Respondents submits that the Respondents in the petition are none other than the mother and brother of the so called mentally unsound person. He further submitted that the suit has been filed after six years from the date of issuance of a medical certificate at Australia. The maternal uncle of the alleged person of unsound mind was duty bound to produce the person of unsound mind before the Court for the Court to conduct enquiry and after passing order, the maternal



C.R.P.No.1199 of 2021

uncle of the person of unsound mind cannot blame the Court for his lapses.

He would also submit that suit had been filed for partition and it is always open for him to agitate it and therefore, the petition lacks merit and it has to be dismissed.

9.The learned Counsel appearing for the Petitioner placed reliance on the order of this Court in **C.S.Navamani Vs. C.K.Sivasubramanian** made in **C.R.P(PD) No.1227 of 2005** dated **30.08.2006** and submit that he had paid Court fees of Rs.2,45,000/- and therefore, for the lapses on the part of the Court for having numbered the suit by advertence, the suit cannot be dismissed. If the Interlocutory Application was dismissed, the party should have been granted an opportunity to produce the person of unsound mind before the Court or to refer the peson of unsound mind before the Medical Board.

10.On consideration of the submission of the larned Counsel for the Petitioner and the learned Counsel for the Respondents and on perusal of the order passed by the learned Principal District Judge, Tiruppur, in



C.R.P.No.1199 of 2021

O.S.No.291 of 2019 and the order passed in I.A.No.506 of 2019, instead of dismissing the Petition the learned Principal District Judge, Tiruppur, ought to have granted opportunity to the Petitioner to produce the person of unsound mind before the Court, to hold enquiry as per the reported ruling and also in the light of the Mental Health Act, 1987 as amended in 2017.

11.In the light of the above discussion, the order dated 01.03.2021 passed by the learned Principal District Judge, Tiruppur in I.A.No.506 of 2019 in O.S.No.291 of 2018, is set aside. The learned Principal District Judge, Tiruppur shall hold enquiry afresh after granting opportunity to the Petitioner in I.A.No.506 of 2019 to produce the person of unsound mind so as to enable the learned Principal District Judge, Tiruppur to hold enquiry against the person of unsound mind in the light of Mental Health Act, 1987 as amended in 2017 and only on such satisfaction by the learned Principal District Judge, Tiruppur, by himself or herself, he/she shall pass appropriate orders.



C.R.P.No.1199 of 2021

12.If the learned Principal District Judge, Tiruppur arrives at a conclusion that the person of unsound mind as per the provisions of the Mental Health Act, 1987 as amended in 2017 is bona fide, he can number the suit. Till such time, the suit shall not be numbered.

13.In case, the suit is not numbered and the petition seeking permission is rejected, the Court fee already paid by the Petitioner on behalf of the person of unsound mind shall be returned to the Petitioner in I.A.No.506 of 2019 in O.S.No.291 of 2019 as it is not fair to receive Court fees for an unnumbered suit.

In the result, **this Civil Revision Petition is allowed.**

The order dated 01.03.2021 passed by the learned Principal District Judge, Tiruppur, in I.A.No.506 of 2019 in O.S.No.291 of 2019 is set aside. No costs.

06.03.2023

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Internet :Yes/No

Index :Yes/No

Speaking/Non-speaking order

Nuetral Citation :Yes/No



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C.R.P.No.1199 of 2021

To:-

The Principal District Judge,
Tiruppur.



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C.R.P.No.1199 of 2021

SATHI KUMAR SUKUMARA KURUP, J.

KKN

C.R.P.No.1199 of 2021

06.03.2023