



A.Nos.2588, 2589 & 2590 of 2023

A.Nos.2588, 2589 & 2590 of 2023
and O.A.No.408 of 2023
in O.P.No.235 of 2023

RESERVED ON 29.06.2023	PRONOUNCED ON 17.07.2023
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K.KUMARESH BABU, J.

The Original Petition had been filed seeking for appointment of guardian of one Thiru.P.K.M.Thurai and applications have also been filed seeking interim reliefs. The petitioner and the 1st respondent are the sons and the 2nd petitioner is the wife of Thiru.P.K.M.Thurai

2.Heard Mr.R.Rajarajan, learned counsel for the applicant and Mrs.Chitra Sampath, learned Senior Counsel for Mr.T.S.Baskaran, learned counsel for the respondents.

3.Mr.R.Rajarajan, learned counsel for the applicant would submit that his father had suffered a stroke and brain damage and therefore, he is not in a sound state of mind and is unable to take decision on his own.



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4.Taking advantage of his mental illness, the respondents in whose custody the said person is; had created various documents in respect of his property and business. They had also reconstituted the partnership firm. Hence, he had approached this Court seeking to appoint him as the guardian of the person and Manager of the properties of Thiru.P.K.M.Thurai for operation and sale of his assets and liabilities of the schedule mentioned properties.

5.He would submit that the respondents are not even permitting the applicant to visit his father Thiru.P.K.M.Thurai. He had also taken appointments with the Doctors to treat him which is being denied by the respondents. He would submit that the respondents taking advantage of the mental illness of Thiru.P.K.M.Thurai, are trying to act against the interest of the applicant. Therefore, he would pray this Court to order these applications as prayed for.



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6.He had also, in support of his contentions relied upon the provisions of the Mental Healthcare Act, 2017, the medical reports given by the hospital that had treated the said Thiru.P.K.M.Thurai and also the various documents that have been allegedly executed by Thiru.P.K.M.Thurai.

7.Countering his arguments Mrs.Chitra Sampath, learned Senior Counsel appearing on behalf of the respondents, at the outset would submit that the Original Petition itself is not maintainable. She would submit that the Original Petition had been filed invoking the provisions of Clause 17 of the Letters Patent Act, 1862. She would submit that Clause 17 would only apply in respect to the person and estates of infants, idiots and lunatics. She would submit that the said Thiru.P.K.M.Thurai would not fall within any of the aforesaid categories. She would further submit that it is true that Thiru.P.K.M.Thurai had suffered a stroke and that there was a Cerebellum damage which had been treated. She would further submit that the said Thiru.P.K.M.Thurai does not suffer from any mental illness as claimed by



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the applicant or as defined under the Mental Healthcare Act, 2017. She would submit that the said Thiru.P.K.M.Thurai is fully aware of his surrounding and happenings and he cannot be said to be mentally imbalanced person. She would submit that unfortunately the said person has lost his ability to speak and move.

8.She would further submit that the applicant who is also a son of the said Thiru.P.K.M.Thurai was settled outside India in the United States and has been carrying on the business from there. She would further submit that the applicant is trying to utilise the situation to usurp the properties and business of Thiru.P.K.M.Thurai. She would add that the said Thiru.P.K.M.Thurai is a qualified lawyer who had ventured into the garment business.

9.She would submit that whatever documents that have been executed by the said Thiru.P.K.M.Thurai after his illness had been made by him in the state of sound mind and it is false for the applicant to claim that



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his father has lost his mental balance. Therefore, she would pray this Court to reject the applications filed by the applicant.

10.I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

11.It is pertinent to note that when the Original Petition was listed for hearing on 12.06.2023 based upon the submissions made by the respective counsels, I directed the said Thiru.P.K.M.Thurai to be brought to this Court and I had also interacted with the person. He was unable to speak but was able to express his views through sign language to the questions that I had specifically put to him. I had also recorded the said interaction in my order dated 23.06.2023. Be that as it may, I do not propose to deal with these applications based upon my interaction with the said Thiru.P.K.M.Thurai.



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12.Application No.2589 of 2023 had been taken out by the applicant to permit him to visit his father pending disposal of the Original Petition and Application No.2590 of 2023 had been taken out to permit the applicant to take his father to a Neuro Pshychatrist or any other specialised hospital for medical treatment of his medical illness.

13.It is not the case of the applicant that his father namely Thiru.P.K.M.Thurai has been left without any treatment. Except for filing the discharge summary of the year 2021, the applicant had not substantiated or did not claim that the medical treatment has not been given to his father. On the contrary he wants his father to be taken to a Neuro Psychiatrist or to a specialised hospital for a medical treatment of his mental illness. His contention is that his father is mentally ill is based upon the discharge summary of the year 2021. The discharge summary does not discloses any mental illness. The said Thiru.P.K.M.Thurai had been admitted to a reputed hospital in Chennai and the discharge summary does not disclose it is a permanent illness that had been suffered by the patient. The discharge



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summary also discloses various advices and also medical treatment apart from follow-up consultations with named consultant.

14.It is further not the case of the applicant that such follow-up medical treatment had not been given to his father. In such view of the matter, I do not propose to entertain the applications filed by the applicant as regards to permit him to take his father to a Neuro Psychiatrist or to a specialised hospital to treat his mental illness.

15.As regard the application to permit the applicant to visit his father Thiru.P.K.M.Thurai, a statement was made by the learned Senior Counsel appearing on behalf of the respondent that they at no point of time had prevented the applicant from visiting his father. Since, I have already found that Thiru.P.K.M.Thurai *prima facie* did not suffer from any mental illness, which ofcourse is subject to the result in the main Original Petition. It is for the applicant to visit his father, if his father so permits.



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16.As regards to the Application No.2588 of 2023, the applicant has sought for a prayer to appoint a Court Receiver to maintain, administer the schedule mentioned properties. This application also is again without merits as the applicant has not substantiated, before this Court to come to a *prima facie* conclusion that the said Thiru.P.K.M.Thurai is affected by mental illness. It is to be noted that the schedule D properties are share in the partnership firm and the Bank Savings Account standing in the name of Thiru.P.K.M.Thurai.

17.Further the Application in O.A.No.408 of 2023 had been filed seeking for an ad-interim injunction restraining the respondents from alienating encumbering the schedule 'A' and 'B' mentioned properties pending the disposal of the Original Petition.

18.According to the applicant, the properties stand in the name of Thiru.P.K.M.Thurai. He is still alive and therefore, it is only he who could deal with the properties. Therefore, there will be no useful purpose in



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granting the injunction as prayed for by the applicant. If it is the case of the applicant that the properties have already been transferred by Thiru.P.K.M.Thurai in favour of the respondents, then, even such injunction cannot be granted for the simple reason that without seeking prayer to set aside the documents of transfer of title by Thiru.P.K.M.Thurai in favour of the respondents such injunction cannot be entertained by this Court. For the same reason, I am also of the view that the request for appointment of a Receiver also cannot be entertained.

19.In fine, these applications are dismissed. However, there shall be no order as to costs.

17.07.2023

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Index: Yes/ No

Speaking order: Yes/ No

Neutral Citation: Yes/ No



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A Pre-delivery order made in

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