



C.R.P.(MD) No.2013 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.2013 of 2023

Vinothkumar

... Petitioner

Vs.

Nil

... Respondent

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 19.06.2023 passed in unnumbered G.W.O.P.S.R.No.1478 of 2023 on the file of the District Court, Tirunelveli and direct the lower Court to number the case and take it on file and decide the same on merits.

For Petitioner : Mr.R.J.Karthick

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the impugned order dated 19.06.2023 passed by the District Court, Tirunelveli in unnumbered G.W.O.P.S.R.No.1478 of 2023 and direct the lower Court to number the petition and take it on file and decide the same on merits.



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2. According to the petitioner, the 1st schedule property was purchased by one Mr.Perumal Chettiyar on 03.12.1965 under the Sale Deed Document No.1644/1965 and the 2nd schedule property was purchased by one Mrs.Alameluammal on 29.03.1961 under the Sale Deed Document No. 2270/1961 and the 3rd schedule property was purchased by one Mr.Kandhasamy Chettiyar on 31.12.1956 under Sale Deed Document No. 6823/1956. Thereafter, a partition took place on 03.04.1963 between the family members of Mr.Kandhasamy Chettiyar and in the family partition, 3rd schedule property was allotted to Mr.Perumal Chettiyar.

3. It is submitted that the said Mr.Perumal Chettiyar and Mrs.Alameluammal are blessed with a daughter and three sons namely, Thirupathi (ward), Dhanalakshmi, Varadharajan and Saravanan. The said Mr.Perumal Chettiyar and Mrs.Alameluammal died on 13.06.2022 and 30.12.2009 respectively. One of three sons, namely, Varadharajan who is the father of the petitioner died on 06.05.2020 leaving behind his wife Santhanavalli, Renganathan, the petitioner and Saradha as legal heirs.

4. It is submitted that after demise of Mr.Perumal Chettiyar, his legal heirs inherited the property and they have 1/4th share each in the property. It is



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further submitted that the said Mr.Thirupathi is a mentally disorder person and he could not do his daily fundamental activities. The petitioner is taking care and having custody of the said Mr.Thirupathi. The petitioner has applied to appoint him as guardian of the said Thirupathi under Section 14 of the National Trust Act, 1999. The District Collector, Tirunelveli has appointed the petitioner as guardian of said Thirupathi on 14.09.2022.

5. It is further submitted that since the said Thirupathi is suffering from Mental Retardation and Mental Disabilities decease, he depends on with medicines and now, the petitioner wants to sell the said Thirupathi's undivided 1/4th share in the schedule property as the petitioner is in need of Rs.2,000/- per day for treatment of the said Thirupathi. Therefore, the petitioner filed a petition under Section 29 of the Guardians and Wards Act, 1890 before the District Court, Tirunelveli for a permission to sell the property. The Court below *vide* impugned order dated 19.06.2023 returned the said petition as it is not maintainable, against which, the present Civil Revision Petition has been preferred.

6. The learned counsel appearing for the petitioner would submit that since there is no provision in 'The Mental Health Care Act,2017', 'The



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National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (in short 'National Trust Act, 1999') and 'The Rights of Persons with Disabilities Act, 2016' for grant of a permission to alienate the property of the mentally retarded person/ward, the petitioner filed the petition under Section 29 of the Guardians and Wards Act, 1890 for the said purpose. Section 29 of the Guardians and Wards Act, 1980 contemplates as follows:-

29 Limitation of powers of guardian of property appointed or declared by the Court. —Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

7. The further contention of the learned counsel for the petitioner is that as per the proviso to Section 59(1) of the Mental Health Act, 1987, “manager shall not mortgage, create any charge on, or, transfer by sale, gift, exchange or otherwise, any immovable property of the mentally ill person or lease out any



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such property for a period exceeding five years, unless he obtains the permission of the District Court in that behalf.” The said provision was repealed by the new Act namely ‘The Mental Healthcare Act, 2017’ and therefore, the petitioner approached the District Court to grant permission to sell the property of the ward.

8. It is submitted that the Court below failed to consider that the said petition was not filed for appointment of the guardianship for mentally retarded person. It is further submitted that ‘The Mental Health Act, 1987’ was repealed and was replaced by ‘The Mental Healthcare Act, 2017 which came into force w.e.f. 07.07.2018. As seen from the Mental Healthcare Act, 2017, there is no provision available for appointment of a guardian of a mentally ill person, which was very much available under the repealed Mental Health Act, 1987. It is submitted that though the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 under Section 14 empowers the Local Level Committee to appoint a legal guardian for a mentally retarded person, the said legislation has not curtailed the powers of the Court to appoint a legal guardian for a mentally retarded person exercising its powers under Clause 17 of the Letters Patent.



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9. The learned counsel appearing for the petitioner would submit that the Principal Seat of this Court by its order dated 27.01.2022 passed in O.P.No.731 2021 had entertained the original petition seeking appointment of guardianship for the mentally retarded person and his property under Clause 17 of the Letters Patent Act, 1865. The Principal Seat of this Court in C.R.P.(PD) No. 1981 of 2022 had also directed the District Courts situated within the jurisdiction of Chennai to entertain the Original Petitions filed under Clause 17 of the Letters Patent Act, 1865.

10. It is submitted that since the petitioner and the ward are residing outside the jurisdiction of Chennai, he cannot file a petition under Clause 17 of the Letter Patent Act, 1865 and therefore, he filed the petition under Section 29 of the Guardians and Wards Act, 1890 before the District Court, Tirunelveli. However, the Trial Court declined to number the G.W.O.P. by stating that the petitioner ought to have filed the petition under the proper Act.

11. Heard. Records perused.

12. The learned District Judge, Tirunelveli has returned the petition on 19.06.2023 with the following observations:-



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WEB COPY 19.06.2023

orders. Returned.

This petition has been filed u/s. 29 of Guardian and Wards Act, to permit the petitioner to sell the share of P.Thirupathi who is a mentally retarded person. S.29 of Guardian and Wards Act does not entitle the guardian of a mentally retarded person to sell his share. Hence this petition has to be filed under proper Act.

Time 2 weeks.

13. The case involved in the petition is for grant of a permission to the guardian to sell the property of the mentally retarded person. Since the guardian and the ward are residing outside the jurisdiction of Chennai, the petition cannot be maintained under Clause 17 of the Letters Patents Act, 1865 as observed by the Principal Seat of this Court in the order dated 27.01.2022 passed in O.P.No.731 2021. Therefore, the petitioner can only file a petition under the Guardians and Wards Act, 1980 before the District Court. Therefore, the said petition is maintainable and the endorsement made by the learned District Judge, Tirunelveli on 19.06.2023 is liable to be set aside. The impugned order dated 19.06.2023 passed in unnumbered G.W.O.P.SR.No.1478 of 2023 is set aside.



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14. The learned District Judge, Tirunelveli is directed to number the said G.W.O.P. and take it on record and dispose the same on merits, as expeditiously as possible.

15. Accordingly, this Civil Revision Petition is allowed with the above observations. No cost.

17.08.2023

NCC :Yes/No
Internet: Yes/No
Index: Yes/ No
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To
The District Judge,
Tirunelveli.

Note: Registry is directed to return the original petition to the learned counsel for the petitioner for re-presentation before the Court below, within a period of 2 weeks from the date of receipt of a copy of this order.

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