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C.R.P.No.690 of 2022

In the High Court of Judicature at Madras

Reserved on: 07.03.2024

Delivered on : 03.06.2024

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**C.R.P.No.690 of 2022
and C.M.P.No.3508 of 2022**

1.M.N.Renuka

2.N.Rajesh Kannan

... Petitioners

/Plaintiffs

-Vs-

1.T.Narayanan

(mentally ill) by next friend

and Guardian M.N.Renuka

2.T.Ramesh

3.T.Murugan

4.T.Udhaya Kumar

5.M.Shankar

6.M.Damodaran

... Respondents

/Defendants



C.R.P.No.690 of 2022

PRAYER : Civil Revision Petitions filed praying to set aside the order and decretal order passed in I.A.No.12360 of 2018 in O.S.No.6562 of 2013 dated 23.10.2021 pending on the file of XX Additional City Civil Court, Allikulam, Chennai.

For Petitioner : Mrs.Vasudha Thiagarajan

For Respondents : Mr.V.Manohar for R4

R1 to R3, R5 and R6 – No appearance.

ORDER

The above Civil Revision Petition is filed praying to set aside the order passed in I.A.No.12360 of 2018 in O.S.No.6562 of 2013 dated 23.10.2021 pending on the file of XX Additional City Civil Court, Allikulam, Chennai, whereby, the petition seeking to appoint court guardian for 1st defendant was dismissed.

2. The revision petitioners are the plaintiffs. Plaintiffs/Revision petitioners filed I.A.No.12360 of 2018 praying to appoint a fit person as the guardian of the 1st respondent/1st defendant to defend the proceedings during the pendency of the suit.



C.R.P.No.690 of 2022

3. The relevant facts necessary for the disposal of this revision petition are as follows:-

(a) The Revision Petitioners/Plaintiffs filed O.S.No.6562 of 2013 before XX Additional City Civil Court at Allikulam, Chennai, for partition and other reliefs. 1st petitioner is the wife of 1st defendant. The marriage between the 1st petitioner and 1st defendant was performed on 04.07.1990 and the 2nd revision petitioner/2nd plaintiff is the son of 1st petitioner and 1st defendant/1st respondent.

(b) According to the 1st plaintiff/1st revision petitioner, the 1st defendant though appeared to be normal, his behaviour and attitude created doubt in the mind of the 1st petitioner and it is known that 1st defendant is undergoing treatment for Schizophrenia and is suffering from mental illness. Since the 1st defendant is not in a position to understand what is happening around him and is under constant treatment, the plaintiffs initially filed I.A.No.1032 of 2014 to appoint herself as the guardian of 1st defendant to defend the proceedings and the application was withdrawn on advice to file the present IA.No.12360 of 2018 in O.S.No.6562 of 2013.



C.R.P.No.690 of 2022

(c) The defendants/respondents filed counter in the I.A., stating that the suit is not maintainable as against 1st defendant who is admittedly suffering from mental health disorder and that the petition to appoint guardian in I.A.No.1032/2014 was dragged-on for more than 4 years and the plaintiff is not genuine enough to pursue the matter and only to delay the issue and to harass the defendants. It is pure abuse of process of law.

4. The learned counsel for the revision petitioners/plaintiffs would submit that the learned Judge, trial court, without considering the reasons set out by the petitioners in I.A.No.12360 of 2018 that the 1st plaintiff's husband was mentally ill and to appoint her as guardian of the 1st defendant, dismissed the petition. It is submitted that the plaintiffs/petitioners has right of share over the property that belongs to the first defendant. After 8 years of the institution of the suit, the learned Judge is questioning about the maintainability of the suit which is erroneous. The petitioners/plaintiffs in order to protect the interest of the first defendant from the other defendants who are trying to alienate and dispose of the property through a sale deed sold the property in favour of the 5th and 6th defendant, hence, the suit has been filed by the petitioners and the application to appoint as guardian of the 1st defendant – husband of the 1st



C.R.P.No.690 of 2022

petitioner/1st plaintiff. The defendants are trying to dispossess the ancestral property by denying the first defendant's share and the 2nd petitioner/2nd plaintiff is entitled to receive his father's share over the same. The learned counsel, thus prayed to set aside the order dated 23.10.2021 passed in I.A.No.12360 of 2018.

5. Per contra, the learned counsel for the 4th respondent would submit that the plaintiffs' right over the suit properties as the legal heirs of the 1st defendant do not come into force when the 1st defendant is alive and well. Further claiming one share for the plaintiffs and 1st defendant jointly is against the basic principle of succession law. The suit filed by the plaintiffs when 1st defendant is alive is not maintainable and deserves to be dismissed.

6. The learned counsel for the 4th respondent would also submit that the plaintiffs who claim that the 1st defendant to be of unsound mind presented suit in O.S.No.6562 of 2013 as if the 1st plaintiff was “Next friend and Guardian” of the 1st defendant, however, filed I.A.No.1032 of 2014 for appointment of the 1st plaintiff as the guardian of the 1st defendant. But the plaintiffs prolonged I.A.No.1032 of 2014 for 4 years and finally withdrew the



C.R.P.No.690 of 2022

IA as not pressed. But the plaintiffs filed I.A.No.12360 of 2018 under Order 32 Rule 3 CPC and sought for appointment of fit person as Guardian of the 1st defendant for the purpose of the suit.

7. The learned counsel for the 4th respondent would submit that if at all the plaintiff's claim were bonafide and the plaintiff's intention is to protect the interest of the 1st defendant they would have very well filed the suit under Order 32 Rule 1 of CPC with the said T.Narayanan (1st defendant) as the plaintiff along with procedures entailed in Order 32 of CPC.

8. The learned counsel for the 4th respondent would contend that the plaintiffs have not followed any of the procedure as per law and rather engaged in abuse of process of law.

9. This court heard both sides submissions and perused the impugned order passed by the learned Judge, Trial Court.

10. The learned Judge, trial court, after hearing both sides submission, given findings that according to the petitioner/plaintiff, the



C.R.P.No.690 of 2022

property belongs to one Thanigachalam and 1st defendant is one of his sons and petitioners are wife and son of 1st defendant. The petitioner has stated that 1st defendant is suffering from mental illness; it being so, the suit is not filed under Order 32 Rule 3 CPC but it has been filed under Section 26 CPC under Order 7 Rule 1 CPC and an application in I.A.No.1032 of 2014 was filed to appoint the 1st petitioner as guardian of the 1st defendant.

11. The learned Judge pointed out that the respondents/defendant filed I.A.2952 of 2014 raising preliminary issues in respect of maintainability of the suit as well as the petition in I.A.No.1032/2014 and the court dismissed the I.A.2952/2014 stating that I.A.No.1032 of 2014 is not pressed. I.A.No.2952/2014 then becomes infructuous and been dismissed.

12. A perusal of the facts of the case and the impugned order would go to show that the suit is filed in the year 2013 and I.A., in question being the year of 2018, but the plaintiffs failed to produce any document to substantiate the current situation of the 1st defendant. Mere production of hospital bills would not be sufficient to allow the IA filed under Order 32 Rule 15 CPC.



C.R.P.No.690 of 2022

13. It has been pointed out by the learned Judge, trial court that when the fact that suit property belongs to father of the 1st defendant and other defendants, the suit for partition should have been filed only by the legal heirs of the late Thanigachalam/father of the defendants. But the suit is filed by the wife and son of the 1st defendant as plaintiffs seeking partition for the property of the father of the 1st defendant; the petitioners/plaintiffs have no locus standi or legal right to file suit for partition for the property of the 1st defendant's father when 1st defendant is alive; if at all the petitioners/plaintiffs case is that partition is sought for the benefit and welfare of the 1st defendant who is mentally ill, suit should have been filed only by the 1st defendant by adopting the procedures envisaged under Order 32 Rule 3 CPC. But without adopting the procedures and Rules under Order 32 of CPC, the petitioners have filed the suit for partition.

14. The learned Judge, trial court also held that at the time of presenting the plaint before court, Rules under Order 32 should have been followed without fail. Filing the suit in the year 2013 for partition as against 1st defendant who is mentally ill and other defendants and filing the present application in the year 2018 to appoint court guardian for 1st defendant is not



C.R.P.No.690 of 2022

maintainable in the eye of law and the petitioners have no legal right to file the suit for partition for the property of the father of the 1st defendant when 1st defendant is alive and for the sole reason, dismissed the I.A.

15. In the considered opinion of this court, the plaintiffs have not proved the condition of the 1st defendant and the necessity for appointment of guardian for the 1st defendant. In such a situation, the learned Judge, trial court has rightly dismissed the IA and this court do not find any ground to interfere with the said order. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.06.2024

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To

The learned Judge, XX Additional City Civil Court, Allikulam, Chennai.



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C.R.P.No.690 of 2022

J.NISHA BANU, J.

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Order in
in CRP. No.690 of 2022

03.06.2024