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CRP.No.1283 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1283 of 2016 and
CMP.No.7189 of 2016

Minor Akshay Kumar
Rep.by his mother and next friend
Sangeetha @ Jangameswari

... Petitioner

Vs.

1.Baskaran
2.Shanmugavel
3.Ramalingam
4.Tamilselvi

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the learned II Additional District Judge, Erode, dated 26.03.2016 made in I.A.No.148 of 2016 in OS.No.168 of 2012.

For Petitioner	: Mr.S.Saravanakumar for Mr.I.Abrar MD Abdullah
For Respondent	: Mr.R.Karthikeyan for R1 & R2 R3 - Served-No appearance Mr.S.Chandrasekaran for R4



CRP.No.1283 of 2016

ORDER

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This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioner seeking permission of the Court to withdraw the suit with liberty to file a fresh suit on the same cause of action.

2. The minor petitioner represented by the next friend Sangeetha @ Jangameswari filed a suit in OS.No.168 of 2012 on the file of the II Additional District Judge, Erode, seeking partition against the father and grand father.

3. Pending the above suit, the petitioner herein filed an application to withdraw the suit with liberty to file a fresh suit on the same cause of action. According to the petitioner, the suit was filed without obtaining leave of the Court in favour of the next friend of the minor petitioner. It was further stated that fifth item of the suit property was wrongly included in the plaint schedule. It is also stated that there was no prayer for declaration that sale deeds relating to the 7th item was void. In view of the same, the petitioner wanted to withdraw the suit with liberty to file a fresh suit on the same cause



CRP.No.1283 of 2016

of action.

WEB COPY

4. The application filed by the petitioner was dismissed by the Court below on the ground that the next friend of the minor petitioner namely Sangeetha has not filed present suit for benefit of the minor petitioner. The Court below relied on the statement made by the next friend as PW1. During the course of evidence it was deposed that the suit was filed only because her husband/second respondent issued notice claiming divorce. She further deposed that if no notice had been issued claiming divorce she would not have filed any suit. Relying on the statement of the next friend of the minor petitioner, the Court below concluded that the next friend of the minor petitioner had not filed suit for the benefit of the minor petitioner. Therefore, the Court below held that the leave cannot be granted in her favour for withdrawal of the suit with liberty to file a fresh suit. As a consequence, the application was dismissed by the Court below.

5. In view of the finding rendered by the Court below that next friend of minor did not file suit for benefit of minor, this Court is not inclined to



CRP.No.1283 of 2016

interfere with the impugned order. It is also made clear that once the Court comes to the conclusion that the next friend of the minor friend acted against the interest of the minor, she shall not be allowed act on behalf of the minor petitioner/plaintiff and continue the suit. Therefore, it is for the Court to appoint a Court guardian and proceed with the suit.

6. In case the Court guardian is appointed, it is for the said Court guardian to decide whether to continue with the present suit with the defects pointed out earlier or to file a fresh suit. If the Court guardian comes to the conclusion that a fresh suit has to be filed, it is for him to file an appropriate petition seeking leave of the Court to withdraw the present suit with liberty to file a fresh suit.

7. With these observations, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.02.2024

Index : Yes / No
Internet : Yes / No

4/6



CRP.No.1283 of 2016

To

The II Additional District Judge, Erode.



WEB COPY



CRP.No.1283 of 2016

S.SOUNTHAR, J.

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CRP.No.1283 of 2016
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