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O.S.A.No.285 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

O.S.A.No.285 of 2021

Manohari

... Appellant

Vs.

1.Sugunathalakshmi

2.Satheeswari

3.Indirani

4.C.L.Mohan Raj

5.C.L.Prabhu

6.C.L.Udayakumar

Represented by his Power of Attorney father

Lakshminarayanan

7.K.Dillibabu

Represented by his Guardian

N.Dillibabu

... Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules r/w. Clause 15 of Letters Patent against the order and decree dated 16.02.2021 in A.No.2599 of 2020 in C.S.No.552 of 2019 on the file of this Court.



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For Appellant : Ms.Gopika Nambiar
for M/s.G.Nanmaran

For R1 to R6 : Mr.T.N.Rajagopalan

For R7 : Mr.A.Prabhakaran

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Original Side Appeal is directed against the order in A.No.2599 of 2020 in C.S.No.552 of 2019, dated 16.02.2021.

2.Brief facts that are necessary for the disposal of this appeal are as follows :

2.1.The respondents 1 to 6 herein as plaintiffs filed the suit in C.S.No.552 of 2019 before the Original Side of this Court for partition of the suit properties. The appellant herein is the 1st defendant in the suit. Admittedly, the 2nd defendant in the suit is also entitled to a share in the suit properties even as per the plaint averments, but he is mentally ill. Therefore, the suit was filed by the plaintiffs showing one Mr.N.Dillibabu as the



guardian of 2nd defendant. It is to be noted that the plaintiffs have no claim as against the 2nd defendant and that none of the plaintiffs have any adverse interest as against the 2nd defendant.

2.2.The 1st defendant claims exclusive title to one of the items of the properties on the basis that the property was given to her by the family as sreedhana.

2.3.It is admitted that the suit was filed on 06.09.2019 and thereafter, an application in A.No.9502 of 2019 in C.S.No.552 of 2019 was filed by one Mr.N.Dillibabu for permitting him to act as next friend of 2nd defendant for contesting the suit. The said application was allowed without hearing the 1st defendant. It appears that the said application was allowed on the basis of no objection given by plaintiffs.

2.4.It was thereafter, the appellant filed an application in A.No.1201 of 2020 to set aside the order passed in A.No.9502 of 2019 in C.S.No.552 of 2019 and to restore the above application on file and dispose of the same on merits. The learned Single Judge, after considering the facts and circumstances elaborately, allowed the application in A.No.1201 of 2020, and set aside the order dated 21.01.2020 in A.No.9502 of 2019.



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WEB COPY 2.5. Thereafter, the application in A.No.9502 of 2019 was supposed to be heard afresh.

2.6. However, an application was filed by the plaintiffs in A.No.2599 of 2020 in C.S.No.552 of 2019 to pass an order appointing Mr.N.Dillibabu or any other person as guardian to the 2nd defendant except the 1st defendant. This application was allowed by the order impugned on 16.02.2021. Challenging the same, the above appeal is filed by the 1st defendant in the suit.

3. Learned counsel appearing for the appellant, who is the 1st defendant in the suit, contended that the order of the learned Single Judge is perverse, inasmuch as the previous order dated 24.08.2020 in A.No.1201 of 2020 in C.S.No.552 of 2019, is not even taken note of by the learned Judge. The learned counsel, apart from the contention that the earlier order passed in the very same application was ignored, raised several other grounds by referring to Order 32 Rule 4 of CPC.



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4. Admittedly, the 2nd defendant is a person of unsound mind and therefore, he has to be represented by a guardian. Even though appointment of a stranger as guardian is opposed by the appellant, the appellant has no objection for the 5th plaintiff to represent the 2nd defendant as guardian. The learned counsel appearing for the plaintiffs have no objection for this course. Therefore, by consent of parties, this Court is inclined to allow this appeal, appointing the 5th plaintiff as guardian for the 2nd defendant.

5. Accordingly, **this Original Side Appeal is allowed** and the order in A.No.2599 of 2021 in C.S.No.552 of 2019, dated 16.02.2021, is set aside. However, the 5th plaintiff in C.S.No.552 of 2019 is appointed as guardian to the 2nd defendant to represent him in the suit.

6. This Court has noted the fact that the plaintiffs have no conflicting interest with the 2nd defendant. Therefore, this Court wants to put an end to this issue being raised later. Having regard to the nature of interest which



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we have found, it is open to the plaintiffs to file an application for transposing the 2nd defendant as one of the plaintiffs, so that there will not be room for any kind of objection being raised at any point of time later by referring to Order 34 Rule 4 of CPC. No costs.

(S.S.S.R., J.) (K.R.S., J.)
19.08.2024

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and
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