



C.R.P.No.3159 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13..08..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.3159 of 2024

and

C.M.P.No.16868 of 2024

Radhamani

..... Petitioner

-Versus-

1.Subramaniam

2.Thirumalaisamy

3.Rangasamy

4.Selvanayagi

5.Arunesh

6.Elavarasan

7.Govindasamy

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the fair order and decretal order dated 13.06.2024 made in I.A.No.3 of 2023 in O.S.No.49 of 2015 on the file of the II Additional District and Sessions Judge, (Full Additional Charge), Tiruppur.

For Petitioner : Ms.Preethi Basker

*For Respondent (s) : Mr.Sam Jayaraj Houston for
M/s.Sarvabhauman Associates
for RR1 to 3*

ORDER



C.R.P.No.3159 of 2024

This civil revision petition arises out of the order dated 13.06.2024 passed by the learned II Additional District Judge, Tiruppur, in I.A.No.3 of 2023 in O.S.No.49 of 2015 refusing to permit the petitioner to contest the suit in O.S.No.49 of 2015 on behalf of her husband-Govindasamy.

2. The respondents 1 to 6 before this court have presented a suit for partition. They claimed that they have a share as against Govindasamy, who was the sole defendant in the suit. Alleging that Govindasamy is physically and mentally paralysed due to COVID19, the civil revision petitioner filed an application in I.A.No.3 of 2023 invoking the provision under Order XXXII, Rule 4 of CPC. She wanted to be appointed as next friend / guardian of the said Govindasamy. She pleaded that she is the wife of the said Govindasamy.

3. On the application being filed, the learned II Additional District Judge issued notice to the plaintiffs in the suit. The plaintiffs *inter alia* denied the relationship between the civil revision petitioner-Radhamani and the sole defendant - Govindasamy (since deceased). The partly paralysed gentleman was called to the court and the court had recorded the statement that he was mentally incoherent. After having done so, the learned Additional District Judge, came to a conclusion that the civil revision petitioner has not taken any



C.R.P.No.3159 of 2024

steps for a declaration that she is the legally wedded wife of Govindasamy and therefore, dismissed the petition against which the present civil revision petition has been filed.

4. Heard Ms.Preethi Basker, learned counsel for the civil revision petitioner and Mr.Sam Jayaraj Houston, learned counsel appearing for M/s.Sarvabhauman Associates on behalf of the respondents 1 to 3.

5. Ms.Preethi Basker, at the outset, would submit that the person for whom the civil revision petitioner filed an application as a guardian had passed away on 01.07.2024.

6. As the sole defendant-Govindasamy is no more, there is no question of this court testing the order passed in the application to appoint the civil revision petitioner as the guardian of Govindasamy. That does not mean that the entire matter is put to rest. The specific case of the civil revision petitioner is that she is the legally wedded wife of Govindasamy. The civil revision petitioner has also produced before the trial court Aadhaar Card, Family Card/Smart Card, PAN Card, Voter Identity Card and other records in order to substantiate her plea that she is the wedded wife of Govindasamy. With the sole defendant



C.R.P.No.3159 of 2024

having passed away, it requires someone to represent his estate.

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7. Mr.Sam Jayaraj Houston would state that since the right of the civil revision petitioner-Radhamani had been denied she is not entitled to bring herself on record as legal representative of Govindasamy. He would also point out that the civil revision petitioner-Radhamani filed an independent application in I.A.No.4 of 2023 to implead herself as party defendant to the suit and, therefore, he would state that if I.A.No.4 of 2023 is independently decided that would meet the ends of justice.

8. Ms.Preethi Basker would submit that if the order of the learned II Additional District Judge is not set aside, it will affect her right as the wife of Govindasamy.

9. The factum of death of Govindasamy is not disputed by either side. According to Ms.Preethi Basker, the plea of the civil revision petitioner that she is the wife of Govindasamy need not have to be gone into by the learned II Additional District Judge.

10. I agree with her. It does not require a person to be a spouse in order to be appointed as guardian. As long as a person takes care of another person, who



C.R.P.No.3159 of 2024

is otherwise infirm, such person is entitled to be appointed as a guardian. The only condition is that the next friend / guardian should not have any adverse interest as against the person who is to be appointed as his/her ward. Therefore, I would treat the findings given in I.A.No.3 of 2023 as only for the purpose of disposal of the said application. The findings given therein obviously will not stand in the way of the civil revision petitioner – Radhamani, from staking a claim that she is the wife of Govindasamy in this proceedings or in any other separate proceedings.

11. Now turning to the plea of Ms.Preethi Basker that the civil revision petitioner has to be treated as the wife of Govindasamy and thereby a legal representative of Govindasamy is concerned, a reference under Section 2 (11) of CPC is sufficient. Under Section 2 (11) of CPC, it is not necessary that a person should be a legal heir for the purpose of representing the estate of a deceased. A legal representative includes any person who intermeddles in the property. From the averments made in the affidavit, it is clear that the civil revision petitioner-Radhamani claims to be residing along with Govindasamy in the suit schedule property. If that be the situation, necessarily, even if the civil revision petitioner-Radhamani is not a wife of Govindasamy, she becomes intermeddler in the estate of Govindasamy and is entitled to represent the estate



C.R.P.No.3159 of 2024

of Govindasamy. If an appropriate application is filed by the plaintiff to bring on record Radhamani as legal representative of Govindasamy, it shall be dealt with by the trial court independently on the merits of the said petition. Suffice it to say, as Radhamani is an intermeddler, she is entitled to be declared as legal representative of Govindasamy.

With the above observation, this civil revision petition is dismissed. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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13..08..2024

To

1.The II Addl. District and Sessions Judge, (Full Additional Charge), Tiruppur.



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C.R.P.No.3159 of 2024

V.LAKSHMINARAYANAN.J.,
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C.R.P.No.3159 of 2024

13..08..2024