



A.No.4697 of 2022
and O.A.No.609 of 2022
in C.S.No.198 of 2022

Judgment reserved on 21.08.2024	Judgment pronounced on 06.09.2024
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RMT.TEEKAA RAMAN, J.

This application has been filed under Order XVI Rule 8 of the Original Side Rules r/w Order 1 Rule 10, Section 94 (e) & Section 151 of CPC whereby the defendants 1 & 2 are seeking to transpose the 2nd plaintiff in the suit as the 4th defendant in the suit.

2. The defendants 1 and 2 who are the daughters of one late K.Sarala Reddy have filed this application. The plaintiff is the maternal aunt namely sister of the mother of defendants 1 & 2. The first plaintiff alongwith second plaintiff (admittedly mentally disabled person) represented by the first plaintiff filed the suit for declaration to declare various documents mentioned in para 28 (a) & (b) of the plaint as null and void and not binding on the plaintiffs and for preliminary decree of partition of 1/3rd share.

2. For the sake of convenience, parties are referred to as per their ranking in the main suit.



3. The plaintiff Mallika @ Vimala alongwith Vasanth Kumar Reddy (mentally disabled person) filed the suit seeking partition after setting aside various sale deeds mentioned in the plaint and settlement deed mentioned in the plaint. The defendants 1 & 2 has taken out this application to transpose the second plaintiff Vasanth Kumar Reddy who is mentally retarded person as fourth defendant.

4(a) The defendants 1 & 2 in the suit filed written statement and the third defendant in the suit also filed written statement.

4(b) One Chandrasekara Reddy and Smt.Parvathi had two daughters viz. first plaintiff R.Mallika @ Vimala and Sarala Reddy, daughters and one son viz. the second plaintiff Vasanth Kumar Reddy. Smt.Parvathi died intestate on 26.08.1991 and Chandrasekara Reddy died on 01.03.2020. It is alleged that on the 11th day ceremony post father's demise on 01.03.2020, one of the daughter, Sarala Reddy (now deceased) alleged to have come with a Will dated 13.01.2018 and two settlement deeds dated 24.08.2018 and 19.11.2019 wherein she was made as beneficiary under those documents. It is alleged to have executed by late Chandrasekara Reddy and copy of the said Will was filed in typed set which is a holographic Will. Two settlement deeds are in favour of Sarala Reddy.



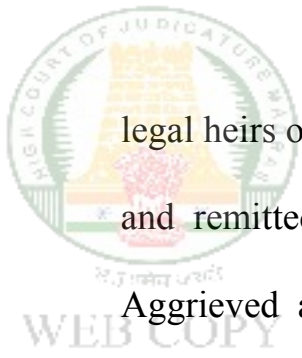
5. It appears that the present second plaintiff is mentally disabled person and certain duties alleged to have been assigned to the daughter Sarala Reddy by late Chandrasekara Reddy to look after his mentally disabled son. It also appears that based upon such document of testamentary guardianship, she moved the application before State Commission and an order dated 27.03.2021 has been obtained whereby it is observed that the second plaintiff is a person with intellectual disability and Sarala Reddy was appointed as the testamentary guardian as per the Will dated 13.01.2018.

6. The said Sarala Reddy appears to have filed W.P.No.10978 of 2021 challenging the order dated 27.03.201 of the State Commission for Persons with disabilities wherein while the matter came up for admission on 28.04.2021, it was reported that the said Sarala Reddy was not alive and their legalheirs, the present defendants 1 & 2 were brought on record. The present defendants 1 & 2 are the grandchildren of late Chandrasekara Reddy through his daughter Sarala Reddy (who died on 25.04.2021).

7. An suo moto complaint appears to have been taken by the Local Committee under the National Trust Act and certain orders have been passed on 27.03.2021.

The said order was challenged by Sarala Reddy in W.P.No.10978 of 2021. Pending

<https://www.thehighcourt.org/> the said writ petition, she died. The present defendants 1 & 2 were impleaded as the



legal heirs of Sarala Reddy. By order dated 13.04.2023, this Court set aside the order and remitted the matter back to the Local Committee under the National Trust. Aggrieved against the order passed by the Local Committee under the National Trust, the plaintiff herein filed W.P.No.20965 of 2024 wherein, by order dated 30.07.2024, this Court has passed the following order -

3..... *There is also a dispute as to who should be granted guardianship of Vasanth Reddy who, in light of a unique disability ID that has been issued by the Government of India, suffers 'Intellectual Disability'.*

8., *the impugned certificate shall not be acted upon until further orders of this Court.(emphasis supplied)*

8. Heard the learned counsel for the applicants as well as the learned counsel for the respondents.

9. The learned counsel for the applicants draw my attention to the typed set of papers and also to the holographic Will executed by the father of the second plaintiff namely Chandrasekara Reddy. My attention was also drawn to the judgment of this Court reported in **1990 (1) L.W 27 [Suchindra Bali vs. Rattan Chaman Bali]** and judgment of the Hon'ble Supreme Court reported in **1999 (9) Supreme Court Cases 324 [Joyce Primrose (Mrs) (Nee Vas) v. Vera Marie Vas (Ms) and others.** I had an occasion to consider the very same judgments in my judgment dated 30.06.2021 in



S.A.No.1855 of 2022. The effect of the holographic Will, burden of proof has been dealt therein.

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10. The learned counsel for the applicants would contend that the second plaintiff was in the care and custody of the mother of the present applicants namely the defendants 1 & 2 during her lifetime. Sarala Reddy died on 25.04.2021 and the defendants 1 & 2 are having the care and custody of the second plaintiff who is their maternal uncle. The first plaintiff filed the suit challenging the Will alleged to have executed by her father late Chandrasekara Reddy and three settlement deeds executed by her father late Chandrasekara Reddy in favour of one of his daughter Sarala Reddy, who is the sister of the plaintiff herein. The defendants 1 & 2 are the legal heirs, viz. son and daughter of late Sarala Reddy. The second plaintiff who is the mentally disabled person as per the identity card issued by competent authority that he suffers from “intellectual disability”. The sum and substance of the Will and the settlement deed is to the effect that Sarala Reddy is taking care of the mentally disabled second plaintiff and hence the property was given to her as a gift. This was challenged by the first plaintiff, consequential prayer for partition of the property. I am not expressing any opinion as to the truth and veracity of the Will and the settlement deed, i.e. impugned document in the main suit.

11. The short point that arises for consideration in this application is “Whether

<https://www.tn.hc.gov.in/judis> the second plaintiff to be transposed as fourth defendant in the suit ?”.



12. I had an occasion to consider the above said fact in my order dated 14.08.2024 in CMP No.1620 of 2024 in A.S.No.434 of 2002 wherein I have dealt with transposing the defendant as the appellant in the appeal.

13(a) Here, in the instant case, the defendants 1 & 2 prayed for transposing the second plaintiff as the fourth defendant. In this regard, the decision of the Division Bench of the Kerala High Court in **2004 SCC Onlnie Ker 501 [Janadas v. Vedanayagam]** was kept in mind. Admittedly, the second plaintiff is the mentally disabled person suffering from “intellectual disability”.

13(b) There is a sale deed dated 03.03.2021 by late Sarala Reddy and the third defendant and there are five settlement deeds alleged to have settled by Chandrasekara Reddy in favour of his daughter Sarala Reddy, now dead and prayer is for partition for the 2/3rd share.

13(c) Guardianship under the National Trust for the welfare of persons with Autism, Cerebral Palsy, Mental Retardation and multiple disabilities Act 1999, the legal authority has passed an order and now that is the subject matter pending before this Court on the writ jurisdiction in W.P.No.20965 of 2024. Hence, I am not inclined to express any view on the order passed by the competent court under the



13(d) It suffice to say that admittedly the second defendant S.Sangeetha is providing care and custody for the second plaintiff. She has, after the death of her mother Sarala Reddy, to whom the second plaintiff was given care and custody, who had also move the application before the local committee constituted under the Special Act. Since at present, the second plaintiff who is having “intellectual disabilities” is with the care and custody of the second plaintiff and some of the gifts are appears to be given for the person who is taking care of the said person, which is the impugned document under the suit.

13(e) Hence, continuation of the said person as a second plaintiff namely co-plaintiff with first plaintiff who is having a conflict of interest with second plaintiff as per the plaint averment and further fact that care and custody of the second plaintiff was with the Sarala Reddy and after her death, now with her daughter S.Sangeetha, the second defendant, I find that in the welfare of the said person suffering with “intellectual disabilities” has to be protected, I am inclined to transpose the second plaintiff as fourth defendant in the suit.

14. In view of the order passed by this Court on 30.07.2024 in WMP No.22921 & 22922 of 2024 in W.P.No.20965 of 2024 whereby impugned certificate issued in the name of Vasanth Kumar Reddy in favour of the person, as stated supra,

<https://www.jhncn.gov.in/judg> I am inclined to appoint **Ms.Sudharshana Sunder, Advocate, No.31, Law**



Chambers, High Court Buildings, Chennai – 600 104 , Mob.No.94442 32590, as a

court appointed guardian to conduct the case and her initial remuneration is fixed as Rs.20,000/- to be payable by the first plaintiff and the court appointed guardian shall collect details and file a written statement on behalf of the original second plaintiff who is now transposed as fourth defendant in the suit. This application is ordered accordingly.

15. Registry is directed to put up a copy of this order in the case bundle in W.P.No.20965 of 2024 for king information of the Roaster Court.

06.09.2024

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