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C.M.A. No.869 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.869 of 2019
and
C.M.P. No.2440 of 2019

Sanjeevi Appellant
vs.
1. K.S. Sampath Reddy
2. Kasthuri Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 76 of the Mental Health Act to set aside the order and decretal order of the learned Principal District Judge, Vellore passed in I.A. No.29 of 2010 in MHOP No.02 of 2000, dated 21.12.2017.

For Appellant : Mr.S.V. Karthikeyan
For Respondents : No appearance for R1
R2 – Died

JUDGMENT

This appeal has been filed challenging the order dated 21.12.2017 passed by the Principal District Court, Vellore in I.A. No.29 of 2010 in MHOP No.02 of 2000. The appellant and the respondents are siblings. They were born to Sivarama Reddy. Sivarama Reddy had five children viz., the appellant and the respondents herein along with Krishnamoorthy and Chandrasekara Reddy. According to the 1st respondent, Krishnamoorthy is an insane person and he is the one who has been



C.M.A. No.869 of 2019

taking care of him. The 1st respondent was appointed as a Guardian in the year 2005, pursuant to an order passed by the Principal District Court, Vellore in MHOP No.02 of 2000 on 13.06.2005. Admittedly, the appointment of K.S. Sampath Reddy, the 1st respondent as Guardian for the insane Krishnamoorthy was not challenged by any of the other siblings. In order to protect the interest of Krishnamoorthy(insane person), the 1st respondent, who is the Court appointed guardian for Krishnamoorthy filed an application in I.A. No.29 of 2010 on the file of the Principal District Court, Vellore seeking permission of the Court to sell the property standing in the name of Krishnamoorthy(insane person) to take care of Krishnamoorthy's financial needs. By the impugned order, dated 21.12.2017 passed in I.A. No.29 of 2010 by the Principal District Court, Vellore, the application was allowed and the 1st respondent was permitted to sell the property of Krishnamoorthy (Insane person) as prayed for in the application. While allowing the application, the learned Principal District Judge has given the following reasons :

- a) The 1st respondent was appointed as Guardian for Krishnamoorthy by an order of the Court in the year 2005 itself. The said order was not challenged by the appellant and the said order has attained finality.



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b) The appellant had himself admitted through his evidence as RW1 in the petition filed by the 1st respondent seeking for appointment of Guardian that Krishnamoorthy is a mentally retarded person.

c) Even though RW2, who is a relative of the appellant and the respondents had deposed in his chief examination that Krishnamoorthy is no longer a mentally insane person and the 1st respondent is not taking care of him, he did not come forward to appear before the Court for cross examination. Hence the evidence of RW2 has to be disregarded.

d) Only after a lapse of five years from the date of order i.e., on 13.06.2005 appointing the 1st respondent as Guardian for the mentally retarded Krishnamoorthy, the appellant is opposing the application filed by the 1st respondent seeking permission of the Court to sell the property of the insane Krishnamoorthy

e) The 1st respondent is a competent person to sell the properties for the welfare and medical treatment of the mentally retarded Krishnamoorthy. None of the allegations



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made by the appellant against the 1st respondent have been

proved. The appellant has also failed to prove that

Krishnamoorthy, the mentally insane person is not taking any treatment and he is hale and healthy.

2. The learned counsel for the appellant would vehemently contend that the properties for which permission has been granted for the 1st respondent to sell under the impugned order also includes some of the properties of the appellant. He would also contend that the suit was filed by the appellant and the said suit was dismissed by the Trial Court but the Lower Appellate Court had set aside the judgment of the Trial Court insofar as some of the items of the properties are concerned and therefore, the impugned order of the Principal District Judge has to be set aside by this Court. However, none of the proceedings relied upon by the learned counsel for the appellant have been brought on record either in the present appeal or before the Court below. Only based on the evidence available on record, the learned Principal District Judge, under the impugned order has allowed the application filed by the 1st respondent seeking permission to sell the property of the insane Krishnamoorthy. It is also to be noticed from the impugned order that the learned Principal District Judge had posted the petition for orders. At



C.M.A. No.869 of 2019

that stage, the appellant had filed I.A. No.57 of 2017 for removal of guardianship and I.A. No.27 of 2017 to stay further proceedings of I.A. No.29 of 2010. The learned Principal District Judge has observed in the impugned order that the appellant wantonly left the said petition for dismissal on 07.09.2017 and filed the petition to set aside the dismissal orders. The learned Principal District Judge has inferred that deliberately, the appellant was not interested in disposal of I.A. No.29 of 2010 which is challenged in this appeal.

3. This Court after careful consideration of the reasons given by the learned Principal District Judge under the impugned order is not inclined to interfere with the said findings as it is based only on the evidence available on record. Accordingly there is no merit in this appeal and the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.06.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

ABDUL QUDDHOSE, J.



C.M.A. No.869 of 2019

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To

1. The Principal District Judge,
Vellore.

2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

C.M.A. No.869 of 2019

18.06.2024