



C.R.P(MD)No.1040 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1040 of 2019

and

C.M.P(MD)No.5730 of 2019

Sugantha Devi

... Petitioner

Vs.

1.R.Abirami

2.M.Udaya Prakash

3.Malarvizhi

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of CPC., to set aside the fair and decreetal order, dated 03.09.2018 made in I.A.No. 120 of 2018 in I.A.No.39 of 2016 in O.S.No.205 of 2008 on the file of the II Additional Sub Court, Madurai by allowing this Civil Revision Petition.

For Petitioner : Mr.K.Guhan

For R-1 : Mr.S.M.Mohan Gandhi

For R-2 & R-3 : No appearance



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ORDER

The plaintiff in O.S.No.205 of 2008 on the file of the II Additional Sub Court, Madurai is the revision petitioner herein. The suit was filed for partition and separate possession. The plaintiff's brother and sister were impleaded as the defendants in the suit. The suit was decreed on 23.06.2009.

2. One Abirami, who is said to have purchased the shares of defendants 1 and 2, had filed I.A.No.39 of 2016 for passing of final decree. While the said application was pending, the plaintiff had filed I.A.No.120 of 2018 under Order XXXII, Rule 15 of CPC for appointment of guardian for the second defendant / third respondent in the final decree application on the ground that, she is a mentally challenged person. Along with the application, the petitioner also produced certain medical records. However, the Trial Court had dismissed the said application on the ground that the applications have been filed in a belated stage only to stall the final decree proceedings.



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Challenging the same, the present revision petition has been filed.

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3. The learned Counsel appearing for the revision petitioner had contended that the second defendant in the suit is a mentally challenged person and she was originally admitted in a home and later she is found missing. The first defendant in the suit, who is the brother of the second defendant has not taken care of her and therefore, she has lost her health and she is found missing. One of the administrators of the said home has been examined as R.W.2 in the final decree proceedings. Unless a guardian is appointed, the property rights of the second defendant in the suit, in whose favour a preliminary decree has been passed would be affected.

4. On the other hand, the learned Counsel appearing for the first respondent in the revision petition has contended that the plaintiff in the suit had not mentioned anything about the alleged mentally challenged nature of the second defendant and she had obtained a contested preliminary decree on 23.06.2009. The final decree application was filed



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by the purchaser in the year 2015. Thereafter, an Advocate Commissioner was appointed and he has also filed a report along with the plan. Only at the fag end of the final decree proceedings, this application came to be filed. Therefore, there are no *bona fides* in the said application and he prayed for dismissal.

5. I have carefully considered the submissions made on either side and perused the materials available on record.

6. It could be seen from the records that, the plaintiff had specifically alleged that her sister, namely, the second defendant in the suit is a mentally challenged person. She has not stated from which date she has become mentally challenged. A perusal of the plaint discloses that, the second defendant was arrayed in her individual capacity without any guardian and she had also defended the proceedings through a Counsel. The medical records produced by the plaintiff along with I.A.No.120 of 2018 disclose that the second defendant was taking some treatment in the year 2006 (i.e.,) two years prior to the filing of the suit. It



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is not known why the plaintiff has chosen to implead her in her personal capacity without a guardian, if really the second defendant was mentally challenged, even on the date of filing of the suit. The plaintiff has also not explained why such an application was not taken in the final decree proceedings, which was pending from the year 2015 onwards. Suddenly, such an application came to be filed in the year 2018 alleging that the second defendant is a mentally challenged person. The Trial Court has arrived at a finding that the plaintiff in order to retain the properties, which are in excess of her share is attempting to stall the final decree proceedings, alleging that the second defendant is a mentally challenged person.

7. The learned Counsel appearing for the petitioner has further contended that, after the filing of the revision petition, the second defendant is not traceable. In such an event, the question of appointing a guardian to a person, who is not even traceable does not arise.



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8. In view of the above said facts, the Trial Court had rightly dismissed the said application. In case, if the petitioner feels that her sister is not been taken care of properly, it is for her to work out her remedy before the appropriate forum.

9. With the above said observation, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

04.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The II Additional Sub Court,
Madurai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR, J.

BTR

Order made in
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