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C.R.P.No.606 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE P.B. BALAJI

C.R.P.No.606 of 2025
and
C.M.P.No.3432 of 2025

Ashok

... Petitioner

Vs.

Eswari,
rep. by her Guardian Daughter and
Next Friend Divyabharathi

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order dated 19.09.2024 made in I.A.No.03 of 2021 in O.S.No.13 of 2020 on the file of the III Additional District Judge, Erode at Gobichettipalayam, by allowing this Civil Revision Petition.

For Petitioner : Mr.V.Anandhamoorthy

For Respondent : No appearance

ORDER

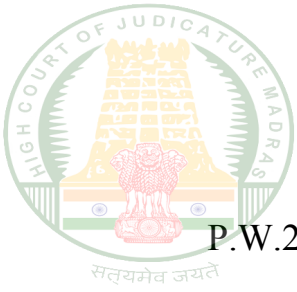
The petitioner before this Court is the plaintiff in the suit in O.S.No.13 of 2020 for recovery of money as against the defendant by name Eswari.



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WEB COPY 2. The specific contention of the plaintiff is that the defendant is a sane and normal person, without any disability and in order to defeat the suit claim, the defendant had alienated her only property by executing a sale deed. Whiles, the defendant had attempted to be represented by her daughter Divayabharathi and an application was taken out in I.A.No.3 of 2021 in O.S.No.13 of 2020 to appoint the daughter as a guardian of the defendant. The said application alleged that the defendant was totally deaf and dumb and could not give evidence in the suit and had to be necessarily represented by a guardian under Order XXXII Rule 15 CPC. Before the Trial Court, the daughter was examined as P.W.1 and an Audiologist was examined as P.W.2 and based on the evidence of P.W.1 and P.W.2, the Trial Court has proceeded to appoint the daughter as a guardian for the defendant. Assailing the said finding of the Trial Court, the plaintiff is before this Court.

3. Learned counsel for the petitioner would invite my attention to the following two major grounds for challenging the impugned order. Firstly, the defendant was never examined nor enquired as mandated under Order XXXII Rule 15. Secondly, referring to the evidence of



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P.W.2, the audiologist, he would state that even the audiologist admitted that he has not examined the defendant in-person and further, he has also stated that if hearing aids are provided, it is possible that the defendant may be in a position to hear normally. He would also place reliance on the decisions of this Court in the cases of ***C.S.Navamani Vs. C.K.Sivasubramanian*** reported in ***2006 (4) CTC 657*** and ***Manohari Vs. Sugunathalakshmi & Ors.*** reported in ***(2020) 4 LW 385***. In both the decisions, this Court has clearly laid down the ratio that it is mandatory for the Court to conduct an enquiry before proceeding to order an application seeking for appointment of a guardian. He would therefore state that in the present case, the mandate of Rule 15 has been violated. Hence, he prays for the order being set aside.

4. I have carefully considered the submissions advanced by the learned counsel for the petitioner. I have also gone through the provisions of Order XXXII Rule 15, which is extracted for easy reference:-

“15. Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind.--

Rules 1 to 14 (except rule 2A) shall, so far as may be,



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apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.”

5. As held by this Court in the decisions of *Manohari's* case and *Navamani's* case, the appointment of guardian when sought for, alleging any infirmity on the part of the litigant cannot be allowed merely on the asking, but there has to be a mandatory enquiry conducted by the Trial Court. Admittedly, the defendant has not been examined by the Court or even by the Audiologist, who has given evidence only based on the medical records and he has not even seen the defendant. Further, he has also affirmatively answered to a question in the cross-examination that if hearing aid is provided, the defendant may be in a position to hear normally. Therefore, in the said circumstances, the findings of the Trial Court that the appointment of a guardian is warranted and made out is clearly assailable and unsustainable. In view of violation of the mandatory provisions of Order XXXII Rule 15 and also in the light of the admissions of the Audiologist, I am inclined to set aside the impugned order.



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6. Accordingly, the impugned order is set aside and the Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

The III Additional District Judge, Erode at Gobichettipalayam.



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P.B. BALAJI, J.

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