



C.R.P.No.3335 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3335 of 2025
and
C.M.P.No.18373 of 2025

K.Devi

... Petitioner

VS.

V.Krishnamoorthy
S/o.R.Venkataraman,
Represented by his Power Agent
Mr.A.K.Karunakaran, S/o.A.K.Kuppusamy,
23, Nallappa Street, Chrompet,
Chennai 600 044.

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 16.06.2024 passed in I.A.No.8 of 2024 in O.S.No.1272 of 2019 on the file of XIX Additional Judge, City Civil Court, Chennai and allow the C.R.P.

For Petitioner : Mr.K.S.Madhavan

For Respondent : Mr.M.P.Karunakaran



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the XIX Additional Judge, City Civil Court, Chennai in I.A.No.8 of 2024 in O.S.No.1272 of 2019, dated 16.06.2024 dismissing the application filed by the petitioner under Order XXXII Rule 15 of the Code of Civil Procedure to appoint Guardian/Next Friend to represent the respondent/plaintiff in the main suit.

2. The respondent herein filed a suit for possession and other relief against the petitioner and the same is pending. The respondent is represented by his Power Agent in the suit. The petitioner herein filed the instant application seeking appointment of Guardian/Next Friend to represent the respondent/plaintiff mainly on the ground that mental capacity of the respondent got deteriorated and he is not in a position to understand anything. The said application was opposed by the petitioner by filing counter asserting that the respondent is of sound mind and capable of understanding things. The Trial Court dismissed the application filed by the petitioner and aggrieved by the same, the petitioner has come before this Court.



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3. The learned counsel appearing for the petitioner would submit that when there is a dispute with regard to the mental capacity of the respondent/plaintiff, the Trial Court ought to have conducted enquiry by directing the plaintiff to appear before the Court. Instead of following the said procedure, the order passed by the Trial Court dismissing the application on the ground that the respondent is represented by Power of Attorney is unsustainable in law. In support of his contention, the learned counsel appearing for the petitioner relied on the judgment of the Apex Court in *Kasturibai and others Anguri Chaudhary* reported in (2003) 3 SCC 225.

4. The learned counsel appearing for the respondent would submit that the respondent/plaintiff appeared in person in the year 2022 before the Court and therefore, there is no necessity to conduct enquiry on the mental capacity of the respondent.

5. It is seen from the typed-set of papers the instant application was filed by the petitioner only the year 2024. Therefore, the appearance of the plaintiff and his examination before the Court in the year 2022 would not help the petitioner. Once an application has been filed by the petitioner



disputing the mental capacity of the respondent/plaintiff, the Trial Court ought to have conducted enquiry to ascertain the real mental state of the respondent/plaintiff. In this regard, it would be appropriate to refer to the judgment of the Apex Court in **Kasturibai** case cited supra and the relevant observation reads as follows:-

“10. Order 32 Rule 15 C.P.C. reads thus:

"15. Rules 1 to 14 (except Rule 2-A) to apply to persons of unsound mind.- Rules 1 to 14 (except Rule 2-A) shall, so far as may be, 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."

11. On a bare perusal of the said provision, it is evident that the Court is empowered to appoint a guardian in the event a person is adjudged to be of unsound mind. It further provides that even if a person is not so adjudged but is found by court on inquiry to be incapable of protecting his or her interest when suing or being sued by reason of any mental infirmity, an appropriate order thereunder can be passed. The respondent did not contend that Appellant 1 herein is of unsound mind. As noticed hereinbefore, the respondent herself had filed an application before the trial court for holding an inquiry to the effect that she suffers from mental infirmity.



12. The learned trial court refused to do the same and in that view of the matter the High Court, in our opinion, while setting aside the said order could only issue a direction directing the learned trial Judge to hold an inquiry so as to enable it to arrive at a finding as to whether the respondent herein was incapable of protecting her interest by reason of any mental infirmity or not. As no such inquiry was held, there cannot be any doubt whatsoever that, the learned Single Judge committed a jurisdictional error in passing the impugned judgment which, the Division Bench as noticed hereinbefore upheld.”

6. In the case on hand, the petitioner filed the instant application asserting that the respondent is not mentally sound and he is incapable of understanding things. The respondent represented by his Power Agent filed counter asserting that his Principal was of sound mind and capable of understanding things.

7. In view of the dispute with regard to the mental capacity of the respondent/plaintiff, it is desirable to conduct an enquiry by directing the respondent to appear before the Court. The Trial Court without conducting an independent enquiry with regard to the mental capacity of the respondent



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ought not have dismissed the application. Therefore, the impugned order passed by the XIX Additional Judge, City Civil Court, Chennai in I.A.No.8 of 2024 in O.S.No.1272 of 2019, dated 16.06.2024 is set aside.

8. The respondent/plaintiff is directed to appear before the XIX Additional Judge, City Civil Court, Chennai in person. The XIX Additional Judge, City Civil Court, Chennai, shall examine him and satisfy with regard to his mental capacity to take care of his interest in the litigation. After the examination, if the Trial Court is satisfied that the respondent is incapable of taking care of his interest in the litigation, it is open to it to appoint Guardian/Next Friend to represent the plaintiff as per the provisions of Order XXXII Rule 15 of the Code of Civil Procedure.

9. With these directions, the Civil Revision Petition stands allowed. No costs. Consequently, the connected civil miscellaneous petition is closed.

20.01.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The XIX Additional Judge,
City Civil Court, Chennai.



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S.SOUNTHAR, J.

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