



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-02-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

CRP No. 270 of 2026 and

CMP.No.1307 of 2026

1. M. Kalisamy
2. M. Palanisamy

..Petitioner(s)

Vs

Subbathal (Died)

1. Rangammal
2. A. Duraisamy
3. Selvaraj
4. M. Pappannan

..Respondent(s)

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 09-09-2025 made in IA.No.155 of 2016 in OS No.48 of 2014 on the file of the Learned III Additional Subordinate Judge, Coimbatore.

For Petitioner(s):

M.Rajasekar

For Respondent(s):

C.R.Prasanan for R2



ORDER

The civil revision petition is filed challenging the order passed by the trial court allowing the application filed by the respondents 1 and 2/plaintiffs seeking appointment of guardian to third respondent herein, who is suffering from mental illness.

2. The respondents 1 and 2/plaintiffs filed a suit for declaration that they are the sole heirs of the deceased Periasamy Gounder. They also sought for declaration of title and recovery of possession in respect of the suit property. Since the third respondent, who was arrayed as first defendant in the suit, is a person of unsound mind, the respondents 1 and 2 filed application seeking appointment of guardian to him. The trial court, based on Ex. P1 to Ex. P4 allowed the said application. Aggrieved by the same, the petitioners/ defendants 3 and 4 have come before this Court.

3. The learned counsel for the petitioner by taking this court to Order 32 Rule 15 of CPC, submitted that without examining the person, who is stated to be mentally unsound mind, the court below ought not have appointed the guardian.

4. The learned counsel for the contesting respondents/plaintiffs submitted that the documents filed before the trial court Ex. P1 to Ex. P4 which includes medical records would conclusively prove that the third respondent is suffering from mental illness. Therefore, the trial court is justified in appointing a



5. The copies of Ex. P1 to Ex. P4 filed before the trial court are included in the typed set of papers filed by the second respondent. A perusal of the same would indicate that he was produced before the Judicial Magistrate No.1 Gobichettipalayam in the year 2016 and based on examination and also certificate issued by Assistant Surgeon, Government Headquarters Erode, the learned Judicial Magistrate rendered a finding that he was suffering from mental illness and hence, the order was passed for keeping him in mental asylum. Exhibits P1 to P4 were relating to the year 2016. However, there is no material on records to suggest what is the present mental state of affairs of the third respondent. The certificate issued by the doctor dated 19.08.2016 marked as Exhibit P3 would indicate that the third respondent was suffering from mental disease of schizophrenia. Now, nearly nine years have gone. What is the present mental state of affairs of the third respondent has to be ascertained by the court below. In this regard, it would be appropriate to refer Order XXXII Rule 3 and Order XXXII Rule 15 of CPC which reads as follows:-

*“O.32 R.15 of CPC: 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."

Order XXXII Rule 3 of CPC: Guardian for the suit to be appointed by Court for minor defendant.

(1) Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) Order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or where there is no father or mother, to other natural guardian, of the minor, or, where there is no father, mother or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.



WEB COPY



(4A) The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.

(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree.

6. A perusal of the above provisions would indicate that in cases of persons of unsound mind, the court shall conduct enquiry and come to the conclusion that by virtue of mental infirmity, he is incapable of protecting his interest and hence, cannot sue or be sued. In the case on hand, based on nine year old document, the trial court appointed a guardian without examining the person sought to be mentally ill. Therefore, the mandate under Order XXXII Rule 15 of CPC has not been complied.

7. Accordingly, the impugned order is set aside and the trial court is directed to conduct enquiry in terms of Order XXXII Rule 15 of CPC and find out about the present mental state of affairs of the third respondent.

8. After conducting inquiry, if the court comes to the conclusion that 3rd respondent is incapable of protecting his interest in the suit due to mental infirmity, it can pass necessary orders for appointment of a guardian.



9. With this clarification, the civil revision petition stands allowed and the matter is remitted back to the trial court for fresh consideration as indicated above. Consequently, the connected miscellaneous petition is closed. No costs.

10-02-2026

Index: Yes

Speaking Order

Neutral Citation: Yes

nr

To

The III Additional Subordinate Judge, Coimbatore.



WEB COPY

CRP No. 270 of 2



S.SOUNTHAR, J.

nr

CRP No. 270 of 2026 and

CMP.No.1307 of 2026

10-02-2026