

Sethuraman Vs. 1.Ramaraj

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Court : Chennai

Decided On : Jul-28-2015

Judge : The Honourable Ms.Justice v.M.Velumani

Appellant : Sethuraman

Respondent : 1.Ramaraj

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 28.07.2015 CORAM THE HONOURABLE MS.JUSTICE V.M.VELUMANI C.M.A(Md.No.98 of 2013 and M.P(MD)No.1 of 2013 Sethuraman .Appellant/Respondent No.2 versus 1.Ramaraj ..Respondent/Petitioner 2.Tamilselvi 3.Saraswathi ..Respondents 2 and 3/ Respondents 1 and 3 PRAYER This Civil Miscellaneous Appeal has been filed under Section 76 of the Mental Health Act against the order made in M.H.O.P.No.1 of 2010, dated 31.10.2012 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur.

!For Appellant :Mr.M.Sivathilakar for M/s.A.Sivaji ^For Respondent-1 :M/s.H.Arumugam For Respondent-2 :No appearance :JUDGEMENT This Civil Miscellaneous Appeal has been filed against the M.H.O.P No.1 of 2010, on the file of the Principal District Judge, Virudhunagar at Srivilliputhur.

2.The appellant is the second respondent in M.H.O.P.No.1 of 2010, on the file of the Principal District Court, Virudhunagar District at Srivilliputhur.

The fiRs.respondent filed the above said M.H.O.P under Section 52(1) of the Mental Health Act, 1987, for appointing him as Curator to his mentally insane wife, namely Vidya and as Manager of the properties of his wife Vidhya against the appellant and respondents 2 and 3.

3.The learned trial Judge, by the order dated 31.10.2012, allowed the said M.H.O.P.Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed.

4.The facts of the case:- The fiRs.respondent is the husband of one Vidhya.

The marriage between the fiRs.respondent and the said Vidhya was solemnised on 21.04.1996 at Rajapalayam Town as per Hindu rites and custoMs.After marriage, both were living together as husband and wife at their matrimonial home at Sivakasi.

The said Vidhya, wife of the fiRs.respondent was suffering from mental disease namely "Schizophrenia".

It came to the knowledge of the fiRs.respondent only after the marriage.

He taken his wife Vidhya to mental Hospital, being run by Dr.Rajmohan at Sivakasi.

She was given treatment for 25 days.

The doctor advised that she must be on medication throughout her life-time.

Till date, she is given medicine.

The said Vidhya used to laugh and shout and throw away things and break the same.

Two female children were born to them on 10.08.1998 and 23.04.2002.

Due to the mental disease of fiRs.respondent's wife, the children were looked after by his sister Chandra and his parents.

After the death of fiRs.respondent's parents, in the year 2004, the sister of the fiRs.respondent is looking after the children at Srivilliputhur.

After birth of children, the mental health of Vidhya became deteriorated and she was admitted in M.S.Chellamuthu Trust and Research Foundation, Madurai, as in-patient in the year 1997.

There was no complete cure for vidhya.

Therefore, she was admitted often in the said Research Foundation for treatment.

From the year 2006 onwards, she is being treated as in-patient at the said Trust Hospital at Madurai.

The fiRs.respondent is only taking care of Vidhya and attending her needs and spending money for the treatment and respondents 1 to 3 are the brother and sisters of Vidhya.

The respondents are already married and they are living with their family.

The respondents never cared for the welfare of Vidhya.

The respondents never shown any interest in the welfare of the children of Vidhya born to the Petitioner.

5.After the death of the father of Vidhya Mr.Govinda Konar, she is entitled for , th share along with appellant and respondents 2 and 3 herein.

The fiRs.respondent requested the appellant and respondents 2 and 3 to release the 1/4th share of Vidhya for the benefit of the minor children.

They refused to do so.

Therefore fiRs.respondent has filed M.H.O.P.No.1 of 2010 to appoint him as Curator of his mentally insane wife Vidya and as Manager of the properties.

6.The appellant and the respondents 2 and 3 resisted the said O.P on the ground that after marriage, the said Vidhya came to know that the fiRs.respondent is not

employed either before the marriage or after the marriage and because of that only she is suffering from mental depression.

She is not suffering from any mental disease i.e., "Schizophrenia".

The appellant/brother of Vidhya only spent for all her medicine, not less than Rs.10,000/-.

The appellant only met all the delivery expenses of children born to Vidhya.

7. On 06.03.1997, a family arrangement took place in the presence of the village elders with regard to the family properties.

The said Vidhya and respondents 2 and 3 were allotted certain properties and the properties mentioned in the schedule of the Petition were allotted to the appellant.

The respondents 2 and 3 gave an undertaking in the presence of the Panchayatdars that they will not claim any share in the property allotted to the appellant.

8. The fiRs. respondent continued to trouble the appellant and respondents 1 and 3 demanding money for medicinal expenses of Vidhya.

On 16.06.1998 in the presence of the panchayatdars and witnesses, a sum of Rs.20,000/- was given to the fiRs. respondent.

The fiRs. respondent is having illegal intimacy with one Vijaya.

He is maintaining the said Vijaya, alleging that she is employed to look after the minor children.

The appellant only gave Rs.60,000/- towards medical expenses of Vidya from and out his retirement benefits.

The said Vidya is not suffering from any mental disease and she was looking after her father-in-law and mother-in-law till their death in the year 2005.

9.Only due to the illegal intimacy with said Vijaya, the fiRs.respondent is alleging that Vidya is suffering from mental disease .

He is completely disowned his wife and two children without extending any care and concern for them The properties are already divided on 06.03.1997 in the presence of the elders in the village.

The terms of partition were reduced into writing and Vidya and respondents 2 and 3 are enjoying the properties allotted to them by paying kist.

At no point of time, the fiRs.respondent demanded 1/4th share in the schedule mentioned property.

The fiRs.respondent is not entitled to be appointed as curator of his wife Vidya, as she is not suffering from any mental disorder.

Therefore, he is not entitled to be appointed as Manager of the properties of the said Vidya and to the schedule mentioned properties as the same belongs to the appellant as per the partition deed, dated 06.03.1997.

10.On these pleadings, the learned trial Judge, framed point for consideration and the fiRs.respondent examined himself as P.W.1 and one Dr.Ramasubramanian was examined as P.W.2.

Six documents were marked as Ex.P1 to P6.

The appellant examined himself as R.W.1 and the third respondent was examined as R.W.2.

Five documents were marked as Ex.R1 to Ex.R5.

11.The learned District Judge after considering the evidence and pleadings, appointed the fiRs.respondent as curator of his wife Vidya and directed him to file a suit for partition and separate possession of alleged , share of his wife Vidya in his name as Curator.

Against the said order, the appellant has filed the present Civil Miscellaneous Appeal.

12.The learned counsel for the appellant contended that as per the Mental Health Act, it is mandatory that the trial Court must examine the person who is alleged to have been suffering from mental disorder.

Ex.P1 Medical Certificate was obtained only one month before filing of the Petition.

The evidence of P.W.2-Dr.Ramasubramanian cannot be relied on, as he was employed in the said hospital only four years prior to the date of issue of medical certificate.

The fiRs.respondent has alleged that his wife was suffering from mental disorder from the year 1996.The learned Judge without proper appreciation of facts and evidence and in violation of human rights, passed an order without notice and seeing the concerned person I.e.,Vidhya.

The intention of the fiRs.respondent is clear, as documents filed by him relates to properties, which originally belonged to the father of Vidhya and after the death of her father, it was allotted to the appellant in the family partition.

The learned Judge has not properly appreciated the documents filed by the appellant and respondents 2 and 3.

For the above said reasons, he payed for allowing the appeal.

13.

Per contra, the learned counsel for the fiRs.respondent contended that the pleadings and evidence clearly show that Vidya is suffering from mental disorder.

The appellant and respondents 2 and 3 have also admitted that the said Vidya is being treated for mental disorder.

Ex.R1, Ex.R2 and Ex.R3 filed by the appellant clearly reveal that the said Vidya is under constant medical treatment.

The appellant and respondents 2 and 3 have not stated the particulars of properties allotted to Vidya in family partition alleged to have been held on 06.03.1997.

The said Vidya has not signed any document relinquishing her rights over the properties.

The learned trial Judge has properly appreciated the facts of the case and appointed the fiRs.respondent as curator and directed him to file a suit for partition and separate possession of the alleged , share of his wife Vidya.

14.Heard the learned counsel appearing on either side and perused the material papers available on record.

15.The learned counsel for the appellant vehemently argued that the trial Court failed to comply with the mandatory provisions of the Mental Health Act, 1987, by issuing notice to Vidya and examining her before rendering its findings.

The learned counsel for the appellant submitted that application in respect of property of mentally ill person can be filed only under Section 50 of the Act.

The fiRs.respondent has filed petition under Section 52 of the Mental Health Act, which is not maintainable.

The learned counsel for the appellant referred to Section 50(2)(3)(4).which reads as follows: 50(2).On receipt of an application under sub-section(1).the District Court shall, by personal service or by such other mode of service as it may deem fit, serve a notice on the alleged mentally ill person to attend at such place and at such time as may be specified in the notice or shall, in like manner, serve a notice on the person having the custody of the alleged mentally ill person to produce such person at the said place and at the said time, for being examined by the District Court or by any other person from whom the District Court may call for a report concerning the mentally ill person: Provided that, if the alleged mentally ill person is a woman, who according to the custom prevailing in the area where she resides or according to the religion to which she belongs, ought not to be compelled to appear in public, the District Court may cause her to be examined by

issuing a commission as provided in the Code of Civil Procedure, 1908(5 of 1908).(3) A copy of the notice under sub-Section(2) shall also be served upon the applicant and upon any relative of the alleged mentally ill person or other person who, in the opinion of the District Court, shall have notice of judicial inquisition to be held by it.

(4) For the purpose of holding the inquisition applied for, the District Court may appoint two or more persons to act as assess ORS.16.The learned counsel contended that as trial Court failed to follow mandatory provisions and did not examine Vidya.

17.The appellant has filed M.P.No.1 of 2015 for marking mortgage deed, dated 25.01.2007, executed and registered by Vidya and registered redemption deed, dated 30.06.2010.

According to the learned counsel for the appellant, he did not have any knowledge about these documents earlier and only in the second week of April 2005, he came to know about these documents and immediately he had filed the Petition for receiving and marking the said documents.

According to the learned counsel for the appellant, these two documents reveal that the said Vidya was not suffering from any mental illness and she is hale and healthy.

The fiRs.respondent filed counter affidavit denying all the allegations made by the appellant.

The learned counsel for the fiRs.respondent contended that appellant has not given acceptable reason for not filing the documents earlier and failed to comply with provisions of Order 41 Rule 27 C.P.C and prayed for dismissal of M.P.No.1 of 2015.

18.In view of the contention of the learned counsel for the appellant that the learned District Judge did not issue notice to Vidya and did not examine her, I directed the said Vidya to appear before the Court.

I also directed two daughters to appear before this Court.

On 30.06.2015, the Doctor, Vidya, her two daughters, appellant and fiRs.respondent were present.

When I examined the said Vidya in chambers, she stated that she is not willing to go to her residence.

She did not speak and act as a normal person.

Two daughters also supported the case of the fiRs.respondent.

19. Admittedly, the said Vidya is suffering from mental disorder.

According to the fiRs.respondent, the mental disease is called "schizophrenia", whereas according to the appellant, it is only a mental depression.

From the year 1996, the said Vidya is under treatment.

P.W.2 doctor has given evidence to the effect that she is suffering from "Schizophrenia".

There is no reason to disbelieve the evidence of an expert.

20. The appellant, respondents 2 and 3 do not dispute the fact that Vidya is having mental depression and she is taking treatment.

The appellant has stated that he is meeting medical expenses. In his evidence, P.W.2 doctor has deposed that when illness is under control Vidya would be sent home.

When her condition deteriorates, she will be again admitted in the hospital as inpatient.

21. The evidence of P.W.2 reveals that sometimes Vidya will recover and after some time, she may require treatment as inpatient.

In view of this evidence, the documents sought to be marked by appellant has no relevance to decide the issue in C.M.A on merits.

For these reasons, M.P(MD)No.1 of 2013 is dismissed.

22.The real dispute seems to be with regard to 1/4th share of Vidya in the property of her father.

Even though the appellants and respondents have stated that a family partition was effected on 06.03.1997 and Vidya was allotted her due share, no particulars of properties alleged to have been allotted to her had been furnished either before the trial Court or before this Court.

The Courts have power only to appoint a Manager for the properties of mentally ill persons and have no power to direct the Manager so appointed to take particular action with regard to property of mentally ill- person.

The duties and power of guardian and Manager are enumerated in Sections 58 and 59 of the Act.

Therefore, the portion of the impugned order, directing the fiRs.respondent to file suit for partition, is set aside.

23.In view of evidence of P.W.2 and opinion formed by this Court, when Vidya appeared before this Court in person the portion of the impugned order, appointing the fiRs.respondent as curator, is hereby confirmed.

24.In the result, the Civil Miscellaneous Appeal is allowed, setting aside the direction given by the learned District Judge to the fiRs.respondent to file a suit for partition and confirming the appointment of the fiRs.respondent, as Curator.

No costs.

To The Principal District Judge, Virudhunagar at Srivilliputhur..

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