

IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,

AT MAGADI.

O.S.No.210/2016

**Present: Sri.Hanumanth Satwik.,
LL.M,
Addl. Sr. Civil Judge & JMFC. Magadi.**

DATED : THIS THE 29TH DAY OF JULY, 2020

PLAINTIFFS:

1. Smt. Lakshmi Devi W/o Lakshmi Narayana K.L.,
Aged about 34 years,
2. Smt. Doddamma W/o Puttaiah
Aged about 55 years,
3. Sri Deexith R. S/o Raju and Late. Mangalamma,
Aged about 07 years,
(Being minor represented by plaintiff no.1)
all are R/at Kallente Palya Village,
Kasaba Hobli,
Magadi Taluk,
Ramanagara-562120.

(By Smt. P.A.V. Advocate)

V/s

DEFENDANTS:

1. Sri. Gangaiah S/o Late. Halerangaiah,
Aged about 70 years,
R/at Kabbepalya Village,
Kasaba Hobli, Magadi Taluk,
Ramanagara-562120.
2. Sri. Puttaiah,
S/o Late. Emaraiah,
Aged about 65 years,

R/at Kallente Palya Village,
Kasaba Hobli,
Magadi Taluk,
Ramanagara District.

3. Sri. Hanumanthaiah,
S/o Puttaiah,
Aged about 38 years,
R/at Kallente Palya Village,
Kasaba Hobli,
Magadi Taluk,
Ramanagara District.

(Defendant no.1 by Sri. C.B.H. Adv.)
(Defendant no.2 and 3 are placed Ex-parte)

ORDER ON IA NO.7

The present suit is for partition and separate possession. The plaintiffs further pray to cancel the registered sale deed dated 19.01.2005.

2. The plaintiffs filed the present application U/o.32 rule 3(2) of CPC praying to permit plaintiff no.1 to act as guardian to plaintiff no.3. Plaintiff no.1 in her affidavit submits that she could not file the present application at the time of institution of the suit. Plaintiff no.3 is under her guardianship. The father of plaintiff no.3 murdered his wife Mangala. Since that date, she is taking care of plaintiff no.3. In this circumstance it is not just and proper to appoint father of plaintiff no.3 as guardian to plaintiff no.3. In this regard plaintiffs pray as above.

3. Defendant no.1 in his objections denied the contents of the application. The defendant contended that the present application is not maintainable and it is not specific. No specific prayer is forthcoming in the application as to whom among the plaintiffs, guardian is to be appointed to plaintiff no.3. The father of plaintiff no.3 is alive and he is the natural guardian to plaintiff no.3. As the father of plaintiff no.3 is alive, the other plaintiffs cannot be appointed as guardian to plaintiff no.3. In this regard defendant no.1 prays to reject the application.

4. Heard arguments of counsel.

5. Considering the contentions of the counsel, following points arise for my consideration.

1. *Whether the plaintiffs have made out sufficient grounds to permit plaintiff no.1 to represent plaintiff no.3 as his next friend in the present suit as sought for?*

2. *What order?*

6. My findings for the above points are as under.

Point No.1: In the affirmative,

Point No.2: As per final order.

For the following,

REASONS**POINT NO.1:-**

7. In the present application plaintiff no.1 has sought permission of this court to permit her to act as next friend to plaintiff no.3. Plaintiff no.1 in her affidavit submits that due to oversight she could not file the present application at the time of institution of the suit. In this regard, I have perused the plaint. The cause title of the plaint reflects that plaintiff no.3 being minor, he has been represented by plaintiff no.1. Further, it is settled principle of law that permission of the Court is not necessary for institution of suit by minor through his next friend. In this regard I am supported by the decision of Hon'ble Supreme Court of India between Nagaiah and Anr. V. Chowdamma (Dead) By legal representatives and Anr. cited in (2018) 2 SCC 504, wherein Hon'ble Court held thus;

“In case, where the suit is filed on behalf of the minor, no permission or leave of the court is necessary for the next friend to institute the suit, whereas if the suit is filed against a minor, it is obligatory for the plaintiff to get the appropriate guardian ad litem appointed by the court for such minor.”

In view of the law laid down by the Hon'ble Court and for the reasons stated above I am of the view that not filing of application seeking permission to represent minor plaintiff as his next friend, at the time of institution of the suit has no bearing on the case of the plaintiffs.

8. Defendant no.1 contended that the father of plaintiff no.3 is alive. As such, the father of plaintiff no.3 is his natural guardian, the other plaintiffs cannot be appointed as guardian to plaintiff no.3. It is germane to note that any person of sound mind and who fulfills the requirements as contemplated in Order 32 of CPC can be appointed as next friend to the minor plaintiff. Furthermore, it is not the case of defendant no.1 that plaintiff no.1 has adverse interest to plaintiff no.3 and plaintiff no.1 cannot protect the interest of plaintiff no.3. It is also not the case of defendant no.1 that plaintiff no.1 is not major and not resident of India. Further, in the case at hand there is no question of appointment of next friend to plaintiff no.3, because plaintiff no.3 is already represented by plaintiff no.1. In this circumstance I am of the view that there is no impediment for plaintiff no.1 to represent plaintiff no.3 in the suit as his next friend. In this regard I am supported by the decision of Hon'ble Supreme Court of India between Nagaiah and Anr. V. Chowdamma (Dead) By legal representatives and Anr. cited *supra*, wherein Hon'ble Court held thus;

“It is by now well settled and as per the provisions of Order 32 of the Code that any person who is of sound mind, who has attained majority, who can represent and protect the interest of the minor, who is a resident of India and whose interest is not adverse to that of the minor, may represent the minor as his next friend.”

In view of the law laid down by the Hon'ble Apex Court and for the reasons stated above I am of the view that the contentions raised by defendant no.1 are of no avail to him.

9. Defendant no.1 further contended that the application is not specific as to who among the plaintiffs is required to be appointed as guardian to plaintiff no.3. Be it stated, on perusal of the application and the accompanying affidavit in entirety it is clear that plaintiffs sought permission to allow plaintiff no.1 to act as next friend to plaintiff no.3. Be that as it may, in the present case there is no question as to appointment of next friend to minor plaintiff no.3. Rather, the present suit is already instituted by plaintiff no.3 through his next friend plaintiff no.1. Further, for the reasons stated above it is clear that permission of the Court is not necessary for institution of the suit by minor through his next friend. Such being the case, I am of the view that this contention of defendant no.1 holds no water.

10. In the present case the cause title of the plaint indicates that plaintiff no.3 instituted suit through his next friend plaintiff no.1. As such, plaintiff no.3 is already represented by plaintiff no.1. Therefore, in the case at hand there is no question of appointment of next friend to minor plaintiff no.3. So also, it is settled principle of law that permission of the Court is not necessary for institution of the suit by minor plaintiff through his next friend. In this circumstance considering the pleadings, the application, the objection and for the reasons stated above, I am of the view that plaintiffs made out sufficient grounds to allow plaintiff no.1 to represent minor plaintiff no.3 as his next friend in the present suit. In these circumstances, I decide point no.1 in the affirmative.

POINT NO.2:

11. In view of reasons on point No.1 and in the interest of justice and equity, I proceed to pass the following,

ORDER

**IA No.7 U/o.32 Rule 3(2) of CPC filed by
the plaintiffs is hereby allowed on cost of
Rs.50/-.**

**Plaintiff no.1 is permitted to represent
plaintiff no.3 as his next for the present suit.**

(Dictated to the Stenographer directly on the computer, typed by him corrected by me and then pronounced in the open court on this the 29th day of July, 2020.)

**(Hanumanth Satwik)
Addl. Sr. Civil Judge & JMFC
Magadi.**