

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM
PRESENT: Tmt. S.SUGANIYA SRI B.A.B.L (Hons), M.L., PGDAML
ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM
MONDAY, THE 20TH DAY OF NOVEMBER 2023
IA.NO. 278/2023 IN OS.NO.218/2014

Ganesan @ Ganesamoorthy, represented
by guardian Bakeeravathi

..... Petitioner/3rd Defendant

/Vs/

1. Anandraj
2. Minor. Vinothraj
represented by guardian mother
Sundari

..... Respondents/ 1, 2
Plaintiffs

3. Rathinasababathi (died)
4. Saraswathi (died)
5. Balasubramanian
6. Thaiyal nayaki
7. Latha
8. Muthukkumaran

.... Respondents/ 1,2, 4 to 7
Defendants

For Petitioner	Thiru A.Sambandan, Advocate
Respondents No.1,2 (plaintiffs 1, 2)	Thiru.N.Rajendiran, Advocate
Respondents No. 3,4 (Defendants 1,2)	Died
Respondents No. 5,6,7,8 (Defendants 1, 2 4 to 7)	Exparte in the suit
Relief Claimed	This petition filed by the petitioner under Order 32 Rule 3(1) to recognize the petitioner as guardian of 3 rd Defendant (Ganesan)
Final Hearing	1.8.2023

Upon hearing the petitioner and respondent side enquiry and on perusal of the entire records and having stood over for consideration till this day, this court delivers the following:

ORDER

THE CASE OF PETITIONER:

1. The petitioner is not the party in suit, but the husband of 3rd defendant. The 1st and 2nd respondent are the 1 and 2 plaintiffs, 3 to 8 respondents are 1 to 7 defendants in the original suit. The 3rd defendant is contesting the suit and he has also filed his written statement. The 3rd defendant is suffering from nerves problem and as a consequence, he was affected by schizophrenia. The petitioner has also annexed the medical certificate in that regard. Therefore, the 3rd defendant could not attend the court. Therefore, the petitioner prays to recognize her as a guardian for 3rd defendant to conduct the suit on his behalf as his power agent and for costs.

THE CASE OF THE 1,2 RESPONDENT:

2. The respondents vehemently oppose the petition filed by the petitioner. The prescription filed along with this petition has expired. When the 3rd defendant was affected mentally, it is doubtful as to how he has filed his written statement. If the petitioner intends to conduct the suit on behalf of her husband, she has to seek permission from District Court. Therefore, the petitioner prays to dismiss this petition.

3. Now the point for consideration is whether the petitioner is entitled to get the relief as prayed for?

4. On the side of petitioner and respondent, no oral and documentary evidences were let-in.

Points for consideration:

5. Heard both sides learned counsels. Material records perused. This is the petition filed under Order 32 Rule 3(1) of CPC to permit the petitioner to prosecute the original suit on behalf of 3rd respondent as his guardian. The suit is filed for the relief of partition and separate possession. When the suit was posted for defendant side evidence, this petition was filed. According to the petitioner, she is not the party in

suit, 3rd defendant is her husband. The 1st and 2nd respondent are the 1 and 2 plaintiffs, 3 to 8 respondents are 1 to 6 defendants in the original suit. The 3rd defendant is contesting the suit and he has also filed his written statement. The 3rd defendant is suffering from nerves problem and as a consequence, he was affected by schizophrenia. The petitioner has also annexed the medical certificate in that regard. Therefore, the 3rd defendant could not attend the court. On the other hand, the respondents contends that the prescription filed along with this petition has expired. Also when the 3rd defendant was affected mentally, it is doubtful as to how he has filed his written statement. If the petitioner intends to conduct the suit on behalf of her husband, she has to seek permission from District Court. On perusal of records, it is seen that plaintiff side evidence was closed and suit is in the stage of defendant side evidence.

6. The section 120 of Indian Evidence Act authorizes the spouse to adduce the evidence on behalf of another in civil cases. In this petition, the wife of 3rd defendant annexed the medical certificate of his husband alleging his mental infirmity and prayed to appoint her as guardian to adduce the evidence. The suit is filed for the relief of partition and therefore in the considered view of this court, the wife is competent witness to adduce the evidence on behalf of 3rd defendant. Considering, the medical certificate produced and in the interest of justice, this court is inclined to allow this petition.

In the result, this petition is allowed. No costs.

Dictated to the steno-typist, transcribed by her and typed in computer, corrected and pronounced by me in the open court this the 20th November 2023.

(Sd/-S.Suganiya Sri)
Additional District Munsif,
Chidambaram.