

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM.**

Present: Mr. T. GANESH, B.A., B.L.,

Subordinate Judge, Madurantakam

Monday, this 24th day of June 2024

I.A.No.2/2023

in

O.S.No.14/2016

(CNR.No.TNKPOB000086-2016)

1. Rukmaniammal (died)
2. Thenmozhi, rep. By her natural guardian and next friend mother
Rukmaniammal and now rep. By her sister 3rd plaintiff Kamatchi
3. Kamatchi
4. Murugan
5. Vanitha
6. Manikandan @ Mani

... Petitioners/Plaintiffs

..Vs..

Radhakrishnan

... Respondent/Defendant

This petition coming up for final hearing on 12.06.2024 in the presence of Thiru.A.Karunanidhi, Counsel for the petitioners/plaintiffs and Thiru.V.Agoram, counsel for respondent/ defendant, after hearing the arguments on both sides and upon perusing the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioner under Order XXXII Rule 1 to 14 (Except Rule 2 A) and section 151 of CPC to permit the 3rd plaintiff Kamatchi to represent on behalf of 2nd plaintiff and also to proceed with the same on her behalf.

2. Averments of the petitioner:

Petitioners filed the suit for partition and separate possession of their share in the suit properties. 2nd petitioner is a psychiatric patient and she was represented by her mother namely the 1st plaintiff. 1st plaintiff died on 14.02.2020. Now the 2nd petitioner is under the care and custody of her sister namely 3rd petitioner. Hence the petitioners filed this application to appoint the 3rd petitioner as guardian of the 2nd petitioner in suit.

3. Counter in brief:

The respondent denies the allegations set out in the affidavit. No proof produced to show that the 2nd petitioner is a psychiatric patient. Petition is only to drag on the proceedings. Hence the respondent prays for dismissal of the application.

4. Heard both sides and perused the records.

5. Point :-

“Whether this application can be allowed?”

At the outset it is pertinent to note that already this court has accepted the plea that the 2nd petitioner is a person of unsound mind and appointed the 1st plaintiff, the mother as guardian. As the 1st plaintiff died the petitioners came up with this application to appoint the sister of the 2nd petitioner as guardian for her. There is no serious allegations putforth in the counter of the respondent except the delay proceedings.

It is pertinent to note that this court already had an enquiry as contemplated under Order XXXII Rule 15 of CPC in respect of the unsound mind of the 2nd petitioner and granted leave to the 1st plaintiff to act as guardian of the 2nd petitioner. So, there need not be any rowing enquiry again to decide the unsoundness of the 2nd petitioner. Even then the petitioners have produced a document issued by the government to show that the 2nd petitioner is a of unsound mind. Hence there is no doubt that the 2nd petitioner is of unsound mind.

Next the learned counsel for the respondent vehemently argued that the guardian has to be appointed only by District collector and that Order XXXII of CPC would have no application. It is pertinent to note that the petitioners filed the suit for partition before civil forum. So, the court ought to adopt the Civil Procedure code to appoint guardian for an unsound

person. Hence the contentions of the respondent cannot be accepted. So, there is no bar to allow this application.

In fine this application is allowed. No cost.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 24th day of June 2024.

Subordinate Judge,
Madurantakam.

I. Petitioner side evidence and Exhibits : Nil.

II. Respondents side Evidence and Exhibits : Nil.

Subordinate Judge,
Madurantakam.