

IN THE COURT OF THE SUBORDINATE JUDGE, MELUR.

Present: Tmt. M. SAMUNDEESWARI PRABHA, M.A., M.L.,

Tuesday, the 25th day of March 2025

I.A.No.7/2022

in

O.S.No.93/2022

R. Sumathi Petitioner / Plaintiff

// Vs //

1. R. Krishnan @ R.Krishnamoorthy

2. K. Shashi Kumar

..... Respondents/Defendants

This petition coming up for final hearing before me on 08.07.2024 in the presence of Advocate.Mr.A.Satharkhan, Advocate for the Petitioner and Advocate.Mr.Saba Balamurugan, Advocate for the 1st respondent and Advocate.Mr.K.Ramesh, Advocate for the 2nd respondent and upon hearing the enquiry on both sides and on perusal of the records and having stood over for consideration till this day, this court delivers the following:-

ORDERS

This petition has been filed Under Order 32A Rule 15 of CPC pass an order to appoint the petitioner as guardian to the 1st respondent of this petition.

1. Brief averments of the petition :-

(I) The petitioner herein is the wife of the 1st defendant and the petitioner/plaintiff have filed this suit for partition in OS.No.93/2022. The above said suit is pending before this court, many times this court repeated the appearance of the 1st Defendant. The petitioner husband (1st Defendant) appeared before this court for the first time when the above matter 1st Defendant came up for hearing dated on 26.09.2022. The petitioner husband is unable to lead the normal life in sense partially he has become mentally deranged. He could not understand questions and answers the same in fact his behaviors in court also would reveal that he is not mentally all right. The petitioner husband the 1st Defendant Krishnan @Krishna Moorthy took more time for answering each question. He is suffering from mental infirmity due to the accident happened in the year 2017. The petitioner hearing have stated the awarement in the main suit the 1st Defendant is of unsound mind. This court also put questions to 1st Defendant when he appeared for first time dated 26.09.2022 in which the 1st Defendant was answered not properly, he contradicted himself back and forth. No application of mind with respected of 1st Defendant for example this court put questions to the 1st Defendant.

(ii) The 1st Defendant (R.Krishnan @R.Krishna Moorthy) is incapable of protecting his interest in the suit. Further this court also observed the abnormal activities of the 1st Defendant (R. Krishnan @R.Krishna Moorthy). The petitioner have spent all her money and all her jewels and her life for the welfare of the 1st Defendant (R.Krishnan @R.Krishna Moorthy) to recover and for the treatment in the hospital when the 1st Defendant (R.Krishnan @R.Krishna Moorthy) met in an accident. The relative of the 1st Defendant (R.Krishnan @R.Krishna Moorthy) with melefied intention misleading the 1st Defendant (R.Krishnan @R.Krishna Moorthy) and taking the advantage of the mental weakness and mental infirmity of her husband (1st Defendant) at the same time the other third parties are also cheating her husband (1st Defendant R.Krishnan @R.Krishna Moorthy). The 1st Defendant and petitioner herein already entitled to sale agreement with the respect of property in the name of 1st Defendant situated in Bangalore since the Petitioner herein made her contribution. The petitioner herein is the wife of the 1st Defendant who takes complete care to be appointed as guardian of the 1st Defendant (R.Krishnan @R.Krishna Moorthy). Hence this petition has to be allowed.

2. Brief averments of the counter affidavit filed by the respondents/defendants :-

(I) The respondent herein is the 1st defendant in the original suit. Save and except those which are specifically admitted and the others are put to strict proof of the same. The petitioner is the wife of the 1st defendant/1st respondent. Due to the petitioner's misconduct and the

lack of proper understanding between the petitioner and the respondent, the respondent has been living permanently separated from the petitioner for over 30 years. He has also filed a petition for divorce from the petitioner in the Family Court, Chennai. However, the 1st respondent was unable to appear in person during the trial due to his ill health. Therefore, the case was dismissed for default. However the respondent has been living separately from the petitioner for more than 30 years. A few years ago, the respondent was involved in an accident and suffered a head injury. He has been receiving treatment at a government hospital and is currently in good spirits. At this time, the petitioner is asked everyone that he treated the respondent. The respondent has been harassing the respondent by claiming that he kept the hospital documents related to the treatment received by the petitioner and that he himself had seen the doctor and that the respondent was not in a good mood after the accident.

(ii) The suit property are ancestral property of the respondent. The said property was duly divided between the respondent and his brothers after the time of the respondent's father. According to the above division, the property in this suit and other properties are vested in the respondent. The opposing petitioner is relying on this property for his future livelihood, but the petitioner intends to claim it. Therefore, the petitioner is deliberately trying to seize the property of the respondent by claiming that he is mentally ill. Hence this petition has to be dismissed with costs.

3. Brief averments of the reply statement filed by the petitioner :-

(I) The above 1st Defendant is her husband and he met with an accident in the year 2017 and got heavy head injury. As the result of that accident the 1st defendant herein is suffering from neuroanatomy temporal lobe till date. The have filed the medical report of the 1st defendant as evidence before this court. The petitioner prayed for medical examination in I.A.No.8/2023 in O.S.No.93/2022 dated on 19.01.2023 before this court. After hearing the 1st defendant and observing the activity of 1st defendant this Hon'ble court come to the conclusion and allowed the above IA.No.8/2023 dated on 19.04.2023 with direction to the 1st defendant for medical examination. But the Respondent/1st Defendant never obliged nor went for medical examination. The action of 1st Defendant is well clear that he is suffering from neuroanatomy temporal lobe till day.

(ii) The petitioner deny the para 2nd and 3rd in objection filed by the 1st defendant herein. Since from the year of accident 2017 and taken the medical treatment till 2020. The petitioner done service like a hospital lower grade servant for the 1st defendant and spent her own jewels, money (more than Rs.15,00,000/-) for the welfare (Including the Hospital expenditure) of the 1st defendant. But well knowingly the 1st defendant herein suppressed all the true facts before this court.

(iii) The 1st Defendant relatives are taking the advantage of the 1st defendant mental illness and grabbing the property and giving the wrong direction. The petitioner have filed I.A.No.7 /2022 in O.S.No.93 / 2022 is only for the welfare of the, life of the 1st defendant and to

safeguard the health and properties and further to give him medical treatment. Hence this petition has to be allowed.

4. The point for consideration aroused is that :-

Whether the petition has to be allowed or not ?

5. Point :-

This petition has been filed to appoint the petitioner as guardian to the 1st respondent herein. In fact the main suit has been filed by the petitioner as against the respondents herein.

The petitioner has filed Medical records to show that the 1st respondent who is none other than her husband is suffering from head injury and so he could not conduct the legal proceedings. In fact the Plaintiff/Petitioner has filed the main suit as against him and so she couldn't be appointed as guardian or next friend on the 1st respondent. If there is a necessity, this court will appoint the next friend as and when it is required. Hence this petition has got no merits.

6. Result:-

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

Dictated to the Steno Typist by me, and typed by her directly, corrected and pronounced by me in open court, this the 25th day of March 2025.

**Sub Judge,
Melur.**

Petitioner and Respondents both sides witness and documents : Nil

**Sub Judge,
Melur.**

**Draft/Fair Order
in
IA.No.7/2022
in
O.S.No.93/2022
Dt : 25.03.2025
Sub Court, Melur.**