

(2011) 04 MAD CK 0390

Madras High Court

Case No: C.R.P. NPD. No. 2015 of 2005

Thanikachalam @ P.T. Chalam
rep. by his legal representatives
(P.T. Dhanalakshmi, T. Kannan
and P. Dhanasekaran)

APPELLANT

Vs

A. Murugesan

RESPONDENT

Date of Decision: April 19, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 14 Rule 6, Order 9 Rule 13
- Constitution of India, 1950 - Article 227

Hon'ble Judges: S. Tamilvanan, J

Bench: Single Bench

Advocate: R. Thiagarajan, for the Appellant; S. Sivasamy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Tamilvanan, J.

This Civil Revision Petition has been preferred against the order and decreetal order dated 27.06.2005 made in E.A. No. 1365 of 2005 in E.P. No. 1584 of 2004 in O.S. No. 6935 of 1996 on the file of the X Assistant Judge, City Civil Court, Chennai.

2. It is seen that the Execution Petition in E.P. No. 1584 of 2004 was filed by the Respondent/decreed holder, pursuant to the decree passed in O.S. No. 6935 of 1996 for specific performance of the contract. The Execution Application in E.A. No. 1365 of 2005 was filed by the Petitioners/judgment debtors under Order XVI Rules 6 and 7 read with Rule 14 of CPC., seeking permission to examine one Doctor Reginald, if he is not available to examine any other competent Doctor attached to the Appolo Hospital, No. 21 Greames Lane, Chennai-600 006, to speak about the discharge summary report dated 02.06.1991.

3. It is an admitted fact that the Respondent/decreed holder had filed the suit seeking specific performance of contract against one Thanikachalam alias Chalam and the Petitioners herein are the legal representatives of the said person. The Petitioners have stated that an ex parte decree was obtained by the Respondent/decreed holder on 06.01.1997 and subsequently E.P. Nos. 2088 of 1997 and 2090 of 1997 were filed and dismissed on 05.06.2002 and according to them the aforesaid Thanikachalam was a mental patient and he could not have executed the sale deed. Hence, the decree passed by the court below is a nullity. With the aforesaid plea, the Petitioners have sought an order to examine a Doctor by name Reginald to speak about the discharge summary report dated 02.06.1991 and if he is not in service to examine some other Doctor of the Appolo Hospital.

4. As contended by the learned Counsel appearing for the Respondent/decreed holder, the Petitioners being the legal representatives of the deceased cannot go beyond the scope of the decree. Though the decree was passed nearly 23 years after the separate decree, the Petitioners have come forward with a defence that the deceased Thanikachalam was a mental patient and to establish the said factum that they want to examine a Doctor who attended the said person on 02.06.1991. Had it been true, they could have filed an application under Order 9 Rule 13 CPC. to set aside the ex parte decree dated 06.01.1997, immediately after the decree being passed. The Respondent/decreed holder has stated in the counter that I.A. Nos. 19709 of 1999, 19710 of 1999, 19711 of 1999 and 15553 of 2000 were already filed to examine the Doctor stating that the Defendant was mentally ill, during the pendency of the above application. However, no attempt was made to produce the Defendant before the trial court to enable the court to adjudge his mental condition.

5. According to the learned Counsel appearing for the Respondent/decreed holder, the claim of the Petitioners is legally not maintainable and that the same is only a delay tactics adopted by the Petitioners. In the impugned order, the court below has specifically stated that the very same Petitioners have filed a similar petition before the trial court during the life time of the deceased. However, they failed to proceed with the same and hence the petition was dismissed. Even, the deceased was not produced before the court below for holding enquiry, prior to the death of the said deceased on the alleged reason.

6. It is not in dispute that Order 32 Rule 15 apply to persons of unsound mind, who, though not so adjudged are found by the court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued. The rights of such person has to be protected as per Rule 15 Order 32 of CPC.

7. In the instant case, admittedly no such steps had been taken by the Petitioners, while the person of alleged unsound mind was alive for the reasons best known to the Petitioners herein. However, nearly 20 years after the alleged date of discharge summary of the deceased Thanikachalam @ P.T. Chalam, even without producing any supporting document, the Petitioners have come forward with a petition before

the court below to examine a Doctor one Reginald, if he is not available or any other competent Doctor attached to the Appolo Hospital, No. 21 Greames Lane, Chennai-600 006, to speak about the discharge summary report dated 02.06.1991.

8. In *Kasturi Bai and Ors. v. Anguri Chaudhary* 2003 (2) CTC 276 the Hon"ble Supreme Court, with reference to Order 32 Rule 15 of the Code of Civil Procedure, 1908 has held that "appointment of guardian to protect interest of persons, who are incapable of protecting their interest due to mental infirmity and the provision provides for appointment of guardian not only in respect of persons adjudged to be of unsound mind but also in respect of persons who are found by court after due enquiry to be incapable of protecting their rights when suing or being sued by reason of mental infirmity".

9. It is not dispute that Rules 1 to 14 (except Rule 2A) apply to persons of unsound mind, Rules 1 to 14(except Rule 2A) apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.

10. In *A. Manonmani v. A. Siva Subramanian* 2004 (5) CTC 487, a Division Bench of this Court has held that "if the court is satisfied that the Defendant is either a minor or a person of unsound mind or a person incapable of protecting his or her interest when suing or being sued, a further duty is cast on the court itself to decided who could be a proper person to be appointed as a guardian ad litem for an effective representation of the case on behalf of the minor or a person of unsound mind".

11. In the case of *Gurus my and Ors. v. Santhanam* 2004 (5) CTC 102, while deciding a revision petition under Article 227 of the Constitution of India, this Court has held thus:

in this case, the objection appears to be that the document sought to be proved is itself inadmissible in evidence, whereas the objection is not towards the mode of proof, alleging the same to be irregular or insufficient ,as settled by the Apex Court in [R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another](#), , merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision, therefore, there cannot be any difficulty in receiving the document for the purpose of marking the same in evidence and it at all, it is always open to the other party to raise admissibility of the document

12. The aforesaid decisions cited by the learned Counsel appearing for the Petitioners are not applicable to the facts and circumstances of this revision petition. Admittedly the Petitioners/ judgment debtors are not persons of unsound mind. Being the legal heirs they could have produced any document before the court below to show that Thanikachalam @ P.T. Chalam was a person of unsound mind

while he was alive. The relief sought for in the Execution Application is to permit the judgment debtors to examine a Doctor by name Reginald, if he is not available or any other competent Doctor attached to the Appolo Hospital, No. 21 Greames Lane, Chennai-600 006, to speak about the discharge summary report dated 02.06.1991.

13. It is seen that the Petitioners are not certain about the fact that whether the said Doctor Reginald is working in the aforesaid private hospital or not and admittedly, the Petitioners have not produced any discharge summary or report dated 02.06.1991 relating to the deceased Thanikachalam from the Appolo Hospital.

14. In the counter filed by the Respondent/decreed holder, it has been specifically averred that the Petitioners had already filed similar application in I.A. No. 15553 of 2000 and that was dismissed for non prosecution and the same has not been disputed by the Petitioners/ judgment debtors. Similarly, the Respondent/decreed holder has averred that I.A. Nos. 19709 of 1999, 19710 of 1999 and 19711 of 1999 were filed by one Mr. Kannan one of the sons of the deceased Thanikachalam seeking stay of the decree and to condone the delay of 384 days and to set aside the exparte decree respectively and the same were dismissed. However, no revision was preferred by the said Petitioner therein. The petition filed under Order 32 Rule 4 CPC. was also dismissed by the court below.

15. The Petitioners have specifically stated that Thanikachalam, the Defendant in the suit died on 24.12.2000. Though the exparte decree was passed on 06.01.1997, subsequently the Petitioners filed a petition to condone the delay, to set aside the exparte decree and also seeking stay of the decree, however the same were dismissed by the court below and admittedly the orders reached finality. The present Application in E.A. No. 1365 of 2005 was filed by the Petitioners only on 15.03.2005 as per the accompanying affidavit filed by them, nearly five years after the death of Thanikachalam, the Petitioners wanted to examine a Doctor by name Reginald, even without knowing the fact, whether he is serving in the hospital or not. In the alternative to examine any other competent Doctor attached to the Appolo Hospital, No. 21 Greames Lane, Chennai-600 006, to speak about the discharge summary report dated 02.06.1991. The Petitioners have not even filed any such discharge summary report of Thanikachalam @ P.T. Chalam dated 02.06.1991.

16. The Hon"ble Supreme court in the decision reported in 2003 (2) CTC 276 (Kasturi Bai and Ors. v. Anguri Chaudhary) has categorically held that Order 32 Rule 15 CPC. is applicable for appointment of guardian not only in respect of persons adjudged to be of unsound mind but also in respect of persons who are found by court after due enquiry to be incapable of protecting their rights when suing or being sued by reason of mental infirmity.

17. In the instant case, the Petitioners herein cannot raise a legal defence that on 02.06.1991, Thanikachalam, the deceased was insane or a person of unsound mind, nearly five years after the death of the Defendant. It is strange that the legal heirs of

the deceased without knowing the fact that whether he is working or not have come forward with the petition, to examine some Doctor who issued the alleged discharge summary dated 02.06.1991, even without producing a copy of the same and without knowing whether one Doctor Reginald is serving in the Hospital or not.

18. As contended by the learned Counsel appearing for the Respondent/decreed holder, the decision cited by the learned Counsel appearing for the Petitioners are no way applicable to the facts and circumstances of the case and it can be construed as only an abuse of process of court and the law, only to protract the proceedings against the Respondent/decreed holder. The relief sought for by the Petitioners is not legally sustainable and the earlier petitions were also dismissed. Hence, the present petition filed by the Petitioners could be construed only a clear abuse of process of court and the law and accordingly the same is liable to be dismissed.

19. Therefore, I could find no error or infirmity in the impugned order passed by the Court below so as to warrant any interference by this Court.

20. In the result, this Civil Revision Petition is dismissed. No order as to costs.