

(2014) 02 OHC CK 0055
In the Orissa High Court
Case No : F.A.O. No. 314 of 2012

Animarani Barua and Another

APPELLANT

Vs

Collector-cum-District Magistrate and Another

RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Mental Health Act, 1987 — Section 50, 51, 52, 53, 54

Citation : (2014) 118 CLT 131 : (2014) 1 OLR 647

Hon'ble Judges : Raghubir Dash, J

Bench : Single Bench

Judgement

R. Dash, J.—This is an application u/s 76 of the Mental Health Act, 1987 (for short "the Act") challenging the order dated 16.5.2012 passed by the learned District Judge, Cuttack in Guardianship Petition No. 122 of 2011.

2. Appellant No. 1 is the mother and appellant No. 2 is her mentally ill son. Appellant No. 1 and appellant No. 2, being represented by appellant No. 1, filed the Guardianship Petition under Sections 50, 51, 52 and 53 of the Act praying therein that the appellant-petitioner No. 1 be appointed as the guardian for the person and Manager of the property of appellant-petitioner No. 2 claiming that the latter being a mentally ill person is incapable of taking care of himself and of managing his property. The learned District Judge recorded his finding that appellant No. 2 is a mentally retarded/mentally ill person and it is necessary to appoint a guardian in respect of the person and property of appellant No. 2. However, the mother of the mentally ill person was not found to be fit to be appointed as the guardian of her mentally ill son solely on the ground that before making the Guardianship Application, the mother had executed a sale deed in respect of some property in which her son had a share which, according to the learned District Judge amounted to acting adversely to the interest of the mentally ill person. Consequently the Guardianship Petition was dismissed vide the impugned order. On behalf of the appellants, it is submitted that when the learned District Judge has come to a categorical finding that appellant No. 2 is

mentally ill, he should have allowed the Guardianship Petition appointing the mother as the guardian of the mentally ill person. It is also contended that the finding recorded by the learned District Judge that the mother has acted adverse to the interest of her son being without any basis, be set aside.

3. The impugned order reflects that the learned District Judge has recorded his findings that appellant No. 2 is mentally ill. However, there is no finding that Appellant No. 2, because of his mental illness is not capable of taking care of himself and of managing his property. Once it is decided that the mentally ill person is such incapable, Section 52 of the Act mandates that the District Court shall make an order for appointment of a Guardian u/s 53 of the Act to take care of the mentally ill person and of a Manager u/s 54 of the Act for the management of his property. Under Sub-section (4) of Section 52 of the Act where it is deemed to be fit the District Court may appoint the same person to be the guardian and the manager. It is only after the Manager is appointed u/s 54 of the Act, the Manager so appointed shall have the power u/s 59 of the Act to manage the property. Even though the Manager gets the power to manage the property, he cannot mortgage, create any charge on, or, transfer by sale, gift, exchange or otherwise, any immovable property of the mentally ill person or lease out any such property for a period exceeding five years, unless he obtains the permission of the District Court in that behalf by making an application u/s 59(2) of the Act. When such permission is sought for, the District Court shall proceed u/s 59(4) of the Act and grant or refuse permission having regard to the interest of the mentally ill person. Therefore, at the stage of making a decision as to whether the mother should be appointed as the Guardian of the person as well as Manager of the property of the mentally ill person, the learned Court below should not have been influenced by the fact that before making the Guardianship Petition the mother had attempted to alienate the immovable property in which her son has got a share.

So far appointment of Manager for management of property of the mentally ill person is concerned, the District Court is required to consider the same matter in accordance with the provisions contained in Section 54 of the Act. Since the learned District Judge has not disposed of the petition in accordance with Sections 53 and 54 of the Act, the matter needs to be remanded to the District Court for disposal of the Guardianship Petition afresh.

4. In the result, the FAO is allowed, the impugned order is set aside and the matter is remanded for disposal afresh, if necessary, giving opportunity to the appellants to adduce additional evidence as well as opportunity of being heard in the matter.