

(2007) 02 AP CK 0099
In the Andhra Pradesh High Court
Case No : CMA No. 3390 of 2002

Boggavarapu Sriramam

APPELLANT

Vs

B. Suryanarayana Murthy and Others

RESPONDENT

Date of Decision : 27-02-2007

Acts Referred:

Guardians and Wards Act, 1890 — Section 25, 39, 7
Mental Health Act, 1987 — Section 52, 53, 54

Citation : (2007) 5 ALD 19 : (2007) 6 ALT 158

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V. Venkataramana, for the Appellant; M. Sivananda Kumar, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri Anand Rao, the Counsel representing the appellant and Sri Sivanand Kumar, the Counsel representing the contesting respondents.

2. The unsuccessful petitioner, Boggavarapu Sriramam in IA. No. 388 of 1998 in OP No. 412 of 1995 on the file of the Court of District Judge, East Godavari at Rajahmundry, had preferred the present civil miscellaneous appeal.

3. The appellant herein, the petitioner moved an application, IA. No. 388 of 1998 in OP. No. 412 of 1995 on the file of the Court of District Judge, East Godavari at Rajahmundry, u/s 39 of the Guardian and Wards Act, 1890 {hereinafter referred to for short "the Act" for the purpose of convenience} to remove the third respondent from the guardianship of the property for the mental ill-person Maitreyudu and appoint him as property guardian.

4. The learned Judge on the strength of the evidence of PW.1 and RW.1 and also Exs.A1 to A6 came to the conclusion that the appellant-petitioner failed to make reasonable ground to remove the third respondent as property guardian of congenital idiot-Maitreyudu and accordingly dismissed the petition with costs of

R3. Aggrieved by the same, the present civil miscellaneous appeal is preferred.

5. The Counsel representing appellant made elaborate submissions in relation to the provisions of the Act and also certain provisions of the Mental Health Act, 1987 and would submit that the learned Judge recorded erroneous findings and hence the impugned order to be interfered with.

6. The Counsel representing the contesting respondents however would maintain that in none of the grounds for removal of the guardian or replacing of the guardian had been made out and hence the impugned order does not suffer from any illegality whatsoever.

7. The appellant-petitioner in the affidavit filed in support of the application, IA No. 388 of 1998 in OP No. 413 of 1995 aforesaid, averred that on his application to appoint him as guardian for the person and property of the mentally ill-person-Maitreyudu the Court appointed him as guardian for the person and third respondent as guardian for the property for the mentally ill-person Maitreyudu. It is stated that the third respondent is the bank employee residing at Hyderabad and the property of the mentally ill-person i.e., a portion in the big family house and the site appurtenant thereto is situated in Tapeswaram, which is far away from his residence and after appointment of third respondent as guardian for the property of mentally ill-person Maitreyudu on 13-8-1997, the third respondent has not taken any care to protect and preserve the property of mentally ill-person Maitreyudu. A portion of the family house got badly damaged in November 1996 cyclone. The third respondent-property guardian has not taken any care to get the house repaired. The house being a tiled one, there is imminent danger to it if repairs are not attended promptly. The third respondent property guardian has not done anything to collect rents from the tenants in occupation of a portion of the premises belonging to the mentally ill-person Maitreyudu. As the electricity charges were not paid in respect of the premises, the meter was taken away by the departmental officials and no action was taken by the third respondent property guardian to restore the power supply. The third respondent committed default in payment of monthly maintenance amount ordered to be paid while the petition was pending enquiry. The third respondent also opposed the application filed by the petitioner for release of Rs.1,500/- per month as granted by the Court as per orders dated 13-8-1997. The third respondent also instigating the mentally ill-person Maitreyudu to revolt against the petitioner. The third respondent is unfit to continue as property guardian of mentally ill-person Maitreyudu. The petitioner is at liberty for modification of the order as observed by the High Court in CMA No. 1670 of 1997. Since the third respondent is not evincing any interest in looking after the property of mentally ill-person Maitreyudu, he is unfit to continue as property guardian. Since the petitioner has been acting as guardian for the person of mentally ill-person Maitreyudu, he is entitled to act as property guardian.

8. The third respondent resisted the said application by filing a counter-affidavit in detail with the following averments:

As per the orders in OP No. 413 of 1995 dated 13-8-1997, the petitioner is appointed as guardian for the person and this respondent is appointed as guardian for the property of mentally ill-person Boggavarapu Maitreyudu. The respondent is a bank employee and he is presently working at Hyderabad. The allegation that the respondent has not cared to protect and preserve the property of mentally ill-person-Maitreyudu is false. After his appointment as guardian for the property of mentally ill-person Maitreyudu, he visited Tapeswaram Village and found that the petitioner inducted some persons as tenants in a portion of the house belonging to mentally ill-person Maitreyudu. Subsequently, the tenants evicted the premises. It is the petitioner, who is preventing the persons to take the house on lease. The respondent in pursuance of the orders of the Court demanded the petitioner and the respondents 1 and 2 to render a true and correct accounts of the amounts realized by them. The petitioner failed to furnish accounts and instead filed the application to remove the respondent as property guardian of mentally ill-person Maitreyudu. The allegation that a portion of the house fell to the share of mentally ill-person Maitreyudu requires repairs to a tune of Rs.10,000/- is false. The joint family house was partitioned between the coparceners and a portion of the joint family house was allotted to the share of mentally ill-person Maitreyudu. The petitioner, respondents 1 to 3 and their deceased brother have got shares in the joint family house. Except the petitioner, the other sharers are away from Tapeswaram Village. The petitioner is in occupation of the entire house. The petitioner under the guise of the effecting repairs to the portion of house that fell to the share of mentally ill-person Maitreyudu wants to knock away the funds belonging to the mentally ill-person. The respondent never opposed the application filed by the petitioner to withdraw the amounts for the maintenance of the mentally ill-person Maitreyudu. The substantial part of the estate of the mentally ill-person Maitreyudu in the form of investments. There are no other immovable properties except a portion of the joint family house, which are required to be maintained by the respondent.

9. On behalf of the petitioner, PW.1 was examined and Exs.A1 to A6 were marked. On behalf of the third respondent, RW.1 was examined. The second respondent appeared in person and filed counter opposing the application but he did not choose to adduce any evidence.

10. The learned Judge framed the following point for consideration:

Whether the petitioner made out reasonable grounds to remove the third respondent as guardian for the property of mentally ill-person Maitreyudu?

11. The learned Judge recorded reasons at paras 6, 7, 8, 9 and 10 and ultimately negated the relief. Hence, the civil miscellaneous appeal.

12. The following points arise for consideration in this CMA:

(1) Whether the findings recorded by the learned Judge to be confirmed or disturbed in the facts and circumstances of the case?

(2) If so to what relief the parties would be entitled to?

13. Point No. (1)

Section 39 of the Act deals with removal of guardian and the said provision reads as hereunder:

The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely:

- (a) for abuse of his trust;
- (b) for continued failure to perform the duties of his trust;
- (c) for incapacity to perform the duties of the trust;
- (d) for ill-treatment, or neglect to take proper care, of his ward;
- (e) for contumacious disregard of any provision of this Act or of any order of the Court;
- (f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfit him to be the guardian of his ward;
- (g) for having an interest adverse to the faithful performance of his duties;
- (h) for ceasing to reside within the local limits of the jurisdiction of the Court;
- (i) in the case of a guardian of the property, for bankruptcy or insolvency;
- (j) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject:

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Act or not, shall not be removed--

- (a) for the cause mentioned in Clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that the person made and maintained the appointment in ignorance of the existence of the adverse interest, or
- (b) for the cause mentioned in Clause (h) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

14. The grounds to be made out for removal of guardian had been dealt with in Lakshmi Devi Vs. Chandrakala Saraogi and Another, , K.R. Thangapandian Vs. Kuchu Bomma Naicker and Another, , Kisandas Laxmandas Gujar and Others Vs. Godavaribai Govinddas Gujar and Others, and Sankar Prasad Khan and Others Vs. Smt. Ushabala Dasi and Others, , Jagarnath Lal Vs. Lal Babu, .

15. No doubt strong reliance was placed on certain provisions of the Mental

Health Act, 1987. Section 52 of the said Act deals with provision for appointing guardian of mentally ill-person and for manager of property. Section 54 deals with appointment of manager for management of property of mentally ill-person. Certain submissions are made in relation to the scope and ambit of the provisions of the Act and also the provisions of the Mental Health Act, 1987.

16. The appellant herein filed OP No. 413 of 1995 under Sections 7 and 25 of the Act and also Sections 52 - 54 of the Mental Health Act, 1987 to appoint him guardian for the person and property of Maitreyudu. The said Maitreyudu, the appellant-petitioner and R1 to R4 are brothers. The learned Judge by order dated 13-8-1997 appointed the appellant-petitioner as guardian for ill-person and the third respondent as guardian for the property of congenital idiot-Maitreyudu. The appellant-petitioner filed the present application for removal of third respondent as guardian of Maitreyudu.

17. The grounds raised are that the third respondent is not evincing any interest to keep the property intact and the second ground is that the third respondent is residing out of the jurisdiction of the Court. The learned Judge recorded the reasons in detail at paras 9 and 10 of the order. By the date of appointment of third respondent as guardian, he was residing within the jurisdiction of the Court and the learned Judge considered all the factors and appointed third respondent as guardian by order dated 13-8-1997. The learned Judge also recorded that if the person was residing outside the jurisdiction of the Court at the time of his appointment as guardian, he cannot subsequently be removed on the ground that he ceased to reside within the jurisdiction of the Court.

18. While discussing the other grounds that the third respondent is not evincing any interest in keeping the property of Maitreyudu intact the evidence of PW.1 and RW.1 had been discussed at length and Exs.A1 to A6 letters and postcard also had been considered and positive findings had been recorded. On overall appreciation of the respective stands taken by the parties and also the oral and documentary evidence available on record, inasmuch as none of the grounds specified u/s 39 of the Act had been satisfied, the learned Judge came to the conclusion that the application filed by the appellant-petitioner being devoid of merit and the same to be dismissed and accordingly the said application was dismissed.

19. Point No. 2:-In the light of the findings recorded by the learned Judge, this Court is of the considered opinion that the civil miscellaneous appeal is devoid of merit and accordingly the same shall stand dismissed. However, inasmuch as two Brothers are fighting this litigation in relation to the property and person of yet another, the parties to bear their own costs.