

(2015) 04 KAR CK 0335

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1937 of 2015

In Re: Ramrustgi and Others

Date of Decision : 09-04-2015

Acts Referred:

Mental Health Act, 1987 — Section 60(1)

Citation : (2015) 04 KAR CK 0335

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : D.R. Sundaresha, Advocate for Narasimharaju, for the Appellant

Final Decision : Allowed

Judgement

H. Billappa, J.

1. This appeal is directed against the order dated 26.02.2015 passed by the V Additional City Civil Judge, Bengaluru City, in Misc. No. 15/2015.

2. By the impugned order, the Trial Court has dismissed the petition filed by the appellants praying to appoint them as guardians of the appellant No. 3 and to permit them to sell the properties of appellant No. 3.

3. Aggrieved by that, the appellants have filed this appeal.

4. Briefly stated the facts are; The appellant Nos. 1 and 2 are the parents of the appellant No. 3. Appellant No. 3 is a major. He is aged about 25 years. He is mentally ill person. The Medical Authority for disability of Victoria Hospital has issued disability certificate. The daughter of the appellant Nos. 1 and 2 has issued no objection to appoint appellant Nos. 1 and 2 as guardians of appellant No. 3. The Presiding Officer of City Civil Court, CCH-11, had granted certificate to sell the schedule property on 28.10.2005 in G and W.C. case.

5. It is stated, the appellant No. 2 had purchased the property bearing Sy. No. 97/2 (Old Sy. No. 97) situated at Gunjur Village, Varthur Hobli, Bengaluru South Taluk (now Bengaluru East Taluk) measuring 1 acre 30 guntas and property bearing Sy. No. 92/1B (Old Sy. No. 92) situated at Gunjur Village, Varthur Hobli,

Bengaluru South Taluk (now Bengaluru East Taluk) measuring 10 guntas through registered sale deed dated 4.8.1995 and she was the absolute owner and she was in possession and enjoyment of the property. Thereafter, the appellant No. 2 had executed a registered gift deed in favour of the appellant No. 3 out of love and affection in respect of the property bearing Sy. No. 97/2 (Old Sy. No. 97) situated at Gunjur Village, Varthur Hobli, Bengaluru South Taluk (now Bengaluru East Taluk) measuring 1 acre 30 guntas and another property bearing Sy. No. 92/1B (Old Sy. No. 92) situated at Gunjur Village, Varthur Hobli, Bengaluru South Taluk (now Bengaluru East Taluk) measuring 10 guntas. At the time of execution of gift deed, appellant No. 3 was aged about 13 years. Therefore, the gift deed was executed showing appellant No. 1 as the guardian of appellant No. 3. Appellant No. 1 is the father of appellant No. 3. After gift deed was registered, mutation and RTC entries have been effected in the name of the appellant No. 3. It is stated, the appellant No. 3 is now aged 25 years. The immovable properties need to be disposed of for legal necessities of appellant No. 3. The appellant Nos. 1 and 2 had approached the Court when the appellant No. 3 was a minor. The Court was pleased to grant permission in G and W.C. No. 16/2004 on 28.10.2005. But, the properties were not disposed of. The appellant No. 3 is now a major. He is incapable of managing himself and his affairs. Therefore, the appellant Nos. 1 and 2 have prayed to appoint them as guardians of appellant No. 3 and grant permission to sell the properties standing in the name of the appellant No. 3.

6. The appellant No. 1 was examined as P.W. 1 and Exs. P-1 to P-12 have been marked.

7. The Trial Court considering the material on record by its order dated 26.02.2015 has dismissed the petition. Therefore, this appeal.

8. The learned counsel for the appellants contended that the impugned order cannot be sustained in law. He also submitted that the Trial Court has failed to consider that the appellant No. 3 is mentally disabled and he is incapable of maintaining himself and the properties. The disability certificate and identity card Ex. P-9 clearly shows that the appellant No. 3 is a mentally disabled person. Apart from this, the appellant No. 1 has deposed that appellant No. 3 is a mentally retarded person and he has suffered mental disability of 90%. Without considering the documentary and oral evidence the Trial Court has dismissed the petition stating that appellant No. 3 was not before the Court and that the doctor was not examined. The appellant No. 3 was produced before this Court. This Court has observed the condition of the appellant No. 3. Therefore, the impugned order cannot be sustained in law. Further he submitted that appellant No. 1 is the father and he is capable of maintaining appellant No. 3 and also the properties. Therefore, the appellant No. 1 may be appointed as guardian and he may be permitted to sell the properties for the benefit of the appellant No. 3.

9. I have carefully considered the submissions made by the learned counsel for the appellants.

10. It is relevant to note, the appellant Nos. 1 and 2 are the parents of the appellant No. 3. The appellant No. 3 is now aged about 25 years. It is stated, the appellant No. 3 is mentally ill person and he is incapable of taking care of himself and also the properties. Appellant No. 2 who is the mother of the appellant No. 3 has gifted the schedule properties in favour of the appellant No. 3 through registered gift deed dated 27.12.2002 when the appellant No. 3 was aged about 13 years. Appellant No. 1 is shown as guardian of appellant No. 3 in the gift deed. However, subsequently the appellant No. 3 has become mentally disabled person. He is incapable of managing himself or the properties.

11. Appellant Nos. 1 and 2 have filed G and W.C. No. 16/2004 to permit them to sell the property standing in the name of appellant No. 3. The Trial Court by its order dated 28.10.2005 has permitted the appellant Nos. 1 and 2 to sell "B" schedule property. However, the appellant Nos. 1 and 2 have not sold the property.

12. Thereafter, the appellant No. 3 has attained majority. He is mentally disabled. Therefore, appellant Nos. 1 and 2 have filed Misc. No. 15/2015 praying to appoint them as guardians of appellant No. 3 and also to permit them to sell the schedule properties. The Trial Court has rejected the petition on the ground that the doctor was not examined and the appellant No. 3 was not produced before the Court. This Court had directed the appellant Nos. 1 and 2 to produce the appellant No. 3 before this Court. On 23.03.2015, the appellant No. 3 was produced in the chambers. It was noticed by this Court that the appellant No. 3 was not capable of speaking and he was not mentally sound. Ex. P-9 is the disability certificate and identity card of the appellant No. 3. It shows that the appellant No. 3 is mentally disabled and it is permanent in nature. The disability is assessed at 90%. The appellant No. 1 who is the father of the appellant No. 3 has deposed that by birth the appellant No. 3 was not mentally ill, but by growing he was totally mentally ill-person. The Medical Authority for disability of Victoria Hospital, Bengaluru, has issued disability certificate and identity card as per Ex. P9 stating that the appellant No. 3 has suffered mental disability of 90% and it is permanent in nature. The appellant No. 1 has further deposed that his daughter Priyanka Rustagi Kumar has issued a letter stating that she has no objection to appoint the appellant Nos. 1 and 2 as guardians of the appellant No. 3. The City Civil Court (CCH-11) had granted permission to sell the properties standing in the name of the appellant No. 3 on 28.10.2005. They could not sell the properties. Further, it is deposed that properties were purchased through registered Sale Deed dated 04.08.1995 and the appellant No. 2 was the absolute owner of the properties. Thereafter, the appellant No. 2 has executed registered gift deed in favour of the appellant No. 3 out of love and affection. Thereafter, mutation has been effected in the name of the appellant No. 3. The appellant No. 3 is now aged about 25 years and he is not capable of maintaining himself or the properties. The properties need to be disposed of for legal necessities of the appellant No. 3.

13. Ex. P-1 is the certified copy of the Sale Deed dated 4.8.1995 executed in favour of the appellant No. 2. Ex. P-2 is the certified copy of the Gift Deed dated 27.12.2002 executed in favour of the appellant No. 3 by the appellant No. 2. Exs. P-3 to P-6 are the R.T.C. extracts. Ex. P-7 is the mutation extract. Ex. P-8 is the certified copy of the Order Sheet in G and W.C. No. 16/2004. Ex. P-9 is the disability certificate and identity card. Ex. P-10 is the original Sale Deed dated 04.08.1995. Ex. P-11 is the original Gift Deed dated 27.12.2002. Ex. P-12 is the no objection issued by the daughter of the appellant Nos. 1 and 2.

14. From the oral and documentary evidence on record, it is clear that the appellant No. 3 is mentally disabled person and the disability is 90%. It is permanent in nature. The observation of this Court shows that the appellant No. 3 was not capable of speaking and he was not mentally sound. There is no reason to disbelieve the evidence of the appellant No. 1 who is the father of the appellant No. 3. Ex. P-9 shows that the appellant No. 3 is a mentally disabled person. The material on record clearly establishes that the appellant No. 3 is a mentally disabled person. The appellant Nos. 1 and 2 are the parents of the appellant No. 3. The appellant No. 2, out of love and affection, has gifted the properties in favour of the appellant No. 3. However, while growing the appellant No. 3 has become mentally disabled person. The appellant Nos. 1 and 2 have approached the Court for permission to sell the properties in G and W.C. No. 16/2004. The Court has permitted to sell "B" schedule property. But for some reason, the appellant Nos. 1 and 2 have not sold the property. Now the appellant Nos. 1 and 2 have approached the Court to appoint them as guardians of the appellant No. 3 and to give permission to sell the schedule properties. The sister of the appellant No. 3 has given a letter as per Ex. P12 stating that she has no objection to appoint appellant No. 1 as guardian of the appellant No. 3. Therefore, the Trial Court was not justified in dismissing the petition. The material on record clearly establishes that the appellant No. 3 is a mentally disabled person and a guardian needs to be appointed to take care of appellant No. 3 and also his properties.

15. The learned counsel for the appellants submits that the appellant No. 1 is the father of the appellant No. 3 and he is capable of taking care of appellant No. 3 and also the properties. Therefore, the appellant No. 1 may be appointed as guardian of the appellant No. 3 to take care of appellant No. 3 and also the properties.

16. It is stated, in G and W.C. No. 16/2004, both the appellant Nos. 1 and 2 were permitted to sell the property. However, in the present case, it is appropriate to appoint only appellant No. 1 as guardian and Manager of the appellant No. 3 to take care of appellant No. 3 and also to manage and deal with the property.

Accordingly, the appeal is allowed. The impugned order dated 26.02.2015 passed by the V Additional City Civil Judge, Bengaluru, in Misc. No. 15/2015 is hereby set aside. Misc. No. 15/2015 is allowed. The appellant No. 1 is appointed as guardian and Manager of the appellant No. 3 to take care of the appellant No. 3

and also to manage the property of the appellant No. 3. The appellant No. 1 is also permitted to sell property, if need be, for the welfare of the appellant No. 3 and furnish details to the Trial Court. The appellant No. 1 shall alienate the property only for the upkeep and well being of the appellant No. 3. The appellant No. 1 shall furnish details and accounts to the Trial Court as required under section 60(1) and (2) of the Mental Health Act, 1987.