

(2014) 09 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition No. 1776 of 2014

Jaideep

APPELLANT

Vs

Uday

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 3
Mental Health Act, 1987 — Section 50

Citation : (2015) 2 ALLMR 77 : (2014) 6 MhLj 321

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : Deepa Ahuja and Chaitrali Deshmukh, Advocate for the Appellant;
Kiran Bhagalia, Advocate for the Respondent

Judgement

R.M. Savant, J.

1. Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 9-1-2014 passed by the Learned 4th Additional Judge of Small Causes Court, Pune, by which order, the application Exhibit 23 filed by the Petitioners herein for appointment of the Petitioner No.2 i.e. the Defendant No.2 to the Suit as guardian of the Petitioner No.3 i.e. the Defendant No.3 came to be rejected.

3. It is not necessary to burden this order with unnecessary details. Suffice it to say that Suit in question being Special Civil Suit No.376 of 2013 has been filed by the Respondent herein for declaration that he is the co-owner to the extent of 1/4th share in the flat in question. The second relief is that the Defendants be restrained by way of permanent injunction from creating any third party right in the suit flat whereby sell, perpetual lease, mortgage or otherwise. The Petitioner No.3 herein claims to be a legate of her mother in respect of 1/2 share of the mother in the flat in question and on the basis of the Will of her father claims to

be the full owner of the flat in question. In the said Suit the Will of the mother Sarla A. Dudhbhate is under challenge. It is in the said Suit that the application Exhibit 23 came to be filed in support of the said application. The documents in the form of medical report, psychological report, were sought to be relied upon by the Petitioners amongst other documents. The said documents appear to have been produced before the District Court in the application filed under the Mental Health Act, 1987 (for short the MHA). It seems that prior to the instant application Exhibit 23, the Petitioners have filed an application u/s 50 of the MHA for a declaration that the Petitioner No.3 is of unsound mind. It seems that an application for interim relief was made in the said proceedings. Pursuant to the said application an inquiry was conducted by the Learned District Judge wherein it seems that the Petitioner No.3 was examined before the Court by putting certain questions to her. The said application for interim relief in the said proceedings came to be rejected by the Learned District Judge by holding that the Petitioner No.3 was not of unsound mind. In the instant application Exhibit 23, the Trial Court seems to have relied upon the text of the said examination which was carried out before the Learned District Judge in the application filed under the Mental Health Act and by taking into consideration the answers given by the Petitioner No.3 to the questions put in her examination, as also taking into consideration the final order that was passed by the District Judge, Pune in the interim application, the Trial Court held that there is no necessity to appoint a guardian for the Petitioner No.3 for the purposes of defending the Suit as she is competent to protect her interest. As indicated above, it is the said order dated 9-1-2014 which is taken exception to by way of the above Petition.

4. The Learned Counsel appearing on behalf of the Petitioners Ms Ahuja would seek to reiterate the case of the Petitioners before the Trial Court and by relying upon the documents which have been placed before the Trial Court would contend that in the facts and circumstances of the case, the application Exhibit 23 was required to be allowed and the guardian was required to be appointed for the Petitioner No.3 to prosecute the Suit in question. The Learned Counsel took me through the documents which have been annexed to the above Petition amongst which is the psychological assessment report of the Pune Hospital and Research Center, which report is under the signature of Ms Rucha Bapat, M.A.M.Phil (Clinical Psychology) as also a report of Dr. Vidyadhar Watve dated 30-3-2010 and also the receipts issued by the Poona Geriatric Care Center which are for the years 2012-2013.

5. Per contra Ms Bhagalia the Learned Counsel appearing for the Respondent would support the impugned order. It is the contention of the Learned Counsel that the Learned District Judge having rejected the application for interim reliefs in the application filed under the Mental Health Act, the order passed by the Trial Court taking the said fact into consideration need not be interfered with. This was the main thrust of the submissions of the Learned Counsel.

6. Having heard the Learned Counsel for the parties I have considered their rival

contentions. It is to be borne in mind that the instant application Exhibit 23 is referable to Order XXXII Rule 3 of the CPC and the issue therefore which arises is whether guardian is required to be appointed for the Petitioner No.3 to prosecute the Suit in question which has been filed by the Respondent herein. The Trial Court was undoubtedly seized with the powers to appoint a guardian albeit after conducting an enquiry. Such a right was recognised even when there were no specific provisions in the old CPC, and the appointment of a guardian ad-litem was made by relying upon the rule that was adopted by the English Courts. The scope of an application under the MHA is different than the instant application as the instant application is in respect of the appointment of a guardian ad -litem. It is in the said context that the instant matter would have to be addressed. The material which has been placed on record on behalf of the Petitioners herein is therefore required to be looked into. It would be apposite to produce excerpts of the report of Ms Rucha Bapat to whom a reference was made by Dr. Vidyadhar Watve. The relevant excerpts are for the sake of ready reference reproduced herein under :

"Her capacity for control and ability to deal with stress effectively is less than desirable and is vulnerable to disorganization and impulsive thinking and behaviour as the situations become more complex or ambiguous. She may be vulnerable to disorganization even by natural stresses of day to day living in a complex society. She may function best in environments that are well structured and relatively free of ambiguity. She seems to be striving to achieve more than is possible in the light of her current functional capacities. If this tendency occurs in everyday behaviors, the probability of failure to achieve objectives is increased, and the consequent impact of those failures can lead to the experience of frustration.

There is likely to be a serious problem in information processing. The impairment in reality testing is global in nature may present itself even in the face of obvious distal cues. There are indications to pervasive tendencies to meditative impairment. There is substantial likelihood of inappropriate behaviors which may be due to the impairment in reality testing. Her capacity for control and ability to deal with stress effectively is less than desirable and is vulnerable to disorganization and impulsive thinking and behavior as the situations become more complex or ambiguous. She may be vulnerable to disorganization even by a natural stresses of day to day living in a complex society. She may function best in environments that are well structured and relatively free of ambiguity. The impact of situational stress is likely to range from mild to moderate. This has resulted in an increase in pre-existing confusion about emotion. This confusion may escalate the likelihood of behavioral impulsiveness rather markedly. There is a potential for effective disruption. The profile indicates presence of distress. There is excessive internalization of feeling which the person would like to externalize. She is burdened with more irritating feelings than is normally the case. This is likely to result in experiences of subjective discomfort, sadness or tension. The profile also indicates suicidal ideation. Her estimate of personal

worth is likely to be negative. She is likely to be interested in others but may not understand them well. It is probable that she does not anticipate positive interactions among people and is less comfortable in interpersonal situations. She may periodically exhibit incongruous or disorganized behavior. She may occasionally appear confused and disoriented. At time her affect may appear inappropriate to the surrounding. She may also suffer from auditory hallucinations and unsystematic delusions.

Impression : The profile in conjunction with the client's history is indicative of Chronic Schizophrenia."

7. A reading of the said report of Ms Rucha Bapat to a layman therefore lends to a conclusion that the Petitioner No.3 is suffering from Chronic Schizophrenia and would therefore not be in a position to stand the pressure or the strain of a trial.

8. The Trial Court as can be seen has merely relied upon the examination which took place before the District Court, of the Petitioner No.3 wherein she was put some questions which she has answered and thereafter taking into consideration the fact that the District Court has rejected the application for interim reliefs in the MHA proceedings, has rejected the said application Exhibit 23. The question which therefore arises is whether in view of the ailment which the Petitioner No.3 is suffering from, she would be able to prosecute the Suit in a proper manner. The answer would obviously have to be in the negative. Merely because at some point of time she may have given proper answers to the questions which were put to her, would not imply that she would be in a position to comprehend the complexities and take a decision in respect of various matters which would arise at various stages of the Suit. The test which is applicable is whether the Petitioner No.3 is capable of protecting her interests. A reading of the reports which have been placed on record raise a serious question and doubt about the capability of the Petitioner No.3. Since the ultimate endeavour would be to see to it that there is a fair trial, in my view the interest of justice would be served if the Petitioner No.2 who is her brother is appointed as guardian ad-litem of the Petitioner No.3 which is the relief sought by the Petitioners/Defendants by the said application Exhibit 23. By such appointment no great prejudice would be caused to the Respondent/Plaintiff, however, the appointment would in fact ensure that the Suit is prosecuted in a proper manner on behalf of the Petitioner No.3 who as indicated above claims to be a legatee of her mother's 1/2 share in the property in question by virtue of the Will of her mother which is under challenge in the Suit. The impugned order is accordingly quashed and set aside. The application Exhibit 23 is allowed. The Petitioner No.2 is appointed as guardian ad-litem of the Petitioner No.3. Needless to state that appointment of the Respondent No.2 as guardian is only for the purposes of the present Suit. The application under the Mental Health Act would undoubtedly be tried on its own merits and in accordance with law.

9. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.