

(1988) 07 MAD CK 0012
In the Madras High Court

Mohammed Hussain Bevi alias Syed Sultan Bevi	APPELLANT
Vs	
Haja Sultan Kabir Shahul Hameed Sahib	RESPONDENT

Date of Decision : 26-07-1988

Acts Referred:

Citation : (1988) 2 MLJ 205

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Judgement

Ratnam, J.—These appeals have been preferred against the common order of the District Court, East Thanjavur at Nagapattinam in

O.P.Nos. 66 and 18 of 1982. O.P.No. 66 of 1982 was filed by the appellant in these appeals under the provisions of the Guardian and Wards

Act to appoint her as the property guardian of her minor son Syed Mohammed Hussain Sahib. O.P.No. 18 of 1982 was filed by the respondent in

these appeals, who is the paternal uncle of the minor, praying that he should appointed as the property guardian of the minor.

2. One Haji Section V. Syed Mohammed Hussain Alim Sahib had two sons Haja Sultan Kabir Shahul Hameed Sahib, the respondent herein, and

V.M. Syed Hasan Kuthus Sahib the father of the minor, V.M. Syed Hasan Kuthus Sahib married the appellant herein on 33.1972 and the minor

Syed Mohammed Hussan Sahib was born on 27.6.1973. Even when the minor was in the womb of his mother, V.M. Syed Hasain Kuthus Sahib

died. Subsequently, proceedings for appointment of a guardian for the person as well as the property of the minor were started by Haji Section V.

Syed Mohammed Hussain Alim Sahib, the grand-father of the minor, in O.P.No. 39 of 1976. By consent of parties, on 7.11.1977, an order was

passed in O.P.No. 39 of 1976 appointing the appellant herein as the guardian for the person of the minor and Haji Section V. Syed Mohammed

Hussain Alim Sahib, the grandfather of the minor, as the guardian for the properties of the minor. The property guardian Haji Section V. Syed

Mohammed Hussain Alim Sahib, the grandfather of the minor, died on 15.9.1982. Sometime prior to his death, the respondent herein filed

O.P.No. 18 of 1982 praying that he should be appointed as the property guardian of the minor in the place of Haji Section V. Syed Mohammed

Hussain Alim Sahib. The appellant herein, in turn, filed O.P.No. 66 of 1982 for appointing herself as the property guardian of the minor Syed

Mohammed Hussain Sahib.

3. In O.P.No. 18 of 1982, the respondent herein prayed for the removal of his father Haji Section C. Syed Mohammed Hussain Alim Sahib from

the guardianship on the ground that the property guardian had become old and incapable of managing the affairs of the minor and the interest of the

minor could be properly taken care of and attended to by the senior paternal uncle of the minor. The appellant herein opposed that petition stating,

among other things, that the respondent herein was incompetent to be appointed as guardian as he did not evince any interest in the Welfare of the

minor and he was only anxious to clutch at the properties of the minor. The appellant also stated that she had been evincing interest in the minor

and his affairs and had been looking after the minor also carefully and that she hailed from a respectable and affluent family and was competent

manage the properties of the minor and, therefore, the prayer of the respondent herein in O.P.No. 18 of 1982 should not be granted, but that she

should be appointed as the property guardian of the minor. Consistent with the stand so taken by the appellant in O.P.No. 18 of 1982, she also

filed O.P.No. 66 of 1982 for appointing her as guardian in respect of the properties of the minor, reiterating the stand taken by her in O.P.No. 18

of 1982. The respondent herein opposed O.P.No. 66 of 1982 on the ground that the appellant, after the death of her husband, had married again

one Syed Mohammed Hussain Sahib alias Shaha Syed Sahib and had borne two children and, therefore, the appellant was not likely to evince any

interest in the minor and the second husband of the appellant will not also evince any interest in the welfare of the minor. It was the further plea of

the respondent herein that the properties had been derived by the minor from the paternal side and being the senior" paternal uncle of the minor,

who had shown keen interest in the welfare of the minor, he deserved to be appointed as guardian for the properties of the minor.

4. Before the Court below, both parties did not let in oral or documentary evidence. By a common order, the Court below found that the appellant

herein is a pardanashin lady and necessarily she has to depend upon her second husband, though he had been evincing keen interest in the welfare

of the minor and when the respondent, being the senior paternal uncle of the minor is available and no allegation of misfeasance or malfeasance had

been proved against him, his claim to be appointed as the guardian for the property of the minor cannot be held to be unreasonable. In that view,

the Court below appointed the respondent herein as the guardian for the properties of the minor in the place of haji Section V. Syed Mohamed

Hussain, Alim Sahib on the same terms and conditions as per order dt.7.11.1977 in O.P.No. 39 of 1976. In the result, O.P.No. 18 of,1982 was

allowed, while O.P.No. 66 of 1982 was dismissed. It is the correctness of the order appointing the respondent herein as the property guardian of

the minor that is questioned in these appeals by the mother of the minor.

5. Learned Counsel for the Appellant contended that the main ground on which the claim of the appellant to be appointed as the property guardian

of the minor was negatived by the Court below was that she is a pardanashin lady and, therefore, she would be depending on her second husband

and others for help and assistance but that would not be a good reason for depriving the appellant to get herself appointed as the guardian with

reference to the properties of the minor. Reliance in this connection was placed by the learned Counsel for the appellant on *Jaiwanti Kumari v.*

Gajadhar Upadhyaya ILR 38 Cal. 783, *Rajrani v. Bhagwandas* 691.C. 596 : AIR 1922 Nag. 232 and *Chandrawati v. Jagan Nath Singh* AIR 1928

Lah. 941. On the other hand, learned Counsel for the respondent submitted that the properties belonging to the minor are substantial and are to be

administered and managed carefully and the appellant, by reason of the observance of *pardah*, would not be in a position to effectively go out and

manage the properties of the minor and, therefore, the Court below was right in appointing the respondent herein as the property guardian of the

minor.

6. In order to support the appointment of the respondent as the property guardian of the minor, the Court below had taken into account the

circumstances that the properties belonging to the minor had been derived from his paternal grandfather and that the respondent, who is the

paternal uncle of the minor, is quite competent to manage the properties of the minor, as the estate of the minor is not too big. The source from

which the properties have been obtained would be not a very relevant consideration in the matter of appointment of a guardian for the property

belonging to a minor. Irrespective of the source from which the properties have been obtained by the minor, what is of paramount consideration is

the efficient and beneficial management and administration of the properties belonging to the minor. Merely on account of the respondent being the

senior paternal uncle of the minor, he cannot be considered to be also clothed with the capacity for such efficient and beneficial management.

Therefore, neither the source from which the properties have been obtained by the minor nor the fact that the respondent herein is the senior

paternal uncle of the minor would be relevant in the consideration of the appointment of a suitable guardian for managing the properties of the

minor. Those considerations cannot justify the appointment of the respondent herein as the property guardian of the minor. The only ground put

against the claim of the mother, as could be gathered from paragraph 6 of the order of the Court below, is that she is a pardanashin lady and for

everything regarding the administration of the properties of the minor, she will have to depend upon her second husband. The Court below also

observed that the second husband of the appellant herein had been evincing very keen interest in the Welfare of the minor. The fact: that the

appellant is a pardanashin lady cannot be considered as a disqualification while considering her claim for appointing her as the guardian for the

properties of the minor. It will be relevant to recall in this connection the following observations of the Privy Council in *Kali Baksh Singh v. Ram*

Gopal Singh 26 M.L.J. 121.

Much as their Lordships support and approve of the protection given by law to a pardanashin lady, they cannot transmute such a legal protection

into a legal disability.

Mere observance of pardah could not be equated to some, kind of disability disentitling the mother from acting as the guardian for the properties of

her minor son. In *Jaiwanti Kumari v. Gajadhar Upadhy* ILR 38 Cal. 783, it was laid down that the mere fact of the mother being a pardanashin

lady is no obstacle to her being appointed as a guardian and that though a pardanashin lady may not be able to personally supervise the

management of the properties, the safe custody of the property and its due administration may be sufficiently guaranteed by security being taken

from the proposed guardian by Court. In *Rajrani v. Bhagwandas* 69 I.C. 596, it was held that the mere fact that a lady is a pardanashin does not

disqualify her to be appointed as the guardian of the property of her minor son, but that the consideration should be whether she would be able to

manage the properties with advantage to the minor. Again, in *Chandrawati v. Jagan Nath Singh* AIR 1928 Lah. 941, it was pointed out that it is

not an inflexible rule of law that a pardanashin lady should not be appointed as guardian of the property and person of a minor and that each case

would depend upon its circumstances. From the decisions referred to above, it is clear that the rejection of the claim of the appellant to be

appointed as the guardian of the properties of her minor son on the ground of her being a pardanashin lady is unsustainable. Whether there is seem

other circumstance which Would disentitle the appellant to claim the right to be appointed as the guardian for the properties of her minor son may

now be considered.

7. There are seven items of properties catalogued in the schedule to O.P.No. 66 of 1982, out of which two items are lands, three items are shares

in Nagore Durgha Kasu Pangu, besides 10 shares in the Nagapattinam Electric Supply Corporation and the publishing right of a book. The

properties belonging to the minor are thus not very extensive or of such character as to require day to day attention for its effective and proper

administration. There is no material on record to indicate that the appellant is incapable of effectively and efficiently managing the aforesaid

properties belonging to the minor. Even on the footing that the appellant has to some extent depend upon the help and assistance of others, she

could always avail herself of such help from her second husband. Indeed, even the Court below has accepted that the second husband of the

appellant has been evincing keen interest in the welfare of the minor. Therefore, it is not as if the appellant, having regard to the nature of the properties belonging to the minor, cannot effectively manage and administer the properties either by herself or with the assistance of her second husband. Though the Court below had accepted that the second husband of the appellant has been evincing keen interest in the affairs of the minor, yet, it proceeded to appoint the respondent herein, who is the senior paternal uncle of the minor, as guardian for the properties of the minor on the ground that no serious allegations have been made or proved against him. The approach of the Court below, in overlooking the claims of the appellant herein, the mother of the minor, and in proceeding to appoint the respondent herein as the guardian of the properties of the minor is not correct. It is seen from the records that the appellant hails from a respectable and well to do family possessed of substantial properties and there is nothing to even raise a remote suspicion that she is not likely to diligently attend to the proper management and administration of the properties belonging to the minor. The circumstance that the minor had obtained the properties from his paternal ancestors or that the respondent is the paternal uncle of the minor or there are not serious allegations of misfeasance or malfeasance against the respondent would not justify the appointment of the respondent as the property guardian of the minor, especially when the appellant had not been established to be disqualified in any manner or become otherwise disentitled to be the property guardian of the minor. For the aforesaid reasons, the order of the Court below appointing the respondent herein as the property guardian of the minor is set aside and instead the appellant herein is appointed as the guardian with reference to the properties of the minor, subject to her furnishing security for Rs. 10,000 within six weeks from this day. Consequently, the Civil Miscellaneous Appeals are allowed and O.P.No. 66 of 1982 filed before the Court below by the appellant herein will stand allowed, while O.P.No. 18 of 1982 filed by the respondent herein will stand dismissed. There will be, however, no order as to costs in both the appeals.