

(2013) 06 KL CK 0039
In the High Court Of Kerala
Case No : M.F.A. No. 134 of 2011

R. Santhoshkumar

APPELLANT

Vs

Shaji and Another

RESPONDENT

Date of Decision : 06-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 1, Order 32 Rule 15
Mental Health Act, 1987 — Section 2(t), 22, 24, 25, 42

Citation : AIR 2013 Ker 184 : (2013) 3 ILR (Ker) 379 : (2013) 3 KLJ 346 :
(2013) 3 KLT 397

Hon'ble Judges : K.M. Joseph, J;A. Hariprasad, J

Bench : Division Bench

Advocate : Biju Balakrishnan, for the Appellant; M. Hemalatha, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph, J.—The appellant is the petitioner in an application filed under Sections 50, 52, 53 and 54 of the Mental Health Act, 1987 (hereinafter referred to as "the Act"). The relief sought in the application was to appoint the appellant as the guardian of his mentally ill step sister and also as Manager of her property which was described in the schedule. Further prayer sought was to declare the Sale Deed No. 2431/2001 of S.R.O. Nemom is null and void. The averments in brief are as follows:-

The appellant's step sister is mentally ill for several years. The said mentally ill person is incapable of living an independent life or of guarding heavily against exploitation and incapable of managing her property, Hence an inquisition into her mental Condition is required. A manager is necessary for the management of her property. A guardian has to be appointed to take care of her person.

The said mentally ill person was in possession and enjoyment of 8 cents of property comprised in Re. Sy. No. 365/5 of Kalliyoor Village. The respondents are knowing very well that the appellant's sister is mentally ill. Now the respondents

fraudulently executed the sale deed No. 2431/01 of S.R.O. Nemom with regard to the above said 8 cents of property and the petitioner came to know it on 28-10-2008.

It may kindly be noted that the said mentally ill person has no other property and it is necessary to declare the said sale deed No. 2431/01 of S.R.O. Nemom as null and void.

2. Respondents filed objection in the said application stating inter alia that they are the bona fide purchasers of the property covered under Ext. A1 and the transferor executed the deed of her free will and she was having sufficient mental capacity to execute the sale deed. They also have contended that the present petition has been filed by the appellant with ulterior motives, that too without the juncture of her husband and they prayed for dismissal of the petition.

3. Appellant was examined as PW1. A1 to A5 were marked on the side of the petitioner. No witness was examined and no documents were produced on the side of the respondents. The Court below dismissed the petition with cost and exemplary cost of Rs. 2,000/-.

4. The court found that there is nobody examined to prove the mental ailment of the alleged person and on the other hand the document produced would show that she had undergone treatment for some ailment from the month of May 2001 onwards. The nature of ailment was not clear from the prescriptions. What is reported is "sleep impairment". No steps were taken for conducting any examination of the person through a medical board and no application was filed within a period of three years from the date of execution of the said deed of conveyance. The court has no power to go into the question of validity of a sale deed executed by the alleged mentally ill person in the year 2001 and the petition is filed only in the year 2009, after lapse of 8 years from the date of execution of sale deed. It also stated that while in the box appellant (PW1) had also admitted that he came to know about the delivery of possession to the respondents in the year 2001.

5. We heard the learned counsel for the petitioner/appellant Sri. Biju Balakrishnan and also learned counsel for the respondent Smt. M. Hemalatha.

6. Learned counsel for the appellant would no doubt contend that it is a clear case where the alleged mentally ill person was indeed mentally ill for a long period of time and according to him he has clarified in the cross examination itself that he was under the impression that what was created in the year 2001 was only a mortgage and that only in the year 2008, he came to know that the document was actually a conveyance (28-10-2008). He would also point out that she was under medicines for psychiatric illness and she was in fact suffering from a serious illness.

7. Learned counsel for the respondent on the other hand would submit that there is no merit in the case at all. In fact it is pointed out that the document of sale

executed by the step sister of the appellant in the year 2001 was witnessed by none other than her mother and her husband. She would further submit that actually the step sister is now residing with her husband and she is conducting some business.

8. Section 50 of the Act falls in Chapter VI of the Act. Section 50(1) reads as follows:-

50. Application for judicial inquisition. - (1) Where an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either-

(a) by any of his relatives, or

(b) by a public curator appointed under the Indian Succession Act, 1925 (39 of 1925), or

(c) by the Advocate-General of the State in which the alleged mentally ill person resides, or

(d) where the property of the alleged mentally ill person comprises land or interest in land, or where the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any law for the time being in force in the State, by the Collector of the District in which such land is situate,

to the District Court within the local limits of whose jurisdiction the alleged mentally ill person resides.

Sub-section (2) provides inter alia for examination by the District Court of the alleged mentally ill person. The District Court may also call for a report concerning the mentally ill person. The District Court has the power to appoint two or more persons to act as assessors. Section 51 of the Act deals with the issues on which the finding should be given by District Court after inquisition. Section 51 reads as follows:-

51. Issues on which finding should be given by District Court after inquisition. - On completion of the inquisition, the District Court shall record its findings on,-

(i) Whether the alleged mentally ill person is in fact mentally ill or not, and

(ii) Where such person is mentally ill, whether he is incapable of taking care of himself and of managing his property, or incapable of managing his property only.

9. Section 52 reads as follows:-

52. Provision for appointing guardian of mentally ill person and for manager of property. - (1) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself and of managing his property, it shall make an order for the appointment of a guardian u/s 53 to take care of his person and of a manager u/s 54 for the

management of his property.

(2) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of managing his property but capable of taking care of himself, it shall make an order u/s 54 regarding the management of his property.

(3) Where the District Court records a finding that the alleged mentally ill person is not mentally ill, it shall dismiss the application.

(4) Where the District Court deems fit, it may appoint under sub-section (1) the same person to be the guardian and manager.

10. Sections 53 & 54 being relevant read as follows:-

53. Appointment of guardian of mentally ill person. - (1) Where the mentally ill person is incapable of taking care of himself, the District Court or, where a direction has been issued under sub-section (2) of section 54, the Collector of the District, may appoint any suitable person to be his guardian.

(2) In the discharge of his functions under sub-section (1), the Collector shall be subject to the supervision and control of the State Government or of any authority appointed by it in that behalf."

54. Appointment of manager for management of property of mentally ill person. - (1) Where the property of the mentally ill person who is incapable of managing it is such as can be taken charge of by a Court of Wards under any law for the time being in force, the District Court shall authorise the Court of Wards to take charge of such property, and thereupon notwithstanding anything contained in such law, the Court of Wards shall assume the management of such property in accordance with that law.

(2) Where the property of the mentally ill person consists in whole or in part of land or of any interest in land which cannot be taken charge of by the Court of Wards, the District Court may, after obtaining the consent of the Collector of the District in which the land is situate, direct the Collector to take charge of the person and such part of the property or interest therein of the mentally ill person as cannot be taken charge of by the Court of Wards.

(3) Where the management of the property of the mentally ill person cannot be entrusted to the Court of Wards or to the Collector under sub-section (1) or sub-section (2), as the case may be, the District Court shall appoint any suitable person to be the manager of such property.

11. Section 59 deals with the powers of manager. The District Court may on an application made by the manager grant him permission, to mortgage, create any charge on, of, transfer by sale, gift, exchange or otherwise, any immovable property of the mentally ill person or to lease out any such property for a period exceeding five years, subject to conditions or restrictions. The manager is duty bound to furnish inventory and annual accounts u/s 60.

12. Section 65 reads as follows:-

65. Power to make order concerning any matter connected with mentally ill person. - The District Court may, on an application made to it by any person concerning any matter whatsoever connected with the mentally ill person or his property, make such order, subject to the provisions of this Chapter, in relation to that matter as in the circumstances it thinks fit.

There are various other provisions which we need not detain us as we think that those provisions may not be germane for a decision in the matter.

13. We have already extracted Section 50 of the Act. Section 50 permits an application for the inquisition being filed by any of the relatives of an allegedly mentally ill person among other persons. The word "relative" is defined in the Act of Section 2(t) reads as follows:-

"relative" includes any person related to the mentally ill person by blood, marriage or adoption;

But we notice that Section 50 is premised on another fundamental requirement, which is that the alleged mentally ill person be possessed of property. It is when such an application is received namely an application where it is alleged that an alleged mentally ill person is possessed of property by the District Court, that the law is set into motion under Chapter VI of the Act. Thereafter, no doubt after rendering the findings as contemplated in Section 51, we pass on to Section 52, namely if the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself and of managing his property, a "guardian" is to be appointed u/s 53 and a "manager" is to be appointed u/s 54 for the management of property of mentally ill person. Section 52(2) contemplates the situation where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of managing his property but is capable of taking care of himself, then an order u/s 54 for appointing a manager for managing of the property is to be made. The court may appoint the same person as guardian and manager, if the Court finds it fit. Section 53 applies if "the mentally ill person" is incapable of taking care of himself. The mentally ill person must be the allegedly mentally ill person who is possessed of property referred to in Section 50. Section 54 deals with appointment of manager for management of property of mentally ill person. Under sub-section (1), the District Court has to authorize the Court of Wards to take charge and assume the management of such property in accordance with the law. Where the property cannot be taken charge by the Court of Wards, the District Court may, after getting the consent of the Collector, direct the Collector to take charge of the property or interest therein of the mentally ill person and under sub-section (3) of Section 54, the District Court has power to appoint any suitable person where the property cannot be entrusted to the Court of Wards or to the Collector. We may also refer to Section 58. Section 58 reads as follows:-

58. Duties of guardian and manager. - (1) Every person appointed as a guardian

of a mentally ill person or manager of his property, or of both, under this Act shall have the care of the mentally ill person or his property, or of both and be responsible for the maintenance of the mentally ill person and of such members of his family as are dependent on him.

(2) Where the person appointed as guardian of a mentally ill person is different from the person appointed as the manager of his property, the manager of his property shall pay to the guardian of the mentally ill person such allowance as may be fixed by the authority appointing the guardian for the maintenance of the mentally ill person and of such members of his family as are dependent on him.

14. We are of the view that what is contemplated under Chapter VI of the Act is a judicial inquisition by the District Court only in a case where such an application is made for holding inquisition, in respect of a person who is alleged to be mentally ill person and more importantly who is possessed of property. It is only in respect of an allegedly mentally ill person who is possessed of property, that the District Court gets jurisdiction to hold the inquisition. Section 58(2) contemplates that where the person appointed as guardian is different from the manager of his property, the manager has to pay to the guardian such allowance as may be fixed by the appointing authority for maintenance of the mentally ill person and of such members of his family as are dependent on him. No doubt u/s 58(1), the guardian would have to take care of the mentally ill person and he will be responsible for the maintenance of the mentally ill person and the members of his family who are dependent only. We would think that the law giver has made it a condition for invoking Section 50 that the alleged mentally ill person is possessed of property. There is a golden thread running through these sections and they form part of the scheme, the bedrock of which is the existence of a person who is alleged to be mentally ill and more importantly who is possessed of property. Such an interpretation we would think is inevitable on the clear words used in the Section.

15. No doubt the learned counsel for the appellant would point out that the property need not be immovable property. In this connection, he refers to Clause (d) of Section 50 which indicates that it is not limited to immovable property. We are in complete agreement with the appellant that the property which a person possesses u/s 50 need not be immovable property. The word property as understood in Salmond on Jurisprudence is that it includes all a person's legal rights, of whatever description in its widest sense. In a second and narrow sense, (Dominium and status) property includes not all a person's right, but only his proprietary as opposed to his personal rights. In the third sense what is understood as seen in Salmond on Jurisprudence is proprietary rights in rem (dominium and obligation). Such a concept includes not even all proprietary rights, but only those which are both proprietary and in rem. Finally, Salmond would refer to corporeal property (dominium corporis and dominium juris) i.e., it includes nothing more than corporeal property that is to say the right of ownership in a material object, or that object itself.

16. Certainly, the word "property" as used in Section 50 would not be confined to absolute ownership. It may include a lesser title like lease, mortgage (derivative title). It may even include the possessory right which the allegedly mentally ill person has.

17. The learned counsel for the appellant would however point out that the plight of the alleged mentally ill person in this case and contend that being a mentally ill person she came to execute the document in the year 2001. She could not know the consequences of the said document. He would seek to invoke the doctrine of constructive possession and with the aid of the said doctrine he would submit that the requirements of Section 50 is satisfied. In this context as pointed out by the learned counsel for the respondent, we cannot over look the fact that the clear case of the appellant in his pleading which we are extracted is that his step sister has no other property and it is pleaded that it is necessary to declare the sale deed null and void. We are not also convinced that the appellant can claim that his step sister was having constructive possession having executed a sale deed and possession is delivered also. We therefore are not even called upon to examine the question as to whether the alleged mentally ill person has any other property as movables. Certainly for the protection of the same on application may be maintainable u/s 50. But we need not be detained by any such a question as there is no such case for the appellant.

18. We may also notice that there is no power for the District Court to declare a sale deed executed by the alleged mentally ill person as null and void. An attempt is made by the learned counsel to bestow such a power with the District Court with the aid of Section 65 of the Act must fail. Section 65 no doubt provides for power with the court concerning any matter connected with the mentally ill person. Even though said section is widely worded, we think that such a power cannot be conceded to the court at any rate in a case, where the allegedly mentally ill person was not possessed of any property rights as on the date of filing of the application u/s 50. Without there being a mentally ill person being possessed of the property, we would think that the court would not have jurisdiction under Chapter VI of the Act.

19. We find that the view which we have taken is echoed in the Division Bench decision of Madras High Court in Lakshumi Ammal v. Seerangathammal (I.L.R. Vol. XXIX-1906 Page No. 310). The provisions which were examined by the learned Judges were Sections 3, 9 and 10 of Lunacy Act XXXV of 1858. Therein the court held as follows:-

We think that the District Judge is in error in refusing to entertain the petition on the ground that it is not admitted that the alleged lunatic is possessed of any property. If that were a sufficient reason the jurisdiction of the Court could be ousted in every case by the respondent simply refusing to admit that the lunatic has any property. No doubt it is necessary as a pre-requisite to the Court taking action that the Court should be satisfied that the alleged lunatic has property.

The petitioner alleges that the lunatic has property, and the respondent denies it. Obviously it is necessary for the District Judge to enquire, it may be summarily, and to decide whether or not the lunatic has property, and in case he decides in the affirmative the District judge should proceed to take further action in accordance with law.

We set aside the order of the District Judge with costs and remand the petition for disposal accordance to law.

Still further more we may notice the Apex Court decision, in Raj Kumar Vs. Rameshchand and Others, , where an application for eviction of the respondent tenant was filed through a next friend on behalf of the appellant, a mentally retarded person, who was the owner of the suit premises. The respondent objected to the appointment of a guardian. An application under Order 32 Rule 1 and 15 C.P.C. was filed and the Rent Controller appointed the father as the guardian and next friend. The order though challenged was affirmed by the High Court. The dismissal of the petition for eviction by Rent Controller was affirmed by the High Court without going into the merits of the case, on the reasoning that the provisions of the Mental Health Act, 1987 was applicable and that the eviction petition was not maintainable without a guardian or next friend appointed under the provisions of Sections 52 to 55 of the Act. The Apex Court allowed the appeal. Paragraph 5 and 6 of the judgment read as follows:-

5. Section 52 to 55 are contained in Chapter VI of the Mental Health Act, 1987. This chapter contains provisions relating to "judicial inquisition regarding alleged mentally ill person possessing property, custody of his person and management of his property". Section 50 provides for an application being made for holding an inquisition with regard to the mental condition of a person who is alleged to be mentally ill and is possessed of property. Such an application can be filed only by the persons or authorities specified in clauses (a) to

(d) of sub-section (1) of Section 50. It is pursuant to the proceedings so initiated that the other provisions of the chapter including Section 52 to 55 would apply. Section 50 does not contemplate any application being made or a contention being raised by a tenant in proceedings for eviction against him.

6. In the instant case what was applicable was Order 32 Rule 1 read with Rule 15. An application for appointment of a guardian in accordance with the said provisions was filed. An application to this effect was filed before the Rent Controller and the father was appointed as the guardian and next friend of the appellant. Nothing more was required to be done and the High Court, in our opinion, was in error in coming to the conclusion that the eviction petition was not maintainable and the procedure provided by Sections 52 to 55 of the Mental Health Act, 1987 had not been complied with.

20. Incidentally, we may notice that the Parliament has also enacted the National Trust for Welfare of Persons with Autism, Cerebral palsy, Mentally Retardation with Multiple Disabilities Act, 1999, which Act received the President's assent on

30-12-1999. It purports to deal with cases of persons with mental retardation among other mentally abnormal conditions.

21. The learned counsel for the appellant drew our attention to the judgment of the learned Single Bench of Bombay High Court reported in Anand Yashwant Sarwade, . No doubt therein the learned Single Judge took the view that as far as the appointment of guardian to a mentally ill major person is concerned, the remedy is under the Mental Health Act, 1987 and not under the Guardians and Wards Act, 1890. We may at once notice that, that was a case where the petitioner sought to be appointed as the guardian of his brother inter alia in respect of certain amount due to him from the gratuity and family pension account of their deceased father. Undoubtedly, this was a case where Section 50 was attracted as it related to a person possessed of property. No doubt the learned Judge also found that the Guardians and Wards Act is confined to the appointment of a guardian in respect of a minor.

22. We may incidentally also notice in the Act, Chapter IV deals with admission and detention of persons in a psychiatric hospital or psychiatric nursing home. It contemplates reception orders including at the instance of relatives of the mentally ill person. Section 42 falling in Chapter V reads as follows:-

42. Order of discharge on the undertaking of relatives or friends, etc., for due care of mentally ill person. - (1) Where any relative or friend of a mentally ill person detained in a psychiatric hospital or psychiatric nursing home u/s 22, section 24 or section 25 desires that such person shall be delivered over to his care and custody, he may make an application to the medical officer in charge who shall forward it together with his remarks thereon to the authority under those orders the mentally ill person is detained.

(2) Where an application is received under sub-section (1), the authority shall, on such relative or friend furnishing a bond, with or without sureties, for such amount as such authority may specify in this behalf undertaking to take proper care of such mentally ill person, and ensuring that the mentally ill person shall be prevented from causing injury to himself or to others, make an order of discharge and thereupon the mentally ill person shall be discharged.

23. We may also incidentally notice the following provision contained in Section 24 of second proviso:- Provided further that if any relative or friend of the mentally ill person enters into a bond, with or without sureties for such amount as the Magistrate may determine, undertaking that such mentally ill person will be properly taken care of and shall be prevented from doing any injury to himself or to others, the Magistrate may, instead of making a reception order, hand him over to the care of such relative or friend.

Therefore the upshot of the above discussion is that the application filed by the appellant invoking Sections 50, 52, 53 and 54 was clearly not maintainable and the District Court did not have the jurisdiction at all to entertain the petition filed by the appellant on his own showing that the alleged mentally ill person was not

having any property. Allegedly mentally ill person being possessed a property is a condition precedent for the District Court to get jurisdiction in the matter. In the absence of inherent jurisdiction the application itself was clearly not maintainable. In such circumstances, we dismiss the application filed by the appellant on finding that the application filed was not maintainable u/s 50. Needless to say once it is found that a court does not have jurisdiction, the court would also not have jurisdiction to make any decision on the merits of the matter. With these observations this appeal is dismissed. We are not making any pronouncement on the question as to the availability of the remedies of the appellant.