

(2004) 07 MAD CK 0004

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 1018 of 2003

Sunita Shakunthala Devi, mentally unsound person,
represented by her guardian and next friend Sai Sunitha

APPELLANT

Vs

K.S. Naidu and Narendra Kothari

RESPONDENT

Date of Decision : 26-07-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 1, Order 32 Rule 14, Order 32 Rule 15

Citation : AIR 2005 Mad 56 : (2005) 1 CivCC 271 : (2004) 4 RCR(Civil) 429

Hon'ble Judges : S. Sardar Zackria Hussain, J

Bench : Single Bench

Advocate : S. Sadasivam, for the Appellant; R. Amarnath, for respondent 1, for the Respondent

Final Decision : Allowed

Judgement

S. Sardar Zackria Hussain, J.—The petitioner in I.A. No. 7687 of 1999 in O.P. No. 2626 of 1999 on the file of the learned XV Assistant

Judge, City Civil Court, Madras, is the revision petitioner. The revision is filed against the dismissal of the said petition filed under order 32 Rule 3

(5) CPC seeking to appoint her as guardian to the plaintiff.

2. The petitioner Shakunthala Devi, represented by her daughter Sai Sunitha, has filed a suit for permanent injunction restraining the defendants 1

and 2 from alienating or encumbering the suit properties. It is stated that the plaintiff Shakunthala Devi is her mother and the first defendant is her

father and she is the eldest daughter to them. It is further stated that the first defendant filed Title Suit No.14 of 1978 on the file of the Judicial

Commissioner at Ranchi on the ground that his wife, Sakunthala Devi, the plaintiff, was insane and was suffering from Paranoid Schizophrenia,

which was allowed and divorce was granted on 30.6.1979. The first schedule property was purchased by the plaintiff as per registered sale deed dated 16.3.1964 and the second schedule property and another adjoining Flat No.2 were also purchased by her later on out of her own funds and as such, she is the owner of the suit properties. After the decree of divorce, the plaintiff was living under the care of the guardian and daughter at Puttaparthi and in or about 1984, when she went to Bangalore for treatment, the first defendant enticed her and took her to Vishakapattinam and thereafter, she has been living in Vishakapattinam under his control. The first defendant is alienating plaintiff's assets and using the sale consideration for his personal needs. The first defendant, suppressing the facts that the plaintiff is mentally unsound and incapable of managing herself and her affairs, made her to execute the Power of Attorney in favour of the second defendant as per document No.715/90 dated 26.9.1990 in respect of first schedule of the suit properties. The defendants 1 and 2, colluding together, sold a major portion of the first schedule property. The said Power of Attorney is invalid in law in view of the fact that the plaintiff was insane and was incapable of managing herself and her affairs and the first defendant is aware of the mental unsoundness of the plaintiff. The first defendant also created equitable mortgage in respect of the second schedule property with Purasawalkam Nidhi Limited. The first defendant already sold another Flat No.2 adjoining to the second schedule property and received the sale consideration. As such, the first defendant is acting against the interest of the plaintiff. The second defendant is now taking steps to execute sale deeds in respect of the remaining unsold portion of the suit properties and, therefore, the suit has been filed. The suit was filed on 23.4.1999 and on the very same date, I.A.No.7687 of 1999 was also filed seeking that she may be approved as guardian and next friend of the plaintiff to prosecute the suit.

3. In the affidavit filed in support of the petition in I.A.No.7687 of 1999, it is averred that the plaintiff has got a son by name Ganesh Naidu, who is living with the first defendant, and he was also benefited by the sale proceeds of the first schedule property. The another son Giri is living in Bangalore and he has no interest in the welfare of the plaintiff. Therefore, she has filed this petition seeking to appoint her as guardian to the plaintiff

claiming that she is the only person interested in the welfare of the plaintiff and fit person for the same.

4. The petition was opposed by the first defendant by filing counter stating that the petitioner has no locus standi to represent the plaintiff

Shakunthala Devi as guardian on the ground that she is insane. It is further averred that since the plaintiff was travelling to several places, viz.,

Madras, Bangalore, Simla, etc., without the knowledge of the first defendant and was also planning to take away the three children from the

custody of the first defendant, he had to file petition against her for divorce and custody of the three children including the alleged guardian, Sai

Sunitha, in which divorce was granted besides the custody of the three children to the first defendant. After decree of divorce, Shakunthala Devi,

wife of the first defendant, rejoined with him in the year 1985 and continues to be with the first defendant. It is stated that she is sane and in normal

mental and physical health and as such, there is no necessity to appoint guardian to her. The suit properties are self-acquired properties of the first

defendant purchased out of his own earnings and savings. He filed suit O.S. No.8089 of 1980 on the file of the IV Assistant Judge, City Civil

Court, Madras, for declaration of title of the property at Anna Nagar and after contest by his wife, the suit was decreed on 25.7.1985 declaring

that the suit property in Anna Nagar belongs to the first defendant. Shakunthala Devi, wife of the first defendant, is living with him happily in a good

state of mind and is capable of doing things as a normal person can do.

5. Before the trial Court, Sai Sunitha examined herself as P.W.1 besides examining one Ramanana Satapathy as P.W.2 and Exs.P.1 to P.3 were

marked on the side of the petitioner. The first respondent examined himself as R.W.1 and the second respondent was examined as R.W.2 and

Exs.R.1 to R.3 were marked on the side of respondents. The trial Court, considering the case of both parties, dismissed the petition stating that, it

has not been proved that Shakunthala Devi, wife of the first defendant, is insane and she has also not been brought to Court and, therefore, Sai

Sunitha could not be appointed as guardian for her mother Shakunthala Devi, who is the wife of the first defendant. The said order is under

challenge in this Revision Petition.

6. Heard the learned counsel appearing for the revision petitioner as well as the

learned counsel for the first respondent.

7. The learned counsel appearing for the revision petitioner, referring to Exs.P.1 to P.3, argued that in view of such documents, it is clear that the

first defendant's wife Sakunthala Devi is insane and the first defendant also divorced her on that ground and the Medical Certificate Ex.P.3 dated

15.3.2001 issued by the Doctor would disclose that Sakunthala Devi is suffering from chronic paranoid Schizophrenia. The learned counsel further

contended that as per Order 32 Rule 3(5) CPC, the petitioner can be appointed as guardian to the mother Sakunthala Devi, who is insane.

8. The learned counsel appearing for the revision petitioner also relied on the following decisions:-

(1) Duvvuri Rami Reddi Vs. Duvvudu Papi Reddi and Others, in which it is held as follows:-

Order 32 Rule 15 Civil P.C., applies not only to a person adjudged to be of unsound mind, as under the old Code, but also to a person of weak

mind. Where in a suit filed by the plaintiff through his next friend an application is made by the next friend that the plaintiff is of unsound mind, or

mentally infirm for the purpose of the rule, the extent of the infirmity has to be found by the Court on inquiry. This enquiry should consist of the

examination of the alleged lunatic by the Judge, either in open Court or chambers, and as Courts are generally presided over by lay-men, as a

matter of precaution, the evidence of medical expert should be taken. Where the precaution of such a judicial enquiry is not observed, the person

cannot be declared lunatic and a guardian cannot be appointed for him".

The decision under O.32, R.15 is one fraught with serious consequences, as it results in the rights of a party to conduct his own litigation being

taken away, and the guardianship of another forced upon him, or even though he is unable to safeguard his interests, no suitable guardian would be

appointed to conduct the litigation on his behalf.

(2) Leelason Breweries Ltd. Vs. Sri Bheemi Reddy Lakshminarayana Reddy, rep., by Guardian, Bheemi Reddy Prasuna, wherein it is held:-

Appointment of guardian. Ground of infirmity of plaintiff. Plaintiff examined himself. Contents of medical certificate proved by evidence of doctor.

Procedure contemplated in O.32, R.15 has been followed. Appointment of guardian. No interference.

Appointment of guardian. Ground of infirmity of plaintiff. Contents of medical certificate. Proved and confirmed by doctor on oath who issued it.

Can be taken into consideration by Court in deciding infirmity of plaintiff. No matter it has been issued at the request of the relatives of plaintiff.

(3) Parvathi Ammal (died) and C. Loganathan Vs. Kamalammal and Others, in which a Division Bench of this Court has held:-

Medical Evidence. Whether conclusive proof. Medical evidence regarding unsoundness of mind is not conclusive proof of such state but would be

of great assistance to Court in arriving at proper determination of state of mind of person concerned.

9. The learned counsel for the contesting first respondent/first defendant argued that the revision petitioner has no locus standi to represent the

plaintiff as guardian on the ground that she is insane, inasmuch as she has not been duly appointed as guardian for the plaintiff. It is also pointed out

by the learned counsel that the plaintiff is sane and is in normal mental and physical health and as such, there is no necessity to appoint guardian for

her. It is further submitted that the plaintiff is living with her husband, the first defendant.

10. The suit is filed by the revision petitioner describing the plaintiff in the cause title as mentally unsound represented by guardian and next friend,

Sai Sunitha, her daughter. In paragraph 6 of the plaint, it is stated that after the first defendant divorced his wife, the plaintiff, as per the order in the

Title Suit No.14 of 1978 on the file of the Judicial Commissioner at Ranchi under Ex.P.1 dated 30.7.1979 and when the plaintiff was with her

daughter, the revision petitioner, at Puttaparthi in or about 1984 when the plaintiff went to Bangalore for treatment, the first defendant enticed her

and took her to Vishakapattinam and thereafter, she has been living in Vishakapattinam under the control of the first defendant and the plaintiff

continues to stay at Vishakapattinam. Even in her evidence, the petitioner as P.W.1 has stated that her father/first defendant had taken away her

mother and all her efforts through friends and relatives to bring her mother back were not successful. It is her further evidence that she came to

know that her mother, viz., the plaintiff, was admitted for treatment in a hospital at Vishakapattinam and when she had gone to see her, her mother

had already left. The Doctor, who examined her mother, had given a certificate under Ex.P.2 dated 15.3.2001. It is also her evidence that her

friend Saibaba took the Doctor to examine her mother in her house and as requested by her, the Certificate Ex.P.2 was issued but her friend

Saibaba has not been examined.

11. P.W.2 Ramanana Satapahy, Assistant Professor attached to Government Hospital, Vishakapattinam, has stated in his evidence that he does

not know the address of the mother of the revision petitioner and he only knows the area as Rajeevakka and he does not know either the door

number or the name of the street. He further stated that during the examination of the plaintiff in her house at Vishakapattinam, her niece was

present and the plaintiff was taken by the revision petitioner's relative Saibaba. In the cross-examination, he has further stated that he has not

mentioned in the Certificate that he examined the plaintiff Shakunthala Devi in her house at Vishakapattinam.

12. The first defendant as R.W.1 has stated in his evidence that though he divorced his wife, the plaintiff, he took her again in 1986 and from that

time, she is living with him at Vishakapattinam. He also took his wife to Tirupathi and married her again by tying thali. No doubt, it is seen from

Ex.P.1 that in the Title Suit No.14 of 1978 filed by the first respondent/defendant against his wife, the plaintiff, it is stated that his wife was found

developing mental disease since 1963 due to paranoid schizophrenia and it appears that divorce was granted on 30.7.1979 since no one appeared

for the respondent, viz., the plaintiff herein. According to the first defendant, as suggested by his mother and in the interest of the three children

born to him through the plaintiff, he took back his wife in 1986 and again married her at Tirupathi by tying thali and thereafter, she is with him at

Vishakapattinam. The evidence on the side of the plaintiff is that the Doctor P.W.2 went to the house of the plaintiff at Vishakapattinam and after

examining her, he issued certificate Ex.P.2 stating that the plaintiff is suffering due to paranoid schizophrenia. Though it is stated on the side of the

plaintiff that the revision petitioner's friend Saibaba accompanied P.W.2, he has not been examined. But, however, considering the fact that it is the

definite case of the revision petitioner that her mother is insane and is suffering due to mental disease paranoid schizophrenia, which fact is denied

by the first defendant by stating that the plaintiff is, in fact, keeping sound mind and is with the first defendant, it would be just and proper if

direction is issued to the trial Court to hold judicial enquiry by examining the plaintiff and then to decide as to whether by reason of unsoundness of mind and mental infirmity, she is incapable of protecting her interest in the suit.

13. As per order XXXII Rule 15 CPC, persons of unsound mind or persons so adjudged in the same position as minors for the purpose of Rules

1 to 14 (except Rule 2A) and for that purpose, the trial Court should examine the alleged lunatic either in open Court or in Chambers and in the

presence of the medical expert. The trial Court has got ample power to compel the attendance of the alleged lunatic, viz., plaintiff, before it and to

submit herself for medical examination.

14. In the result, the Civil Revision Petition is allowed setting aside the order and decretal order of the trial Court. The trial Court is directed to

restore the petition I.A.No.7687 of 1999 in O.S.No.2626 of 1999 and to hold judicial enquiry by examining the plaintiff and then to decide as to

whether by reason of unsoundness of mind and mental infirmity, she is incapable of protecting her interest in the suit and dispose the petition afresh

in accordance with law by September, 2004. No costs.