

IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL**JUDGE AND J.M.F.C. HUBBALLI**

Present:- Smt.Deepa G Manerkar,
B.Com. L.L.B, (Spl.)
II Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.

DATED THIS THE 09TH DAY OF SEPTEMBER 2025**O.S. No.395/2019**

Smt. Sumathi Ramachandra Uchila of Hubballi

...Plaintiff/s

-Versus -

Smt. Ashwini W/o Sameer Uchila of Hubballi
and two others

...Defendant/s**IA.NO.VIII**

Smt. Ashwini W/o Sameer Uchila of Hubballi

APPLICANT/ DEFT.NO.1.

Versus -

Smt. Sumathi Ramachandra Uchila of Hubballi

OPPONENT/ PLFF.

**:: ORDERS ON IA. NO.VIII FILED BY THE DEFENDANT
NO.3 UNDER ORDER XXIII RULE 1 R/W SEC.151 OF
C.P.C ::**

The present I.A. is filed by the counsel for defendant No.3 to remove the guardian of minor defendant No.3.

2. In the affidavit accompanying the I.A., it is sworn by mother of minor defendant No.3 that, the suit is filed by the grandmother of defendant No.3 for partition and separate possession. She had appeared in the said case through her counsel. The case was dismissed for default and later was restored by this honorable court. Defendant No.3 was not keeping well and the summons was served upon her hotel premises. She was unaware of the same she was placed ex-parte by this honorable court. Her daughter who is defendant No. 3 was also placed ex-parte. As per the application by her mother-in-law, this honorable court was pleased to appoint a court guardian to her daughter she was not served with

summons of the said application. She was not aware of the application for appointment of guardian to her minor daughter. She never denied from acting as guardian to her daughter in the above case. The court guardian is unaware of the facts of this case and as such could not protect the rights of her minor daughter properly. She apprehend that the interest of the court guardian are adverse to the interest of her minor daughter. The court guardian has not performed his duties properly. The court guardian is a client of the counsel of for the plaintiff and acts as per the instructions of the plaintiff. Recently she came to know about the same and hence she filing the accompanying application seeking permission to remove the court guardian appointed by this Hon'ble court. She is ready and willing to act as guardian of her minor daughter. No loss or hardship will be caused to the plaintiff if the application is allowed. On the contrary they

will be put to untold hardship and loss if the same is rejected. Hence, prayed to allow the application.

3. The present I.A. is resisted by the plaintiffs filed objections to the said I.A. No.8 contended that the contents of the petition are all false, frivolous and vexatious. The same is not tenable in law and liable to be dismissed. The summons were served on defendant No.1 to 3 i.e., to the defendant No.1 on behalf of defendant No.3 and even in spite of service of summons defendant No.1 did not appear on her behalf and also on behalf of defendant No.3. That the Hon'ble Court was pleased to place them as ex-parte. Thereafter defendant No. 1 filed I.A. No. 7 to set aside ex parte order on behalf of defendant No. 1 and 2 only on 27.03.2025 when the case is posted for judgment. That the defendant No.1 purposely not filed any application to set aside ex-parte order on behalf of defendant No.3 or willingness to act as

guardian of defendant No. 3. That the ex-parte order passed by this Hon'ble Court is not set aside and I.A. No. 7 is dismissed. That defendant No. 1 mother has no locus standi to file this application for the removal of court guardian. The entire application is misconceived and liable to be dismissed. At initial stage on the date of filing of the suit I.A. No.1 under Order 32 Rule 3 R/W Sec. 151 C.P.C. is filed for appointment of the defendant No. 1 as a guardian of minor defendant No.3. That the defendant No.1 accepted and Advocate Sri. S.V. Patil appeared for defendant No.1 to 3. That on 13.02.2021 this Hon'ble Court passed the order that written statement of defendant No.1 to 3 is not filed. That it is clear that defendant No.1 has no interest or in other words not interested in safeguarding the interest of the minor defendant No.3. That subsequently I.A. No. 5 and 6 are filed to re-open the case and seeking permission to file

the written statement on behalf of defendant No. 1 and 2 only. That the defendant No.1 purposely not taken interest to contest the matter in favour of defendant No. 3. That both the applications I.A. No. 5 and 6 dismissed. In the beginning stage itself notice is issued to defendant No. 1 to act as guardian and after appearing on behalf of defendant No. 3, defendant No. 1 failed to contest the matter, any order passed by this Hon'ble Court is binding on defendant No. 1 as defendant No. 1 has acted as guardian failed to discharge her duty and now she cannot have a grievance that she has no notice.

4. It is pertinent to note that in Misc. No. 40/2022 this defendant No.1 appeared on behalf of defendant No. 3 and filed an application to set aside the order and application is allowed and defendant No. 1 continued as guardian of defendant No.3. That in spite of allowing the petition defendant No. 1 failed to appear for

herself and on behalf of defendant No.3. That defendant No. 1 not willing to act as guardian of defendant No.3 by filing memo or by conduct not praying to set aside the ex-parte order on behalf of defendant No.3. The guardian has filed the written statement, cross-examined the plaintiff and argued the matter. When the case is for judgment the defendant No.1 came with the application I.A. No. 5 to 7 thereafter with this application I.A. No. 8.

5. This application is filed just to stay the proceedings with the ulterior motive to cause loss to the plaintiff who is aged 85 years. That there is no ground to discharge the guardian and the application deserves to be dismissed. The application is very vague and prayed for removal of court guardian of minor defendant No. 3 and absolutely no prayer who is to be appointed as guardian. Hence, prayed to reject the application.

6. The court guardian has filed objections contending that, the application is false, frivolous and vexatious, the same is not tenable under law and facts. The summons served to the defendant No.1 and 2 personally, hence placed ex-parte on 19.08.2024. The court guardian has been appointed as court guardian on 25.09.2024 and filed the written statement on 19.11.2024. Issues were framed on 2025. The court guardian has examined the plaintiff also. The defendant No.1 and 2 filed memo of appearance on 28.03.2025. Defendant No.2 knows all the proceeding since 19.08.2024 and observing it on every date of hearing and purposely kept silent to drag the matter. The Advocate for defendant purposely made allegation against the court guardian to suit his claim purposely and thereby question the credibility of court guardian to suit his claim and to help his client made allegations against the court

guardian without any proof and without the knowledge of his client. Hence legal action may be taken against the Advocate for the defendant No.1 and 2 personally.

7. As per his statement in the case his claim was not keeping well but not produced any document to show that she was unwell and not taken any trouble to challenge the court order on I.A. No. 5 and 6 and also not filed the vakalat on behalf of defendant No. 1 and 2 but filed it on 08.03.2025. No written statement filed by defendant No. 1 and 2 up to 21.03.2025. Hence, prayed to dismiss the application.

8. The points that arise for my consideration is:-

1. Whether the present application deserves to be allowed?
2. What Order ?

9. Heard arguments from plaintiff counsel, counsel for defendants and court guardian.

10. My findings on the above points is as follows :

Point No.1 : in the Affirmative

Point No.2 : As per final order for the
following :-

:: R E A S O N S ::

11. **Point No.1:** The present application is filed by defendant No.3 to remove the court guardian appointed by this court for minor i.e. defendant No.3 in present suit. That the main ground urged by mother of defendant No.3 for the removal of court guardian is that the court guardian is unaware of facts of this case and he could not protect the rights of minor daughter of defendant no.2 properly. That the interest of court guardian is adverse to that of minor. That the court guardian has not performed his duties properly. That the court guardian is the client of counsel for the plaintiff and acts as per the instructions of the plaintiff. The same has come to the knowledge of

defendant No.2 recently. That the present I.A. is objected by the court guardian contending that the defendant No.2 is aware of the proceedings since 19.08.2024 and she is observing it on all every date of hearing and purposely kept silent to drag the matter. That the advocate for defendant has purposely made allegation against the court guardian to the suit his claim purposely and questioned the credibility of court guardian. That the allegations have been made against the court guardian without any proof and knowledge of his client. The plaintiff has also filed objection to the removal of court guardian on various grounds. However, since the guardian was appointed by this court, it is between the court whether continue the same court guardian or remove the court guardian.

12. The counsel for mother of defendant No.3 argued that though application was made for appointment of court guardian, the notice of same was not issued to the

guardian of defendant no.3, who is defendant no.2, as per Order XXXII Rule 3 (4), it is mandatory for the court to issue notice of such an application to the guardian of the minor and unless same is done, no order can be passed. However, this court has not at all sent notice on I.A. filed for appointing the court guardian for minor as such the said procedure itself is not proper. He also argued that the objections filed by the court commissioner itself shows that there is no sentence whispered to show that the court guardian has not at all acted against the interest of minor guardian. That the objections filed by the plaintiff to the present I.A No.4 at para No.4 shows that the plaintiff is colluding with the minor guardian and acting as per the instructions of plaintiff counsel. He also argued that the plaintiff counsel is representing the minor guardian in other cases, as such, he cannot protect the interest of minor. Since the interest of the minor guardian is adverse

to that of the minor, his removal is necessary in order to protect the interest of minor.

13. On the other hand, the counsel for the plaintiff argued in line with the objections filed to the present I.A., and submitted that on sufficient cause being shown and if the interest of the guardian is adverse to that of the minor, the court guardian can be appointed. It is a judicial act and discretion lies with the court. That the defendants have not requested to appoint defendant No.2 as minor guardian for defendant No.3. The present application is filed only after dismissal of I.A. filed by defendant No.2 to contest the suit. In the application for appointment of minor guardian at I.A. No.2 the plaintiff had sought for appointing any guardian. It is the court which has appointed the minor guardian and unnecessary allegations have been made against the court guardian. The defendant No.2 was aware of appointing court guardian and watching

the proceedings throughout only after dismissal of I.As and defendant No.2 seeking permission to file Written statement by setting aside ex-parte order the present application is filed only to drag proceedings.

14. It is pertinent to make mention that as per order passed in Civil Misc. No.40/2002 the present suit is restored on 23.04.2024. Thereafter court notice was served on defendants but the defendants did not appear. Thereafter on the application made by the plaintiff, court guardian was appointed for defendant No.3 on 04.09.2024. Thereafter, notice was served on the court guardian and he entered appearance and filed written statement on 13.11.2024 for minor defendant No.3. Thereafter, the matter was posted for issues and after recording the evidence, the matter was posted for judgment. No doubt as per the order sheet dated: 26.07.2024 the defendants No.1 and 2 have not appeared in pursuance of summons.

Thereafter court itself has appointed the minor guardian for defendant No.3 but on perusal of order sheet dt:20-03-2025 the plaintiff is examined as P.W.1 and on the said day itself PW1 was cross examined by the court guardian for defendant No.3. Court guardian for defendant No.3 has submitted no evidence on behalf of defendant No.3 on very next day 21.03.2025 and he has submitted arguments as heard on that day itself. Thereafter counsel for plaintiff was present and addressed arguments and thereafter the matter was posted for judgment. It is also pertinent to make mention that the interest of minor is of paramount importance. That the manner in which the case is conducted by the court guardian shows that he has hurriedly conducted cross examination of P.W.1 on the date of leading the evidence by PW1 itself on 20-03-2025. The court guardian has not lead evidence on behalf of minor defendant No.3 and no reasons are coming forth.

When the court guardian had filed written statement on behalf of defendant No.3, in order to protect the interest of minor he ought to have led evidence. No doubt for the said ground is not urged for removal of court guardian appointed by this court however duty is also cast on the court which has appointed the court guardian for minor to see whether the interest of minor guardian is protected or not. In the objections filed by the court guardian for his removal also there is no mention as to how he conducted the case on behalf of minor when he was appointed by this court, who is none other than the officer of the court and has to safeguard the interest of the minor. In the objections to the present I.A. it is contended by the court guardian in para No.2 of his objections it is stated that, summons was served on defendant No.1 and 2 on 19-08-2024 and court guardian was appointed on 25-09-2024 written statement filed on 19-11-2024 and thereafter the

defendant No.1 and 2 filed memo appearance on 28-03-2025. IN para No.4 it is further mentioned that the defendant moves all the proceedings since 19-08-2024 and observing it on every day of hearing and purposely kept silent to drag the matter. That the court guardian nothing to do with the conduct of the parties and whether the parties are dragging on the matter or not is not concerned of court guardian. These objections filed by the court guardian itself shows that, the court guardian not acted independently and is being influenced by the plaintiff. No doubt, no documents have been produced to show that the court guardian was client of plaintiff counsel, but the plaintiff counsel himself during the arguments has submitted that, like any other juniors, he has also advised the court guardian for defendant No.3 in many matters. Even if assuming that the court guardian is client of plaintiff this court has nothing to do with same. However,

it is relevant to make mention that in a hurried manner the case has been conducted by the minor the court guardian who was supposed to protect the interest of the Defendant No.3. No doubt the defendants No.1 and 2 were very well represented by counsel and they have entered into appearance through their counsel on 27.03.2025 itself and have been watching the proceedings since then and despite of same the defendant No.2 has not filed any objections for appointing the court guardian for minor defendant No.3. It is importance to make mention that the notice on I.A. No.III filed for appointment of court guardian is not at all sent to the natural guardian of defendant No.3, by this court, which is mandatory as per Order XXXII Rule 3(4) of CPC. After appointing the court guardian notice was sent to court guardian and not to the natural guardian of the minor defendant No.3. That the said application was filed even before the appearance of defendant No.2 in the

present case i.e. when they were placed exparte. However since the defendant No.2 has expressed her intention to represent the minor guardian and it is noticed by this court that the interest of minor guardian is not protected by court guardian as such the present application deserves to be allowed. Hence, above point is answered in the **Affirmative.**

15. **Point No.2:** In view of my findings on point No.1, this court proceeds to pass the following:

O R D E R

I.A.No.VIII filed by the counsel for
defendant No.3 under Order XXXII
Rule 9 R/w Sec.151 of CPC is hereby
allowed.

(Dictated on AI , corrected by stenographer, verified by me, and then pronounced in the open court on this the 09th day of September 2025.)

Sd/-

(Smt. Deepa G Manerkar)
II Addl. Senor Civil Judge and JMFC
Hubballi.