

ORDER ON APPLICATION UNDER ORDER 32 RULE 15
R/W 151 OF CPC

The applicant has filed application seeking permission to the defendant to prosecute the suit through his friend and son, due to his physical and mental infirmity to protect his interests in the subject matter.

2. In the accompanying affidavit sworn by the applicant averred that, father of the applicant was hale and healthy and since 2020 he has been prosecuting this case in respect of his sister's Late C.B.Leelavathi's suit schedule properties against which the plaintiff's herein and his wife R.Yogini had fabricated a Will of C.B.Leelavathi and obtained the Letters of Administration in P & SC No.29/2019 before this Court by suppressing father of the applicant as a Legal heir and filing false affidavits. Father of the applicant challenged the same on various grounds including that the Will is a fabricated one, it does not bear her signatures and the Letters of Administration were set-aside and father of the applicant was made a party in the P & SC No.29/2019 and then due to contest and serious disputes the present suit proceedings came to be registered.

Further averred that, father of the applicant was prosecuting the suit and in January 2023 he suffered a stroke and was unable to walk and carry out his day today routine independently. He was treated at Apollo Hospital at Mysuru and then at Kokilaben Dhirubhai Ambani Hospital, Mumbai. Thereafter, he was shifted to Mysuru and he is presently under treatment and medication in his house at

Mysuru. Of Late his speech and hearing have deteriorated and is unable to communicate effectively. He is not of unsound mind. Though, he is mentally able to comprehend he is unable to speak with ease, express himself and has become weak and pale. He is unable to physically present himself before the court. All his pleadings and contentions are on record. To further prosecute as per the pleadings and contentions to protect his interest in the suit subject matter he needs to be represented by him. The applicant being the son and taking care of him intend to prosecute this suit further on his behalf based on his pleadings and contentions and protect his interests.

Further averred that, the disputed Will set up by the plaintiffs is by forging the signatures of his aunt (father's sister) Late C.B.Leelavathi and the same is forth coming from comparison of the admitted signatures of Late C.B.Leelavathi occurring in the registered documents executed by her and the disputed signatures on the Will by referring to the handwriting expert after summoning the original registered Sale Deeds from the purchasers. The summons issued last time to Gopal Krishna and his wife Sudha Gopal Krishna residing in Flat No.204 of Sai Heritage Apartments, 7th main, Jayalakshmipuram seeking production of their Sale Deed executed by C.B.Leelavathi is returned unserved. Further steps to other purchasers, who are currently owning the apartments and those present in the apartments to be issued to summon and produce their registered Sale Deeds executed by C.B.Leelavathi in their possession. However,

father of the applicant is unable to prosecute further due to his physical and mental infirmity and hence he must be appointed to continue prosecution to protect his interests. The Plaintiffs although in possession of the registered Sale Deed of a flat got done from C.B.Leelavathi by him have not produced. Also, the Plaintiffs have not produced any documents of their claims of having further sold their flat and the details of the purchaser. This is a false claim by the plaintiffs and are suppressing the Sale Deed as they know that the forgery committed by them on the Will, would be apparent if the registered Sale Deeds of C.B.Leelavathi are produced and signatures compared with those in the Will. Father of the applicant will suffer injustice if not permitted to prosecute further through him.

Further averred that, now father of the applicant Dr. C.B.Murthy is staying in his house at Mysuru along with him and his mother, his wife Smt.Nalina Murthy, and we are taking care of him. He want to further prosecute the suit and protect his interests in the suit subject matter. Himself and his mother Nalina Murthy W/o C.B.Murthy also want to depose in the matter as his witness and give evidence on our personal knowledge in the matter in the circumstance of the creation of the subject Will set up by the plaintiffs and his wife Smt.Yogini, the suspicious circumstances stated in the pleadings of father of the applicant and within their knowledge surrounding the said fabricated Will. Hence, this application.

3. The counsel for the plaintiffs submits no objection to

allow the application subject to following of the proper procedure.

4. Initially plaintiff as a petitioner has filed a petition under Section 232 of Indian Succession Act. He has filed P & SC No.29/2019 and it is prayed to grant letter of administration in respect of Will dated 19.07.2013 executed by the C.B.Leelavathi in favour of the petitioner. Subsequently, the said petition was contested and the petition was converted to suit OS No.06/2021 is registered. After that, the matter is proceeded as suit. The plaintiff examined himself as PW-1 and marked documents. He was cross examined. After that, one witness is examined as PW-2 and the said witness also cross examined. After that, the plaintiff evidence is closed. The matter is posted for defendant evidence.

5. Two witnesses are examined as DW-1 & 2 and both are cross examined by the counsel for the plaintiff. After that, summons issued to witnesses. At that stage, the son the defendant has filed the present application. It is urged in the application that, the defendant suffered stroke and he is unable to walk and carried out his day to day work. He was under treatment. His speech and hearing have deteriorated and he is unable to communicate effectively. He is not of unsound mind. Though, he is mentally able to comprehend and he is unable to speak, express himself and has become weak. He is unable to physically present before the court. Hence, the defendant may to permitted to prosecute suit through his son next friend i.e., applicant herein.

6. Now, in this regard it is necessary to look into the provision under Order 32 Rule 15 of CPC, which reads thus:

"15. Rules 1 to 14 (except Rule 2-A) to apply to persons of unsound mind.-Rules 1 to 14 (except Rule 2-A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the court on enquiry to be incapable, by reason of any mental b infirmity, of protecting their interest when suing or being sued."

The court appoint guardian or next friend if a enquiry it is found, to be in capable by reason of any mental infirmity protecting their interest when suing or being sued. As per the provision, before proceeding to appoint guardian or next friend has to hold an enquiry to the effect that the person suffers from mental infirmity or incapable of protecting interest.

7. In this regard it is worth to relied upon the Hon'ble Apex court in Kasthuri Bai V/s Anguri Chaudhary (2003) 3 SCC 225 as under:

10. Order 32 Rule 15 CPC reads thus:

"15. Rules 1 to 14 (except Rule 2-A) to apply to persons of unsound mind.-Rules 1 to 14 (except Rule 2-A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the court on enquiry to be incapable, by reason of any mental b infirmity, of protecting their interest when suing or being sued."

11. On a bare perusal of the said provision, it is evident that the court is empowered to appoint a guardian in the event a person is adjudged to be of unsound mind. It further provides that even if a person is not so adjudged but is found by the court on enquiry to be incapable of protecting his or her interest when suing or being sued by reason of any mental infirmity, an appropriate order thereunder can be passed. The respondent did not contend that Appellant 1 herein is of unsound mind. As noticed herein before, the respondent herself had filed an application before the trial court for holding an enquiry to the effect that she suffers from mental infirmity.

12. The learned trial court refused to do the same and in that view of the matter the High Court, in our opinion, while setting aside the said order could only issue a direction directing the learned trial Judge to hold an enquiry so as to enable it to arrive at a finding as to whether the respondent herein was incapable of protecting her interest by reason of any mental infirmity or not. As no such enquiry was held, there cannot be any doubt whatsoever that the learned Single Judge committed a jurisdictional error in passing the impugned judgment which, the Division Bench as noticed herein before upheld.

8. In view of the observation of the Hon'ble Apex court as stated supra. It is necessary to hold an enquiry before appointing the guardian. In this present case also it is urged that, the defendant is not able to prosecute the suit and protect his interest in the suit due to his medical condition. The said fact is to be ascertain by holding the enquiry as per the provision as well as the observation of the

Hon'ble Apex court as stated supra. Before allowing this application and to appoint applicant as guardian next friend and also to permit the defendant to prosecute the suit through next friend, it is necessary to hold an enquiry.

Hence, the matter is posted for enquiry.

For enquiry call on 17.10.2025.

III.A.D.J.Mysuru.