



**I.A.No.V**

**Applicant/Plaintiff:** 1. Smt. Kavita D/o. Pundlik Naik  
@ W/o. Babu Nailadi Rayarmane.  
Vs.

**Opponents/Defts:** 1. Shri. Prashant S/o. Pundalik Naik,  
*and others.*

**ORDERS ON I.A. NO.V**

This is an application filed by the learned counsel for plaintiff under the provisions of Order 32 Rule 3 R/W. Sec.151 of C.P.C. to appoint a court official as a guardian to defendant No.1 to represent and safeguard the interest of defendant No.1 who is became insane and unsound mind.

2. The plaintiff has sworn to affidavit and stated that she has filed the suit for Partition and Separate Possession of suit schedule properties. The defendant No.2 has contended that the defendant No.1 is mentally insane and he cannot conduct this case without producing the medical certificate issued by the Hospital. The defendant No.2 has not given her consent to be appointed as guardian to defendant No.1. The plaintiff has filed Writ Petition before the Hon'ble High Court of Karnataka, Dharwad Bench vide

Writ Petition No.147856/2020(GM-CPC), in which, the Hon'ble High Court of Karnataka has directed to appoint the court official as guardian to the insane person. Hence, this application.

3. The learned counsel for defendants has filed objections contending that the application is not maintainable either under law or on facts. The plaintiff has not claimed for examination of defendant No.1 by competent medical officer. As per the guidelines issued by the Hon'ble Supreme Court to all the courts of law that before appointing the guardian, an enquiry has to be conducted. The plaintiff has not pleaded in the affidavit that the officer to be appointed by court has no conflicting interest with the right of defendant No.1. The defendant No.1 has to be examined by the medical officer to ascertain as to whether he is mentally ill person or not under the provisions of Mental Health Act or under Order 32 Rule 15 of C.P.C. The affidavit is vague and bald about the compliance of mandate of law and therefore, the application is liable to be dismissed.

4. The learned counsel for defendants has vehemently contended that neither the plaintiff nor the defendants have produced any documents to show that the defendant No.1 is mentally ill person and therefore, he has to be examined by the competent medical officer to ascertain as to whether he is suffering from mental illness or not. It is further contended that as per the provisions of Mental Health Act and provisions of Code of Civil Procedure, before appointment of next friend or guardian to conduct the case on behalf of mental ill person, an enquiry has to be conducted and direct the defendant No.1 subjected himself for examination by the competent authority.

5. In support of his submission, the learned counsel for defendants has relied upon a decision reported in

**AIR 2020 Bombay 49  
Dynacraft Machine Co. Ltd. vs.  
Vinod Shenoy**

(A) Mental Health Act (14 of 1987),  
Ss.76,53,65,69 - Appeal - Against  
order appointing guardian of mentally

ill person-Without availing remedies under Ss.65, 69- Is maintainable.

(B) Mental Health Act (14 of 1987), Ss. 53, 76- Civil P.C. (5 of 1908), O.1 R.10-Appeal - Challenging order appointing guardian of mentally ill person- Maintainability - Allegations of taking undue advantage of mental illness of mentally ill person were made against appellant - Plea of appellant that appointment of guardian was made without proper inquiry - Appeal by them maintainable - Mentally ill person was not necessary party.

(C) Mental Health Act (14 of 1987), Ss. 53, 57, 76 - Appointment of guardian of mentally ill person-Validity - Appointment was made only on the basis of medical certificate produced

by applicant, son of mentally ill woman  
- Without making any inquiry as to  
mental condition of mother of  
applicant and without calling any  
witness from hospital-Without  
complying with provisions of Section  
57- Not proper.

6. The learned counsel for defendants has also  
relied upon a decision reported in

**AIR 2005 MADRAS 56**  
**Shakunthala Devi vs. K. S. Naidu**  
**and another**

Civil P.C. (5 of 1908), O.32, R. 15 -  
Appointment of guardian - Application  
for - Ground of unsoundness of mind of  
plaintiff - Court has ample powers to  
compel attendance of alleged lunatic  
before it and to submit herself for  
medical examination - Applicant  
stating that her mother was insane  
and was suffering due to mental

disease, paranoid schizophrenia - Said fact denied by defendant - Directions issued to trial court to hold judicial inquiry as to unsoundness of mind of mother of applicant.

7. The learned counsel for defendants has also relied upon a decision reported in

**AIR 2003 SC 1773**  
**Kasturi Bai and others vs. Anguri**  
**Chaudhary**

Civil P.C. (5 of 1908), O.32 R.15-  
Guardian-Appointment of -Application  
by a defendant that she is age old and  
had lost ability to understand - Prayer  
that court should enquire about her  
state of mind - Disallowed by trial  
court - High Court in revision could not  
direct trial court to appoint guardian,  
when no enquiry as contemplated by  
R.15 was made.

8. The learned counsel for plaintiff neither disputed the principles laid down in the above cited decisions nor produced any contra decision or disputed the arguments of learned counsel for the defendants.

9. I have carefully gone through the principles laid down in the above cited decisions and also relevant provisions of Code of Civil procedure and Mental health Act.

10. Admittedly, the plaintiff has filed this suit against the defendants seeking Partition and Separate Possession of  $\frac{1}{3}^{\text{rd}}$  share in the suit schedule properties and also sought for to cancel the sale deed in respect of alienation of item No.3 of the suit schedule property on the ground that the suit schedule properties are the joint family properties of herself and defendants.

11. On service of suit summons, the defendants No.2 to 4 have appeared before the court through their learned counsels and defendant No.2 has filed the written statement denying the averments made in the plaint and claimed exclusive right over the suit schedule properties. The defendant No.2 also contended that the defendant No.1 is

mentally ill person and taking treatment at Manasa Nursing Home, Shimoga and therefore, the suit is for maintainable without the guardian of defendant No.1 who is the insane person.

12. After filing the written statement of defendant No.2, the learned counsel for plaintiff has filed I.A.No.III under the provisions of Order 32 Rule 15 R/W. Sec.151 of C.P.C. to appoint defendant No.2 as guardian and next friend to represent and safeguard the interest of defendant No.1 who is insane person.

13. But, on service of notice on I.A.No.III, the defendant No.2 has appeared before the court through her learned counsel and filed objections. Since the defendant No.2 has not consented in writing to appoint her as guardian to the defendant No.1 and since there was a conflicting of interest of defendant No.2 with defendant No.1, the said I.A.No.III was came to be dismissed with costs vide order dated 13.3.2020.

14. The plaintiff aggrieved by the order on I.A.No.III, has preferred Writ Petition No.147856/2020 before the

Hon'ble High Court of Karnataka which was came to be dismissed vide order dated 13.10.2020 by giving liberty to the plaintiff to file fresh application seeking appointment of of court official as guardian of defendant No.1 in the suit in accordance with law.

15. Therefore, the plaintiff has filed this present application seeking appointment of court official as guardian of defendant No.1 and next friend to represent and safeguard the interest of defendant No.1 who is became insane and unsound mind person.

16. It is important to note here that the defendant No.2 has contended in her written statement that the defendant No.1 is mentally ill person and taking treatment at Manasa Nursing Home, Shimoga and therefore, he is not competent to conduct case on his own. Therefore, whether the defendant No. 1 is suffering from illness or not is a matter which requires consideration and examination by the competent medical officer. Hence, as rightly pointed out by the learned counsel for the defendants and as per the principles and guidelines laid down in the cited decisions, an

enquiry has to be conducted to ascertain as to whether the defendant No.1 is suffering from mental illness and therefore, he could not put-forth his defence effectively in this case and therefore, it is necessary to appoint any court official as guardian to represent the defendant No.1.

17. Therefore, considering the nature of suit and also regard being had to the defence put forth by defendant No.2 in defending this case, this court is of the considered view that before considering I.A.No.V for appointment of any court official or any advocate as guardian to represent defendant No.1, it is just and necessary to direct the first defendant to submit himself for medical examination by a competent Doctor attached to District Hospital, Karwar to ascertain as to whether he is suffering from any mental illness or not. Hence, I proceed to pass the following:

**:ORDER :**

The defendant No.1 is hereby directed to submit himself for medical examination by competent medical officer attached to District Hospital,

Karwar or Medical Board constituted for said purpose so as to ascertain as to whether he is suffering from any mental illness or not.

The Psychiatric attached to the District Hospital, Karwar or Medical Board constituted for said purpose is directed to examine the defendant No.1 and submit the detailed report as to whether he is suffering from any mental illness or not.

Office is hereby directed to issue intimation to the District Hospital, Karwar.

(Dictated to the Stenographer, transcribed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the **4<sup>th</sup> Day of February, 2021.**)

**( N.M. Ramesha )**  
Prl. Senior Civil Judge,  
Karwar.

