

BEFORE THE ADDITIONAL CIVIL JUDGE, KUMTA.

Present : Sri. Mahesh Chandrakanth, B.A., LL.M.
Additional Civil Judge, Kumta.

DATED THIS 24th DAY OF November, 2014

O.S. No. 68/2014

Plaintiffs : Meera Anant Shanbhag and others,

(By Sri. Santhosh Shetty Advocate)

V/s.

Defendants : Ganpayya Ananth Shanbhag and others,

(Defendants by Sri Y.V.S.Advocate)

ORDERS ON IA.NO. I

This application is filed under order XXXIII rule 4 of civil procedure code by the plaintiff No.1 for appointing her as guardian of the plaintiff No.2. The advocate for the plaintiff has filed memo dated 29/10/2014 stating that in the application the provision of law wrongly mentioned as order XXXIII instead of order XXXII rule 4 of CPC.

2. The defendants have filed their objections to the application. The defendants in their objections it is contended that the application

is filed under wrong provision of law, hence, the application is not maintainable. They further contended that the plaintiff No. 2 is not suffering from unsoundness and she is capable for protecting her interest and she is able to prove her right. They further contended that there is no necessity for appointing the guardian for plaintiff No.2, the plaintiff No. 1 has filed false application. Hence, they prayed for dismissal of the I.A.No.I.

3. I have heard the arguments of both sides, perused the I.A. and accompanying affidavit.

4. The following points arise for my consideration

1. Whether the appointment of guardian for plaintiff No.2 is necessary to protect her interest?

2. What order or decree?

5. My findings on the above points are as under:

Point No.1 : In the affirmative

Point No.2 : As per final order

For the following reasons,

REASONS

6. **Point No.1** : The present application is filed by the Plaintiff No.1 for appointing her as guardian of the plaintiff No.2. Admittedly the application is filed under wrong provision of law but the advocate for the plaintiff has filed memo stating that by typing mistake the wrong

provision is mentioned in the application. He has filed memo stating correct provision of law. The memo is accepted. Hence, the contention of the defendants that wrong mention of provision of law not sustainable.

7. The advocate for the plaintiffs argued that the plaintiff No.2 is mentally retired person; he further submitted that the mother of the plaintiff No. 2 dead and father had not come forwarded to take care of the plaintiff No.2. Hence the plaintiff No.1 is taking care of the plaintiff No.2 and she is providing medical treatment regularly. The applicant has deposed in her affidavit the plaintiff No.2 is of unsound mind and appointment of guardian is necessary to represent the plaintiff No.2. She further deposed that there is no conflict of interest between the plaintiffs.

8. In support of application the applicant produced the medical certificate of the plaintiff No.2 issued by the Medical Board of Disability Victoria Hospital Bangalore. I have perused the medical certificate wherein it is certified that the plaintiff No.2 is 90% mentally disabled. The applicant has also produced the identity card of the plaintiff No.2 wherein also it is mentioned that the plaintiff No.2 is 75% permanently disabled. The plaintiff No.2 was present in the court on the last date of hearing, the court observed the attitude of the plaintiff No.2. As per the records produced by the applicant and

observation this court. This Court is of the considered opinion that the plaintiff No.2 is suffering from mental disability.

9. The defendants have admitted the relationship of the parties. The main contention of the defendants is that the plaintiff No.2 is mentally fit to defend her case. But as per the medical records it is impossible to the plaintiff No.2 to contest her case without guardian.

10. Sri. YVS advocate for the defendants vehemently argued that without enquiry court has no power to appoint the guardian. In support of his argument he has relied on the following judgments

1. 1975(1) KLJ SN 22
2. AIR 2002 NOC 123
3. 1999 (6) KLJ 75

11. With great respect to the above judgments these judgments are not applicable to the present case on hand. The enquiry under Rule 15 is required only when there is no material to find out the mental infirmity of the person. But in the present case as per the medical certificates it is clear that the plaintiff NO.2 is incapable to protect her interest due to her mental infirmity. The advocate for the defendant Sri YVS has done his home work extremely well.

12. The order XXXII protects the rights and interest of the minor and unsound mind persons. In the present case also the plaintiff NO.1 is taking care of the plaintiff No.2 and the suit is for partition. The

plaintiff NO.1 is the aunt of the plaintiff No.2 both are claiming the share in the suit schedule property. There is no conflicting interest between the plaintiffs. Hence, to protect the interest of the plaintiff No.2 it is necessary to appoint the plaintiff No.1 as guardian of the plaintiff No.2 to prosecute suit on behalf of plaintiff No.2. Hence, I have answered the point No.1 in the affirmative.

13. Point No.2: In view of the above findings I proceed to pass the following

ORDER

The I.A. No. filed under order XXXII Rule 4 is allowed. The plaintiff No.1 is appointed as guardian and permitted to represent on behalf of the plaintiff No.2.

No order as to costs.

(Typed, corrected and pronounced by me in the Open Court on this the 24th day of November, 2014).

(Mahesh Chandrakanth)
Addl. Civil Judge, Kumta