

23.7.2021
Case called
Plff.by SSS/VPT
D1 to 3 by YVS
D4 by Exparte
For orders

:: ORDERS ON I.A.NO.V ::

The plaintiff No.1(a) has filed I.A.No.V U/O 32 Rule 4 R/w Sec. 151 of CPC seeking for her appointment as guardian of plaintiff No.2.. Plaintiff No.1(a) has filed the affidavit in support of the application wherein she stated that plaintiff No.2 is an unsound person and plaintiff No.2 is under her care and custody. Further, it is stated that her mother i.e., plaintiff No.1 was looking after plaintiff No.2 and she died on 02.06.2018. It is further stated that plaintiff No.2 being unsound, needs to be duly represented in the suit. Further, it is stated she is a fit person to act as guardian of plaintiff No.2 as plaintiff No.2 has been under her care and custody after the demise of plaintiff No.1. Based on the said grounds, plaintiff No.1(a) sought to appoint her as guardian of plaintiff No.2.

2. Defendants have filed objections to the application wherein they have denied the averments made in the affidavit. Further, the defendants have also denied that plaintiff No.1(a) is not the daughter of plaintiff No.1 and plaintiff No.2 is not related to defendants. It is also

contended that plaintiff No.2 is sound minded and she has the ability protect and safeguard her interest. It is also contended that plaintiff No.2 is not under the care and custody of plaintiff No.1(a) and there is no necessity to appoint plaintiff No.1(a) as guardian. Based on the said grounds, defendants sought for rejection of application.

2. On perusal of the materials placed before the court, the below mentioned points arise for consideration:

Point No.1: Whether plaintiff no 1(a) has made out grounds to appoint her as guardian of plaintiff No.2?

Point No.2: What order?

3. The plaintiff No.1(a) got examined as CW1 and got marked Ex.C1 and C2 documents in order to substantiate her contentions. The defendants neither examined any witness nor marked any documents on their behalf.

4. Heard the arguments of counsel for plaintiff and defendants on I.A.No.V.

5. On consideration of the materials, this court answers the above points as below:

Point No.1: In the Affirmative.

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

REASONS

6. **Point No.1:** It is the contention of the plaintiff No.1(a) that plaintiff No.2 is suffering from unsoundness of mind and unable to protect and safeguard her interest in the

suit. On the other hand, the defendants contended that plaintiff No.2 is in a sane condition and able to protect her right and interest in the suit. The plaintiff No. 1(a) has filed the affidavit during enquiry and she has reiterated the facts as stated in the affidavit annexed to the application. CW 1 has also furnished copy of application submitted to concerned authority and certificate of appointment of legal guardian issued by concerned authority which is marked as Ex.C1 and C2. CW 1 has been cross-examined by counsel for the defendants but nothing disputing or doubting the assertions of plaintiff has been elicited.

7. Further, the suggestions put-forth during cross-examination that plaintiff No.2 is sane and plaintiff No.2 has not been under the care and custody of plaintiff No.1(a), have been denied by the witness. Ex.C1 is the application submitted to Department of Physically Disabled and Senior Citizens Welfare and the said document discloses that plaintiff No.2 has 90% disability. In column No.12 of Ex.C1, form, it is stated that plaintiff No.2 has got severe mental retardation. At part II of the said document, it is mentioned that the aspect of disability has been mentioned in accordance with the document provided by Medical Board. Ex.C1, form bears the seal and signature of Medical authority.

8. The plaintiff has also furnished certificate issued by D.C. Bangalore wherein plaintiff No.1(a) has been appointed as legal guardian of plaintiff No.2 and the said document has been marked as Ex.C2. The said document

reveals that the application submitted by plaintiff No.1(a) to appoint her as guardian of plaintiff No.2 has been accepted and a certificate has also been issued, by appointing plaintiff No.1(a) as guardian. Ex.C2 certificate might have been issued only after making suitable verification with respect to the fact of disability. The documents furnished by the plaintiff reveals regarding the fact of disability of plaintiff No.2. On the other hand, the defendants have not put forth any satisfactory materials either to show that plaintiff No.2 is sane or to disbelieve the documents furnished by the plaintiff. Except the averments in the objection, the defendants have not placed any materials to show that plaintiff No.2 is not suffering from any mental disability and also to show that plaintiff No.2 has the capability to protect and safeguard her right and interest. The documents furnished by the plaintiffs substantiate their contention with respect to the mental disability of plaintiff No.2.

9. It is also pertinent to note that plaintiff No.1 was appointed as guardian of plaintiff No.2 by an order passed by this court dated 24.11.2014. While passing Orders on I.A.No.I, this court has come to the conclusion that plaintiff No.2 is suffering from mental disability and has appointed plaintiff No.1 as the guardian. Under Order 32 Rule 15 of CPC, while applying the provisions to persons of unsound mind, it has been provided that the unsoundness of mind of the person shall have been adjudged before or during the pendency of the suit and if not so adjudged, found by the court through enquiry to be incapable. In the present case,

the court has been adjudged plaintiff no 2 as a person of unsound mind vide order dated 24.11.2014. Apart from that as per the documents furnished by the plaintiffs, plaintiff no 2 has been adjudged as a person of unsound mind and plaintiff no 1 (a) has been appointed as a guardian of plaintiff no 2. The conditions required to prove unsoundness of mind as per Order 32 Rule 15 has been fulfilled by the plaintiffs through oral and documentary materials. The materials placed before the court are sufficient and satisfactory to consider that plaintiff no 2 is suffering from unsoundness of mind. Further, apart from plaintiff no 1(a), none has approached the court to act as a guardian of plaintiff no 2. The documents furnished by the plaintiffs reveal that plaintiff no 1(a) has been appointed as guardian of plaintiff no 2 by the concerned authority after making necessary enquiry. As such, on consideration of the materials placed before the court, plaintiff no 1 (a) appears to be suitable and appropriate person to act as guardian in order to protect and safeguard the interest of plaintiff no 2. On consideration of the materials placed before the court, it can be duly construed that plaintiff no 2 is suffering from unsoundness of mind and plaintiff no 1(a) is fit and proper person to act as guardian of plaintiff no 2. Hence, this court answers **point no 1 in the affirmative.**

10. **Point No.2:** In view of my findings on point No.1, this court deems it appropriate to pass the following:

ORDER

I.A.No.V filed by the plaintiff U/O 32
Rule 4 R/w Sec. 151 ofCPC is hereby allowed.

The plaintiff No.1(a) is appointed as
guardian of plaintiff No.2.

No order as to cost.

Sd/-

C/c Addl.C.J. & JMFC, Kumta