

KABG200009992022



**IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE & JMFC.,**

**AT: ATHANI**

Present: Shri. **Abdul Rahaman Pathan**,  
B.A. LL.M.,  
Additional Senior Civil Judge & JMFC.,

**G & W.C. No. 136/2022**

Dated this the 02<sup>nd</sup> day of January 2024

**PETITIONERS:**

1. Shri. Namadev S/o. Gyanu Solankar, Aged about 75 years, Agriculture.
2. Kumari. Kalavati D/o. Namadev Solankar, Aged about 26 years.

Petitioner No. 2 is mentally retarded represented by her father petitioner No. 1.

Both are R/o. Hulagabali Village, Taluka: Athani, District: Belagavi.

**(By Shri. S.M.P Adv.,)**

**// Versus //**

**RESPONDENT:**

**-NIL-**

## **J U D G M E N T**

Petitioners filed instant petition U/Section 7 and 8 (2) of the Hindu Guardianship and Wards Act and Section 28 and 29 of the Guardians and Wards Act to appoint Petitioner No. 1 as guardian of Petitioner No. 2.

### **2. The averments of petition in brief are as under:**

It is the case of petitioners that, petitioner No. 1 is father of petitioner No. 2. Petitioner No. 2 is mentally retarded by birth. She is in care and custody of petitioner No. 1 and he has been looking after her. The Department of Empowerment of Persons with Disabilities Ministry of Social Justice and Empowerment, Government of India issued certificate stating that, petitioner No. 2 is suffering from 75% of mental retardation and is unable to maintain herself. Petitioner No. 2 is granted pension of Rs. 1200/- per month by Government of Karnataka. The concerned authority directed to open a bank account in any of the Nationalized Bank in the name of petitioner No. 2. Thus, petitioners constrained to file instant petition to appoint petitioner No. 1 as guardian of petitioner No. 2.

3. The instant petition has been made over to this Court after registration to dispose off in accordance with law. After receipt of petition, public notice was issued in Kannadamma Daily Kannada News Paper dated, 24-11-2023 inviting persons interested to join the petition but no one have appeared.

4. So as to prove their case, petitioner No. 1 examined himself as PW-1 and two witnesses as PW-2 and 3. In support of oral evidence got marked Ex.P1/Disability Certificate, Ex.P2 and 3/Adhaar Cards and Ex.P4/Paper Publication.

5. On the basis of petition averments and material placed on record following points arise for consideration:

**POINTS**

**1. Whether petitioners have made out sufficient grounds to appoint petitioner No. 1 as guardian of petitioner No. 2, who is mentally retarded?.**

**2. What Order?.**

6. Heard learned Counsel for petitioners. Perused oral and documentary evidence placed on record. My answer to above points is as under:

**POINT No. 1 : In the Affirmative**

**POINT No. 2 : As per final order for the following:**

**:REASONS:**

7. **POINT No. 1:** The instant petition has been filed seeking appointment of petitioner No. 1 as guardian of petitioner No. 2, who is mentally retarded. So as to prove their case, petitioner No. 1, who is father of petitioner No. 2 examined himself as PW-1 and filed affidavit in lieu of examination in chief reiterating petition averments. The evidence of PW-1 remained unchallenged as there are no respondents.

8. This Court also perused evidence of PW-2 and 3 deposed in line with evidence of PW-1. Their evidence remained unchallenged as there are no respondents.

9. This Court carefully perused Ex.P1/Disability Certificate. Wherein it appears that, petitioner No. 2 is a mentally retarded lady and suffering from 75% of disability. The said certificate is issued by competent authority as such, can be considered as proof of mental retardation. This Court also perused Ex.P3/Adhaar Card, which shows that, petitioner No. 2 is major. The Ex.P1 to 3 remained unchallenged as there are no respondents.

10. It is pertinent to state that, Section 3,7,10 and 29 of the Guardians and Wards Act does not deal with mentally retarded person or lunatics. This Court also perused Section 53 of the Mental Health Act, 1987, which deals with appointment of guardian of mentally ill person but said Act has been repealed and has been replaced by the Mental Healthcare Act, 2017, which came into effect from 07-07-2018. The said Act does not provide mechanism for appointment of guardian of mentally ill person, which was available in repealed Act. This Court also perused Section 14 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. The said provision empowers the Local Level Committee to appoint legal guardian for a mentally retarded person but said provision does not exclude jurisdiction of Civil Court to appoint guardian for a mentally retarded major person. Thus, it appears that, exercising power conferred U/Section 7 and 28 of the Guardians and Wards Act, Civil

Court can appoint guardian for a major mentally retarded person. The said preposition of law is supported by decision of Hon'ble High Court of Bombay delivered in **Guardianship Petition No. 8/2023, (ABC VS., XYZ) dated, 17-08-2023.** Wherein it is held that, a guardian can be appointed with respect to a mentally retarded major person invoking provisions of Section 7 of the Guardians and Wards Act. In this case also, petitioner No. 2 is a major mentally retarded lady and petitioner No. 1 is her father. It appears from petition averments that, petitioner No. 2 has been granted with pension of Rs. 1200/- per month by Government of Karnataka and she is unable to withdraw the same due to her mental status as such, she obviously requires guardian to transact on her behalf. Apart from this, petitioner No. 1 is father of petitioner No. 2 and there is no material on record to show that, he has adverse interest as against her. In view of above discussion, this Court is of view that, petitioner No. 1 has made out sufficient grounds to appoint him as guardian of petitioner No. 2. **Accordingly, I answer Point No. 1 in the Affirmative.**

**10. POINT No. 2:** In view of discussion and conclusion arrived at Point No. 1, this Court proceeds to pass following:

#### **ORDER**

**The Petition filed by petitioners U/Section 7 and 8 (2) of the Hindu Minority and Guardianship Act and Section 28 and 29 of the Guardian and Wards Act is hereby allowed.**

**Consequently, Petitioner No. 1 is appointed as guardian of petitioner No. 2.**

**Petitioner No. 1 shall maintain true account of expenses incurred towards education and other expenses of petitioner No. 2 and shall also keep account of the income derived from pension drawn.**

**Issue guardianship certificate accordingly.**

**Parties to bear their own costs.**

(Dictated to the stenographer, directly on laptop, corrected by me and then pronounced in Open Court on this 02<sup>nd</sup> day of January 2024).

**(Abdul Rahaman Pathan)**  
Additional Senior Civil Judge  
& JMFC., Athani.

**:: ANNEXURE ::**

**LIST OF WITNESSES EXAMINED FOR PETITIONERS:**

PW-1 : Shri. Namadev S/o. Gyanu Solankar  
PW-2 : Shri. Maruti S/o. Laxman Uski  
PW-3 : Shri. Kumar S/o. Bahu Patil

**LIST OF DOCUMENTS MARKED FOR PETITIONERS:**

Ex.P1 : Disability Certificate  
Ex.P2 and 3: Adhaar Cards  
Ex.P4 : Paper Publication

**LIST OF WITNESSES EXAMINED FOR RESPONDENTS:**

- NIL-

**LIST OF DOCUMENTS MARKED FOR RESPONDENTS:**

-NIL-

Date: 02-01-2024

Place: Athani

**(Abdul Rahaman Pathan)**  
Additional Senior Civil Judge  
& JMFC., Athani.