

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

TUESDAY, THE SIXTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI



CIVIL REVISION PETITION NO: 690 OF 2025

Petition under Article 227 of the Constitution of India, against the impugned Order dt 03-01-2025 passed in I.A.No.510/2024 in O.S.No.247/2013 on the file of Hon'ble Principal Civil Judge (Senior Division), Kurnool.

Between:

Mahaboob Bi, W/o Late Abdul Majeed, Aged about 60 years, R/o D.No.23/84, Adoni, Rep. by her guardian M. Shehanaz, W/o Habeeb, Aged about 42 years, R/o D.No.14/1, Khazipura, Adoni, Kurnool District.

...Revision Petitioner (Petitioner / 2nd Defendant)

AND

1. Zubeda BI, W/o M. Basheer, Aged about 72 years, R/o H.No.20/336, Near Moulana Masjid Road Adoni, Kurnool District.

...Respondent (1st Respondent / Plaintiff)

2. B.Md. Khasim,, S/o Late B. Abdul Sattar Sab, Aged about 61 years, R/o H.No.20/322, Venkannabhavi Street, Adoni, Kurnool District.
3. S. Ghousia Banu,, W/o S. Khader Basha, Aged about 50 years, R/o H.No.25/392, Havannapet, Adoni, Kurnool District.



4. H. Sofia Beguam,, W/o H. Mahamood Sab, Aged about 48 years, R/o H.No.7-68, Indira Nagar, Railway Station Road, Ghatkesar, Ranga Reddy District.

5. J. Asiya Banu,, W/o J. Basha, Aged about 45 years, R/o H.No.25/115, Bariki Mohalla, Adoni, Kurnool District.

...Respondents (Respondent 2 to 5 / Defendants 1,3 to 5)

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S.No.247/2013 on the file of Hon'ble Principal Civil Judge (Senior Division), Kurnool.

Counsel for the Petitioner :SRI. A SYAM SUNDAR REDDY

Counsel for the Respondents: ---

The Court made the following:

IN THE HIGH COURT OF ANDHRA PRADESH



AT AMARAVATI

[3311]

(Special Original Jurisdiction)

Tuesday, the Sixth Day of May Two Thousand and Twenty Five

Present

The Honourable Ms.Justice B.S.Bhanumathi

Civil Revision Petition No: 690 of 2025

Between:

Mahaboob Bi

...Petitioner

and

Zubeda Bi and others

...Respondents

Counsel for the petitioner:

1.A.Syam Sundar Reddy

Counsel for the respondents:

Nil

The Court made the following Order:

This petition is filed under Article 227 of the Constitution of India, against the order dated 03.01.2025, dismissing the I.A. No.510 of 2024 in O.S. No.247 of 2013 (Old Number O.S. No.67 of 2018) on the file of the Court of Principal Senior Civil Judge, Kurnool filed by the defendant No.2 through Ms.M.Shehanaz, w/o Habeeb, as guardian representing the defendant No.2 under Order XXXII, Rule 15 of C.P.C. and Section 151 C.P.C. to appoint M.Shehanaz, w/o. Habeeb as guardian to the defendant No.2 to prosecute the case on behalf of the defendant No.2 to take proper defence, give evidence and represent in as such other proceedings on her behalf.

2. The proposed guardian is the daughter of the petitioner. The respondent No.1 is the plaintiff. The respondents No.2 to 5 are the other defendants. The respondents No.1 and 2 and the petitioner are the siblings and children of late Abdul Sattar of Adoni. The petitioner is illiterate and innocent. She is deaf and weak minded. On account of the death of her husband and son in the year 2009, she got mentally disturbed and since then, she became incapable of exercising her discretion in proper and correct way. In view of her mental incapacity, the daughter of the petitioner gave affidavit in support of the petition. In the 1st week of April, 2024, the daughter of the petitioner and her other siblings came to know that the respondent No.1 filed the suit originally as O.S. No.68 of 2008. before the Court of Senior Civil Judge, Adoni, against the defendants No.1 and 2 for partition and separate possession of her 1/4th joint share in the plaint schedule property long back left behind by late Abdul Sattar, and that on receipt of summon in the suit, without the knowledge of the children of the petitioner, her brother i.e., defendant No.1 / respondent No.1 herein engaged an advocate to appear for himself and the petitioner taking advantage of her old age, illiteracy, innocence, mental weakness and incapacity. The respondent No.2 promised the petitioner to give her share in the plaint schedule property, but by avoiding to give proper and correct instructions to the counsel, the respondent No.2 got filed the written statement on his behalf with false, baseless and untenable averments, which are prejudicial to the interest of the petitioner's joint share. With that view, he got filed a memo by the petitioner adopting the written statement filed by him. In the written statement filed by the respondent No.2, falsely it was

pleaded that the respondent No.1 and the petitioner received Rs.20,000/- each from him towards full and final settlement of their share in the plaint schedule properties and that ever since the death of Abdul Sattar, the respondent No.2 has been enjoying the plaint schedule property as absolute owner. The children of the petitioner got to know that pending the suit, the defendants No.3 to 5 / respondents No.3 to 5 herein got themselves impleaded in the suit claiming share of their mother late Hazrath Bee who is another daughter of late Abdul Sattar and that at the behest of the respondent No.2, this suit was transferred to the Court of Senior Civil Judge, Kurnool and renumbered as in O.S.No.247 of 2013 and the respondent No.1 had already deposed evidence and the suit is coming for evidence of the defendants. They further came to know that the defendant No.1 filed petition for rejection of the plaint and also acting prejudicial to the interest of the petitioner. When the children of the petitioner came to know about the entire proceedings in the suit in the 1st week of April, 2024, they insisted the respondent No.2 to deliver share of the petitioner in the plaint schedule properties and the respondent No.2 promised to do so, but later, he took 'U' turn and bluntly refused to give share of the petitioner. Under these circumstances, it is expedient to conduct the case in proper and befitting manner protecting the right of the petitioner by engaging another counsel and taking proper defence. In view of the mental condition of the petitioner as she is unable to defend her case it is necessary to appoint the daughter of the petitioner as her guardian. Hence, this petition is filed. Other children of the petitioner have no objection in this regard.



3. The respondent No.1 / plaintiff filed counter denying averments in the petition stating that the suit was filed in the year 2008 and the plaintiff completed evidence way back in the year 2011 and since then the matter has been coming for evidence of the defendants, but they are dodging the trial by filing application on other grounds. To appoint guardian, Court must be satisfied that the petitioner is incapable by reason of unsoundness of mind. However, the petitioner failed to satisfy necessary conditions. Hence, there are no merits in the petition and liable to be dismissed.

4. The respondent No.1 / defendant No.1 filed separate counter opposing the petition stating briefly as follows:

5. The proposed guardian has no *locus standi* to file the petition. The Court has not appointed her as guardian to the petitioner. Without such permission, she cannot proclaim herself as guardian. This petition was filed after 17 years of instituting of the suit. It is a lie that the children of the petitioner came to know that petition in the 1st week of April, 2024. It is incorrect that on account of the death of the respondent and son of the petitioner in the year 2009, she got mentally disturbed and incapable to defend herself. Her husband died on 14.02.2009, whereas her eldest son R.Md.Noor was alive till 03.01.2019. Another son by name R.Nasir aged 60 years is still alive. The petitioner is residing with R.Nasir and her address in the adhaar card is also that of her son. As such, appointment of Shehanaz as guardian of the petitioner is against Order XXXII A, Rule 6 (d) regarding the meaning of 'family' that man or woman and his or her brother, sisters, ancestor or

lineal descendant living with him or her. Further, Order XXXII A, Rule 6 (d) C.P.C. is in consonance with Rule (1) (2) (c) of the same Order which says that suit or proceedings relating to guardianship of the person or the custody of the minor or other member of the family under a disability. As such, the petition is not maintainable. Further, accordingly to Muslim personal law, female can be appointed as the guardian to the 'person' not to the 'property' and as suit is in respect of the property, petition cannot be represented by her daughter, particularly during the lifetime of R.Nasir. No objection was received from R.Nasir. Petitioner suppressed the fact that R.Md.Noor was alive till 03.01.2019 and other son R.Nasir is alive and that the petitioner is residing with him. Thus, the respondent denied the allegation that he took advantage of age, illiteracy, innocence, weak mental condition etc., of the petitioner and got adopted the written statement filed by him. The petitioner's husband and her elder son used to attend the office of her counsel, Mr.M.S. Shasha Vali along with the petitioner and after the death of husband of the petitioner, her eldest son used to attend the office of the counsel till 2019 and later, her younger son R.Nasir attended the office of the counsel. After the death of husband of the petitioner, she gifted shop bearing No.XII /507-1, which stood in her name, to her grandson, Altaf and her younger son R.Nasir and registered gift dated 18.11.2009. Her signature was forged by the counsel of the defendants No.3 to 5 in transfer petition Tr.O.P. No.107 of 2011. She complained the same to the then Principal District Judge, Kurnool on 26.03.2013. As such, the Principal District Judge, after hearing the petitioner in the open Court ordered for personal appearance of the counsel and



then the counsel admitted her mistake and thereby reported no objection to allow the petition and thereafter also the petitioner attended before the Court several times. These medical certificates issued by Dr.B.Ananda Rao, M.B.B.S., Kurnool, dated 23.07.2024, stating that the petitioner is suffering from memory loss with non-recognition of the people with frontal lobe tumor of brain with cronic brain para chysmal disease of Rt M.C.A. region for long term more than 20 years with low I.Q. and was advised treatment and complete rest for Alzhemers disease with family members support is nothing but a hear-say certificate (incorrect certificate). The medical records filed by the petitioner shows that the petitioner was examined by Dr.K.Hemanth Kumar, Adoni, on 26.06.2024 and blood test was also done on 26.06.2024, at Rowjee Diagnostics, Adoni, whereas the medical certificate of Dr.B.Ananda Rao is dated 23.07.2024. No medical record from the year 2008 was filed. The medical certificate produced by the petitioner has no sanctity. It was granted for the purpose of the case. That apart, the petitioner herself executed vakalatnama in favour of the counsel in the year 2008 itself in the presence of her husband and son. Since the beginning, her husband and son were watching the proceedings in the case. The petitioner is highly orthodox, parda-nashin and god-fearing woman. After 17 years of the institution of the case and execution of the vakalatnama, now the petitioner cannot seek no objection to disengage her counsel and also file vakalat and contend that she had not given proper instructions. It is not correct that the petitioner is deaf and weak minded. She hears properly with the help of hearing aid. She is slow in day to day activity due to her old age to due to weak mind

or unsoundness. She can easily recognize persons who are in regular touch with her. Under these circumstances, it is prayed to dismiss the petition.

6. After hearing both parties, trial Court dismissed the petition holding that the petitioner had not produced evidence that she has been suffering from mental infirmity and that the petitioner had not been examined by the Court and no conclusion was arrived by the Court with regard to mental disability.

7. Aggrieved by the order, this revision petition was filed contending that the petition should not be dismissed on assumptions and presumption and that the Court should have directed the party to produce evidence to substantiate mental condition and illness.

8. The learned counsel for the petitioner contended that the trial Court erred in dismissing the petition without following law for appointment of guardian and that the trial Court had dismissed the petition without following due procedure.

9. Whenever party is to be represented by the guardian due to unsound mind, procedure under Rule 15 of Order XXXII C.P.C. akin to enquiry under the Guardian and Wards Act, 1890, including examination of the Ward shall be followed. In the present petition, no such process was followed. It is simply stated that the petitioner had not produced the necessary evidence to prove her mental condition. That part, the question whether daughter of the petitioner is competent to be appointed as guardian to the petitioner was also not decided. Therefore, it is a matter fit to

remand back for fresh consideration by setting aside impugned order and restoring the petition for further adjudication.

10. However, the petitioner is at liberty to lead evidence as even a guardian can only give evidence of facts within his / her personal knowledge and cannot depose what is within exclusive knowledge of the party. A guardian can give evidence like any other witness and nothing more or less. Even if a guardian is appointed, the scope of authority of a guardian to represent the interest of the ward is limited to deal with the proceedings only and cannot be a substitute for the party in so far as evidence is concerned as indicated above.

11. As such, this civil revision petition is disposed of setting aside the order dated 03.01.2025, dismissing I.A No.510 of 2024 in O.S. No.247 of 2013 (Old Number O.S. No.67 of 2018) on the file of the Court of Principal Senior Civil Judge, Kurnool and the trial Court is directed to proceed with the adjudication of the petition as indicated aforesaid by giving both parties enough opportunity to file additional evidence, if any, necessary. There shall be no order as to costs.

Interim orders granted earlier, if any, shall stand vacated.

Pending miscellaneous applications, if any, shall stand closed.

//TRUE COPY//

Sd/- G HELA NAIDU
ASSISTANT REGISTRAR

NB
SECTION OFFICER

To,

1. The Principal Civil Judge (Senior Division), Kurnool.
2. One CC to Sri. A Syam Sundar, Reddy, Advocate [OPUC]
3. Three CD Copies

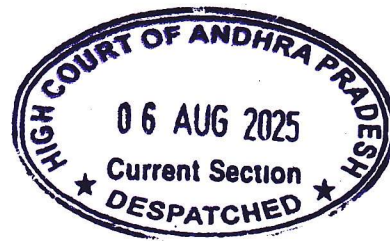
PR

HIGH COURT

DATED:06/05/2025

ORDER

CRP.No.690 of 2025



DISPOSING THE CRP