



CNR: KAHC010276512023

NC: 2026:KHC:39984
W.P. No.11828/2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 31ST DAY OF JULY, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.11828/2023 (GM-CPC)

BETWEEN:

MRS. HELEN PETER ERESSERIL
D/O LATE ERESSERIL PETER ISAAC
WIFE OF MR. SAJAI PAUL
AGED ABOUT 50 YEARS
RESIDING AT NO.12, 11TH MAIN
S.T. BED LAYOUT, KORAMANGALA
BENGALURU - 560047.

...PETITIONER

(BY SRI. PRAMOD N. KALTHAVI, SR. COUNSEL FOR
SRI. CHETAN KUMAR H, ADV.,)

AND:

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA

1. MR. ISAAC PETER ERESSERIL
S/O LATE ERESSERIL PETER ISAAC
AGED ABOUT 54 YEARS
RESIDING AT NO.44
SHIRDI SAI VIP LAYOUT
MEDAHALLI-KADUGODI ROAD
NEAR SRINIDHI SAROVAR APARTMENTS
SEEGHEHALLI, K.R. PURAM
BENGALURU-560049.
MOBILE. 9845039993
Email. fourtstrips@gmail.com
2. MR. E.P. VARGHESE
SON OF LATE ERESSERIL PETER ISAAC
AGED ABOUT 49 YEARS



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RESIDING AT NO.44
SHIRDI SAI VIP LAYOUT
MEDAHALLI-KADUGODI ROAD
NEAR SRINIDHI SAROVAR APARTMENTS
SEEGHEHALLI, K.R.PURAM
BENGALURU- 560049
BY GUARDIAN.

3. CAPT. THOMAS DEVASIA
SON OF P.T. DEVASIA
AGED ABOUT 72 YEARS
RESIDING AT NO.501
THALASSA SUITS, NO. 12
BTM STAGE I
BANGALORE - 560057.

...RESPONDENTS

(BY SRI. YASHIR ALI, ADV., FOR R1
SMT. DIVYA PURANDAR, ADV., FOR R3
R2 REP. BY COURT GUARDIAN R3)

THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
ORDER DT. 28.02.2023 PASSED BY THE LXVI ADDL. CITY CIVIL
AND SESSIONS JUDGE (CCH-67) BANGALORE ON IA NO.8 IN
OS NO.2428/2021 (ANNX-G). AWARD COSTS OF THE
PROCEEDINGS & ETC.

THIS W.P. HAVING BEEN HEARD AND RESERVED ON
27.07.2026, COMING ON FOR PRONOUNCEMENT OF JUDGMENT
THIS DAY, THE COURT DELIVERED THE FOLLOWING:



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CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV ORDER

This writ petition is filed challenging the order dated 28.02.2023 passed on I.A.No.8 in O.S.No.2428/2021 by the LXVI Additional City Civil and Sessions Judge, Bengaluru (CCH-67) (for short 'the Trial Court').

2. The brief facts leading to the filing of this petition are that the petitioner filed a suit in O.S.No.2428/2021 seeking for the relief of partition, appointment of a guardian to take custody of the properties belonging to the defendant No.2 and for other reliefs. In the said suit, the respondent No.3 filed an application in I.A.No.8 under order XXXII Rule 3(4) of the Code of Civil Procedure, 1908 (for short 'the CPC') praying to be appointed as a guardian ad-litem of the respondent No.2. The said application was opposed by the petitioner by filing objections. The Trial Court considered the same and after considering the material on record proceeded to



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allow the same vide impugned order dated 28.02.2023.
Being aggrieved, the plaintiff has filed this petition.

3. Sri.Pramod N Kathavi, learned Senior counsel appearing for Sri.Chetan Kumar H, learned counsel appearing for the petitioner submits that both the petitioner as well as the respondent No.1 had filed applications in O.S.No.2428/2021 seeking permission to represent in the suit on behalf of respondent No.2 as his next friend. The Trial Court, on considering the submissions, proceeded to reject both the applications vide order dated 03.12.2021. It is submitted that the aforesaid order has not been challenged and the Trial Court, without assigning any sufficient reasons, proceeded to allow the application filed by the respondent No.3, which is impermissible. It is further submitted that the petitioner has filed P & SC No.106/2022 seeking letter of administration pertaining to the Will dated 10.07.2020 executed by the late father of the petitioner in favour of



the petitioner. In the said Will, the wife and son of the respondent No.3 have attested as witnesses, hence, if the respondent No.3 is allowed to be appointed as the guardian, he would oppose the petition in P & SC No.106/2022 and the same will also have an adverse effect on the testimonies of the witnesses. It is also submitted that the respondent No.3 has asked the petitioner to let go of the claim over the property and he has also suggested that the suit schedule property belongs to the respondent No.1, which clearly demonstrates that he is an interested party and cannot be appointed as the guardian of the respondent No.2. It is contended that if a third party is appointed as a guardian, he would be a neutral person and able to represent the respondent No.2 effectively. Hence, he seeks to allow the petition.

4. *Per contra*, Sri.Yashir Ali, learned counsel appearing for the respondent No.1 and Smt.Divya Purandar, learned counsel appearing for the respondent



No.3 support the impugned order of the Trial Court and submits that the Trial Court has passed the impugned order after considering the material on record in its proper perspective and the same does not call for any interference. It is submitted that the respondent No.3 suffers from Paranoid Schizophrenia and would have difficulty in communicating with a stranger, hence, the appointment of the respondent No.3, who is the maternal uncle of the respondent No.2 is just and proper and does not call for any interference. It is further submitted that Order XXXII Rule 3(10) of the CPC as amended by the Karnataka High Court, clearly indicates that the Court may appoint any of its officers or a pleader of the Court as a guardian where the Court finds that no person is fit and willing to act as a guardian in the suit on behalf of unsound mind person. It is also submitted that in the instant case, the respondent No.3 himself has willingly filed the application seeking to be appointed as the guardian and the Trial Court has also held that there is no



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ground to describe the respondent No.3 as an unfit person, hence, the question of appointing a third party as a guardian does not arise. It is contended that the respondent No.3, as an elder person in the family, had suggested the settlement and such suggestion cannot be held against him if he volunteers to act as a guardian of the respondent No.2. In support of his contentions, the learned counsel for the respondent No.1 placed reliance on the decisions of the Hon'ble Supreme Court in the case of **BEGUM PARA NASIR KHAN AND OTHERS Vs. LUIZA MATILDA FERNANDES AND OTHERS¹**, as well as in the case of **K.P.NATARAJAN AND ANOTHER Vs. MUTHALAMMAL AND OTHERS²**. The learned counsel for respondent No.3 also placed reliance on the decision of the Andhra Pradesh High Court in the case of **KHAJA MAJEEDULLAH Vs. SMT.JAMEELUNNISA BEGUM AND ORS³**. Hence, they seek to dismiss the petition.

¹ (1984) 2 SCC 595

² (2021) 15 SCC 817

³ 2002 (1) A.P.L.J. 21 (HC)



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5. I have heard the arguments of the learned Senior counsel for the petitioner, the learned counsel appearing for the respondent No.1, the learned counsel appearing for the respondent No.3 and perused the material available on record. I have given my anxious consideration to the submissions advanced on both the sides.

6. The petitioner filed a suit in O.S.No.2428/2021 seeking the relief of partition as well as appointment of a guardian to take custody of the properties belonging to defendant No.2. The defendant No.2 i.e. the respondent No.2 herein was subsequently transposed as the plaintiff No.2. In the said suit, the petitioner as well as the respondent No.1 filed applications under Order XXXII Rule 15 read with Section 151 of the CPC, seeking permission to file the suit on behalf of the respondent No.2 as his next friend. The Trial Court considered the applications and rejected them vide order dated 03.12.2021. The Trial



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Court, in the aforesaid order, held that it was not safe to appoint either the petitioner or the respondent No.1 to safeguard the interests of the respondent No.2 in contesting the suit on merits and also noted that it would be just and proper to appoint an officer of the Court including an Advocate to protect the interest of the respondent No.2. The aforesaid order passed by the Trial Court is admittedly not challenged by either of the contesting parties. Subsequently, the respondent No.3 filed an application in I.A.No.8 under Order XXXII Rule 3(4) of the CPC, seeking to be appointed as a guardian ad-litem of the respondent No.2. The Trial Court considered the said application and proceeded to allow the same vide impugned order dated 28.02.2023. The Trial Court considering the scope of Order XXIII Rule 3(10) of the CPC as amended by the Karnataka High Court, and held that the respondent No.3 is a fit and proper person, there are no grounds to consider him unfit and proceeded to appoint him as the guardian ad-litem.



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7. To appreciate the rival contentions raised by the learned counsels on both the sides, it would be appropriate to refer to the relevant provisions under Order XXXII Rule 3 of the CPC, as substituted by the Karnataka High Court amendment vide notification No.ROC No.2526/1959, dated 09.02.1967 (w.e.f.30.03.1967) and Rule 15 of the CPC, which are extracted hereinbelow:

"3. Guardian for the suit to be appointed by Court for minor defendant.-

(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or his guardian for the suit, provided that the interest of that person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant in the suit or in the case of a guardian a plaintiff in the suit.

(2) Where a minor has a guardian appointed or declared by a competent authority no person other than the guardian shall act as the next friend of the minor or be appointed as a guardian for the suit, unless the Court considers for reasons to be recorded in



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writing that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(10) Where the Court finds no person fit and willing to act as guardian for the suit, the Court may appoint any of its officers or a pleader of the Court to be a guardian and may direct that costs to be incurred by that officer or pleader in the performance of his duties as guardian shall be borned either by the parties or by any one or more of the parties to the suit or out of any fund in Court in which the minor is interested and may give direction for the repayment or allowance of the costs as justice and circumstances of the case may require.

15. Rules 1 to 14 (except Rule 2-A) to apply to persons of unsound mind – *Rules 1 to 14 (except Rule 2-A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of*



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any mental infirmity, of protecting their interest when suing or being sued."

8. The aforesaid provisions lay down the procedure for appointment of the guardian in a suit for a person with unsound mind. Order XXXII Rule 3(10) of the CPC as amended by the Karnataka High Court, lays down the procedure for when the Court may appoint an officer or a pleader of the Court to be a guardian. A perusal of the said provisions indicate that the Court may only appoint an officer of the Court or a pleader when it is satisfied that there is no fit and willing person to act as the guardian for the suit. Hence, in the absence of such satisfaction by the Court, an officer of the Court or a pleader cannot be mechanically appointed as a guardian for the suit.

9. It would be useful to refer to the decision of the Hon'ble Supreme Court in the case of **BEGUM PARA**



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NASIR KHAN AND OTHERS referred *supra*, wherein it is held as under:

"4. Mr Tarkunde appearing for the respondents seriously contended that this is not a case in which we should show any indulgence to the appellants; firstly, because they have no defence on merits and secondly, that they are in arrears of rent and the arrears have piled up to a huge amount. Mr Chatterjee repelled this submission by saying that earlier under the order of the High Court the rent in arrears till the date of the order of the High Court and up to and inclusive of March 31, 1978 amounting to Rs 26,963.60 including water charges was deposited in the Court and subsequent to that date the appellants have been depositing in the Court the rent becoming due and payable from month to month. While this assertion is not controverted, by way of abundant caution we propose to direct that the learned Judge of the Small Cause Court before whom the case would come up pursuant to this order must first ascertain whether this averment of deposit is true and if it be so the respondents are at liberty to withdraw the same. If it is not true, he may direct the appellants to deposit rent in arrears within the time considered reasonable by him and



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provide sanction for breach of such order as deemed proper by him.

5. The question is whether we should sustain the ex parte decree. We are not inclined to examine the contention that there is no defence on merits, because we propose to set aside the ex parte decree and remit the suit for the trial court for disposal according to law. Maybe that we may be open to a charge of indulgence to a person guilty of negligence. But we cannot overlook the fact that the suit is governed by the Rent Act and in view of the provisions contained in Section 5(11)(c)(i) on the death of a tenant his tenancy would stand transmitted to any member of the tenant's family residing with the tenant at the time of his death or in the absence of any such member, any heir of the deceased tenant as may be decided in default of the agreement by the court. The deceased-tenant died leaving a widow and three minor children. Without expressing any opinion on the controversy in issue prima facie it appears that the children also inherited the tenancy and were entitled to continue in the premises as tenants. Transmission of tenancy in favour of minor children of the deceased tenant cannot be seriously questioned in the case. By the



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time the suit was filed the tenant had died and the tenancy had devolved on the heirs or the members of the family under Section 5(11)(c)(i). The minor children were staying with the deceased tenant at the time of his death. Transmission of tenancy right under the Rent Act takes place by operation of law, once the conditions for such transmission are satisfied. Therefore, apart from the widow, minor appellants had inherited tenancy rights and had thus a considerable stake in the suit.

6. The question then is how the interest of the minors was protected before ex parte decree against them was made. The static soulless adherence to rules brings law into disrepute. The mother was away to a country outside India and the Court paying lip sympathy to the provision of the law appointed the Registrar of the Court to act as guardian ad litem of minors, whose only merit was to act as a guardian without having any interest in the proceedings. We are told by Mr Ganpule that he engaged some advocate and this advocate is supposed to have cross-examined the witnesses. From our point of view there is nothing more ludicrous than appointing an advocate to protect the interest of the minors, without giving him aid of any sort. The Court in this country being



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the guardian of all minors a mere detached observance of law brings it into disrepute and the Court as guardian should have made all efforts for effective participation by minors in the proceedings. Would the Court-appointed Registrar as guardian, deposit rent in the Court to save the tenancy? The answer is obviously in the negative. Such adherence to the provisions of the law brings infamy to the whole process of adjudication of dispute involving vital stake more so when persons under disability such as minors are before the Court. And it is this aspect which compels us to reject some of the weighty submissions of Mr Tarkunde. The minors are entitled to an indulgent consideration so far as procedural lapses are concerned at the hands of the Court. It is not for a moment suggested that no ex parte decree can be made against the minors, but if the minors are represented by a person appointed by virtue of his office having no interest in the minors and if the decree is an ex parte decree, and the service was inefficient albeit formal we would be failing in our duty if we do not set aside an ex parte decree, and remit the case for adjudication on merits. We say no more.

(emphasis supplied)



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10. The aforesaid enunciation of law laid down by the Hon'ble Supreme Court indicates that the appointment of an official person by virtue of his position, would amount to a static and soulless adherence to the rules and the same would bring disrepute to the law. It further indicates that a person in an official capacity has no interest in a person with disability that would encourage a proactive action to protect their interests, hence, in the absence of the same, the interests of a person with disability would be put in jeopardy. Hence, it is key to keep in mind the interests of the person with disability and ensure that the appointment of an officer of a court or a third party is undertaken only as a last resort.

11. In the instant case, the respondent No.2 suffers from paranoid schizophrenia, it is to be noted that a person with such a disorder is seldom comfortable interacting with a stranger or a third party. Furthermore, the aforesaid enunciation of the law by the Hon'ble



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Supreme Court makes it clear that the appointment of a person as a guardian by virtue of office and without any interest in the respondent No.2 would not be ideal and should only be considered as a last option. In the instant case, the respondent No.3, who is a maternal uncle of the respondent No.2 has filed an application expressing his willingness to represent the respondent No.2 in the suit. The Trial Court, while considering the said application has also made a clear finding that the respondent No.3 is fit and proper to be the guardian of the respondent No.2. Hence, when both the conditions of fitness and willingness as per Order XXXII Rule 3(10) of the CPC as amended by the Karnataka High Court, are met by the respondent No.3, the appointment of a third party as a guardian does not arise. Hence, the findings recorded by the Trial Court and the appointment of the respondent No.3 as the guardian of the respondent No.2 is in accordance with law.



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12. The contention of the learned Senior counsel for the petitioner that the order dated 03.12.2021 rejecting the applications filed by the petitioner as well as the respondent No.1 is not challenged and the Trial Court, without any reason has passed the impugned order, has no merit as the concerned applications are by the different parties. The Trial Court had rejected the applications filed by the petitioner and the respondent No.1 on the grounds that it would not be safe due to conflicting interest, however, the same would not come in the way of the Trial Court in appointing the respondent No.3 as the guardian.

13. The other contention of the learned Senior counsel for the petitioner is that the respondent No.3 is an interested person as he had urged the petitioner to drop her claim and also stated that the property belonged to the respondent No.1. The learned counsel also placed reliance on Annexure-K-WhatsApp Chat to support his contentions. However, a perusal of Annexure-K -



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WhatsApp chat between the petitioner and the respondent No.3 indicates that the respondent No.3 suggested for settlement of the dispute on various terms. Hence, mere suggestion for settlement of the dispute between the parties cannot be a ground to consider the respondent No.3 as an interested party, hence, such a contention is also required to be rejected.

14. Insofar as the contention of the learned Senior counsel for the petitioner that the wife and the son of the respondent No.3 are witnesses to a Will dated 10.07.2020, the petitioner has filed a petition in P & SC No.106/2022 and the same would be affected adversely, cannot be considered at this stage. There can be no anticipation of the testimony of the witnesses and any apprehension regarding the same cannot be a ground to interfere with the appointment of the respondent No.3 as a guardian for the suit.



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15. In view of the above analysis, I am of the considered view that the Trial Court has passed the impugned order after considering the relevant facts as well as the law in its proper perspective in order to protect the interests of the respondent No.2 and the same does not call for any interference.

16. For the aforementioned reasons, I proceed to pass the following:

ORDER

The writ petition is devoid of merits and is accordingly ***dismissed***. Consequently, the pending interlocutory application stands disposed of.

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

RV
List No.: 1 Sl No.: 1