

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

MFA.No. 61 of 2014 ()

AGAINST THE ORDER IN OPMH 714/2012 of DISTRICT COURT, ERNAKULAM
DATED 21-12-2013

APPELLANT/PETITIONER:

K.B.PRABHAKARAN NAIR AGED 76 YEARS
S/O.LATE K ANANDHAN PILLAI, PENSIONER
KOTTAYAMPURATH HOUSE, IRINGOL P.O, PERUMBAVOOR
ERNAKULAM DISTRICT PIN 683548

BY ADV. SRI.R.DIVAKARAN

RESPONDENT

NIL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON
13-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
P.V. ASHA, JJ.**

M.F.A. (M.H.)No.61 of 2014

Dated this the 13th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant is aggrieved by the order dated 21.12.2013 in O.P. (MH) No.714/2012 of the District Court, Ernakulam.

2. The above application was filed under Sections 52 and 53 of the Mental Health Act, 1987. The main prayer therein is to declare the petitioner therein as the guardian of the mentally ill person Smt. K.G. Valsalakumari, aged 59 years and the next prayer is to permit the petitioner to receive the family pension of the mentally ill person as guardian.

3. It is not necessary to go into the details of the various aspects. The averments show that the late father of the petitioner and the mentally ill person, Shri K. Anandhan Pillai died on 10.8.1992. He was receiving pension from the Postal Department. For enabling the drawing of the pension as guardian of his sister, the petitioner has

approached the court with the above prayers. Smt.K.G. Valsakaumari is the only legal heir to succeed the family pension of late K. Anandhan Pillai. It is also alleged in the petition that she is mentally ill and is not competent to look after her affairs and the family pension is required to look after the affairs of the mentally ill person.

4. Learned counsel for the appellant submitted that on the ground that the mentally ill person is not possessed of any property, the application has been dismissed. In this context, learned counsel invited our attention to the decision of a Division Bench of this Court in **Santhoshkumar v. Shaji** (2013 (3) KLT 397) which has been relied upon by the court below also. It is submitted that paragraph 16 of the above judgment shows that the property need not be immovable property.

5. We have gone through the above judgment. The court below has quoted and relied upon certain portions of the judgment, as evident from paragraph 4. For easy reading, we extract paragraph 16 hereunder:

“16. No doubt the learned counsel for the appellant would point

out that the property need not be immovable property. In this connection, he refers to Clause (d) of Section 50 which indicates that it is not limited to immovable property. We are in complete agreement with the appellant that the property which a person possesses under Section 50 need not be immovable property. The word property as understood in Salmond on Jurisprudence is that it includes all a person's legal rights, of whatever description in its widest sense. In a second and narrow sense, (Dominium and status) property includes not all a person's right, but only his proprietary as opposed to his personal rights. In the third sense what is understood as seen in Salmond on Jurisprudence is proprietary rights in rem (dominium and obligatio). Such a concept includes not even all proprietary rights, but only those which are both proprietary and in rem. Finally, Salmond would refer to corporeal property (dominium corporis and dominium juris) i.e., it includes nothing more than corporeal property that is to say the right of ownership in a material object, or that object itself.

6. The legal position as above was explained by this Court, in the light of the point raised by the learned counsel for the appellant therein, that the property need not be immovable property. We are therefore, of

the view that merely because the mental ill person is not in possession of any immovable property, the application cannot be rejected. The question is as to the right to receive the pension, which can be thus agitated and the application is maintainable. In the light of the declaration of law made by this Court, the matter will have to be re-examined.

6. Accordingly, the order passed by the court below is set aside and the matter is remanded back for fresh consideration in the light of the discussion made by this Court as above. We direct the court below to dispose of the matter finally, within a period of three months.

The appeal is allowed as above. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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