

**HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
HONOURABLE SRI JUSTICE M.S.K.JAISWAL**

C.M.A.No.866 of 2009

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JUDGMENT: (*Per Hon'ble Sri Justice G.Chandraiah*)

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This Civil Miscellaneous Appeal is directed against the order dated 17.12.2008 passed in G.O.P.No.505 of 2008, whereunder the learned District Judge, Vizianagaram, dismissed the said petition filed by the appellant.

Brief facts of the case are as under:

The appellant married one Vadali Malleswara Rao, a mentally retarded, in the month of June, 1999 and her father-in-law- Sitha Ramayya, retired as Station Master in Indian Railways on 30.06.1986 and as a pensioner he died on 20.11.1987. He was survived by his wife Vadali Annapurna, son Vadali Malleswara Rao, husband of the appellant, who are his nearest Class-I legal heirs. After the death of her father-in-law, his family pension was being given to his wife Vadali Annapurna. It is stated that all family members were depending upon the pension drawn by Vadali Annapurna who made a representation to the East Coast Railway authorities, Visakhapatnam requesting to include her son's name V.Malleswara Rao in family pension after her death. Thereafter, the Divisional Personnel Officer, East Coast Railways advised her to obtain guardianship certificate from the Court of law for inclusion of the name of the mentally retarded person. Therefore, the appellant being the wife of mentally retarded person i.e., Vadali Malleswara Rao filed the aforesaid Guardian O.P.No.505 of 2008 under Sections 50, 52 and 53 of the Mental Health Act, 1987 seeking to hold an enquiry into the mental condition of Vadali Malleswara Rao, the mentally retarded person, and appoint her as

guardian to him for getting inclusion of the name of the said person in family pension and other benefits from the East Coast Railways, Visakhapatnam.

By order dated 17.12.2008, the learned District Judge, Vizianagaram, passed the following impugned order:

“The husband of the petitioner Malleswara Rao present and put some questions to him. He is expressing that he is alright in every aspect. I am satisfied. He is alright. Hence, there is no need to appoint a guardian for the husband i.e., Malleswara Rao. Accordingly, the petition is dismissed.”

Now the point that arises for consideration is whether the impugned order dated 17.12.2008 passed by the trial Court is sustainable and that the appellant is entitled to act as guardian to his mentally retarded husband Vadali Malleswara Rao?

We have perused the order under appeal and other material available on record. The trial Court, without assigning any valid reasons, passed a cryptic order. From perusal of the Medical Certificate dated 23.03.2002 issued by Dr.K.Narasimha Reddi, Civil Surgeon Psychiatrist, Government Hospital for Mental Care, Visakhapatnam, it is abundantly clear that V.Malleswara Rao, is suffering from moderate mental retardation (Disability-70%) with partial distress and impaired speech development and that he cannot earn for his livelihood. Further the certificate issued by the Medical Board dated 31.07.2006 reveals that the husband of the appellant V.Malleswara Rao had been examined and found that he was suffering from moderate mental retardation and that he could not earn for his livelihood.

It is evident from the affidavit filed by the mother-in-law of the appellant, Vadali Annapurna, that she made a representation, along with the copy of the certificate issued by the

Medical Board, to the Senior Divisional Personal Officer, East Coast Railway, Waltair, to include her son's name V.Malleswara Rao, who is the husband of the appellant, in family pension after her death. Thereafter, the Senior Divisional Personnel Officer, East Coast Railways by letter dated 04.05.2007, forwarded the certificate issued by the Medical Board to the Senior Divisional Finance Manager, East Coast Railways, Waltair, for further course of action. Subsequently, the Senior Divisional Personnel Officer, East Coast Railways by letter dated 26.09.2007, on the instructions of the Senior Divisional Finance Manager, advised the mother-in-law of the appellant to submit the guardianship certificate from the Court of law for inclusion of the name of the mentally retarded person, V.Malleswara Rao.

In the affidavit filed by the mother-in-law of the appellant, it is stated that the appellant being the wife of her mentally retarded son has been taking care of his welfare and her son is in the custody of the appellant and that she has no objection to appoint the appellant as guardian of her mentally retarded son Vadali Malleswara Rao.

Under the aforementioned reasons, we are of the opinion that the appellant being the wife shall be appointed as guardian of her husband Vadali Malleswara Rao, as she is looking after the welfare of her husband and he is in her custody. Since the appeal is of the year 2009, we are not inclined to remit the matter to the trial Court for fresh consideration as we are satisfied that the appellant deserves for the grant of the relief claimed by her.

The Civil Miscellaneous Appeal is accordingly allowed, impugned order is set aside and consequently the Guardian O.P shall stand allowed declaring the appellant as

guardian of her mentally retarded husband Vadali Malleswara Rao.

No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

G.CHANDRAIAH, J

M.S.K.JAISWAL, J

06.02.2015
Gsn