

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2985 OF 2016
(WITH CA/9994/2016 IN FA/2985/2016)

Suresh s/o Damu Patil,
Age 60 years, Occu: Retired
R/o Datta Nagar, Vanjola Road,
Bhusawal, Tq. Bhusawal, Dist. Jalgaon.

...APPELLANT
(Ori.Resp.No.2)

VERSUS

1. Ku.Champawati d/o Damu Patil,
Age 40 years, Occu: Nil,
R/o. C/o Bhagwat Damu Patil
Professor Colony, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.
(Under Guardian of Respondent No.2)

...ORIG.RESP.NO.1.

2. Bhagwat s/o Damu Patil,
Age 52 years, Occu. Service,
R/o. Professor Colony, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

(ORIG.APPLICANT)
...RESPONDENTS

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Advocate for Appellant : Mr.Farooqui Kamaloddin N
Mr.Gamot Praveen B, Adv. For R/1 and 2.

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CORAM : P.R. BORA, J.
Dated: October 07, 2016

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ORAL JUDGMENT :-

1. With the consent of the parties, the present appeal is taken up for final disposal at admission stage.

2. The appellant has challenged the order passed by the learned District Judge-II, Bhusaval, on 2nd of April, 2016, in Civil Miscellaneous Application No.67/2015. The aforesaid Miscellaneous Application was filed by the present respondent no.2 under Section 39 of the Guardians and Wards Act, 1980, seeking cancellation of the guardianship of the present appellant as a guardian of Kum.Champavati Damu Patil i.e. present respondent no.1. In the aforesaid application, present respondent no.2 had also prayed for appointing him as a guardian of respondent no.1 Kum. Champavati under Section 8 read with Section 10 of the Guardians and Wards Act, 1980. The learned District Judge has allowed the aforesaid application. Aggrieved thereby, the present appeal is filed.

3. When this appeal was taken up for hearing,

apparently, it was noticed by this Court that no orders could have been passed in the present matter under the provisions of the Guardians and Wards Act, 1980 in view of the fact that Kum.Champavati Damu Patil whose guardianship was sought in the aforesaid application is admittedly of the age of 47 and cannot be said to be a minor so as to invoke the provisions of Guardianship and Wards Act, 1980.

4. On perusal of the material on record, it is further revealed that earlier also, the present appellant had preferred such application under the provisions of Guardians and Wards Act, 1980, bearing Miscellaneous Civil Application No.12/2008, and the Ad-hoc District Judge-II, Jalgaon, had allowed the said application and appointed the present appellant as guardian of present respondent no.1.

5. As is revealing from the pleadings of the parties, Kum.Champavati Damu Patil is a mentally retarded person and is aged about 47 years. In view of

the fact that Kum. Champavati is not a minor, in any case, the provisions of the Guardians and Wards Act could not have been invoked in making the appointment for her guardianship. Similarly, the provisions of the Mental Health Act also could not have been made applicable in the present case for the reason that Kum.Champavati, whose guardianship was sought in the applications concerned, will not fall within the definition of 'mentally ill person' as mental retardation stands excluded from the provisions of Mental Health Act, 1987. Section 2(L) of the Mental Health Act, 1987, defines 'mentally ill person' as follows:

"(l) mentally ill person means a person who is in need of treatment by reason of any mental disorder other than mental retardation."

It is, thus, evident that both the Courts have manifestly erred in entertaining the applications, seeking guardianship of Kum.Champavati, under the provisions of Guardians and Wards Act, 1980, coupled with the provisions of the Mental Health Act, 1987. Both the orders are, therefore, un-sustainable and deserve to be quashed and set aside.

6. Mental retardation means a condition of arrested or incomplete development of mind of a person which is specially characterized by sub-normality of intelligence. A special Act has been enacted by Parliament to provide for constitution of a body at the national level for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities and for matters connected therewith or incidental thereto, called as "The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999" (hereinafter referred to as `Act No.44 of 1999'). The said Act provides for appointment of a guardian to a person with disability as defined under Section 2(j) of the said Act which includes a person suffering from any of the conditions relating to autism, cerebral palsy, mental retardation or a combination of any two, and it reads as follows:

"(j) "persons with disability" means a person suffering from any of the conditions relating to autism, cerebral palsy, mental retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple disability."

7. To implement the provisions of the Act No.44 of 1999, and in exercise of power conferred under Section 34 of the said Act, the Central Government has framed Rules called as 'the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Rules, 2000" (for short, `Rules of 2000'). These Rules provide the detailed guidelines.

8. Rule 16 of the Rules of 2000 provides the manner in which the application should be made to the Local Level Committee and that is prescribed in Form A whereas, Rule 16(2) of the said Rules provides that the confirmation of appointment of guardian on such application shall be made in Form B.

9. The Regulations known as `the Board of the Trust Regulations, 2001' are also framed which provide the further procedure as to the person who may be indicated by applicant as guardian; and the guidelines for receiving, processing and confirmation of application for appointment

of a guardian. Regulations 11, 12 and 13 of the said Regulations particularly deal with these aspects.

10. In the light of the provisions of Act No.44/1999, Rules of 2000 and Regulations of 2001 thereunder, the petition and / or application for guardianship of Kum.Champavati has to be presented before the Local Level Committee under Section 14 of Act No.44/1999, in Form A in terms of Rule 16(1) of Rules of 2000.

11. In the instant case, the appellant, namely, Suresh s/o Damu Patil and respondent no.2, namely, Bhagwat Damu Patil both are claiming the guardianship of Kum.Champavati. It will be open for both of them to adopt the course as indicated above in view of the provisions of Act No.44/1999.

12. For the reasons stated above, the order passed in Miscellaneous Civil Application No.12/2008 dated 28.4.2008, and the order dated 2.4.2016 passed in Civil Miscellaneous Application No.67/2015, are quashed and

set aside.

13. The next question arises as about the interim arrangement in the intervening period. As is revealing from the record and the discussion made by the learned District Judge in the impugned order Kum.Champavati is presently residing with respondent no.2 Bhagwat. As has been submitted by learned Counsel appearing for respondent no.2 Bhagwat, he is presently collecting the pension for and on behalf of Kum.Champavati; that arrangement shall continue for next six months. In the meanwhile, the appellant as well as respondent no.2 may file appropriate application before the appropriate authority and secure the necessary orders.

With the direction as above, the First Appeal stands disposed of. Civil Applications, if any, stand disposed of.

(P.R. BORA)
JUDGE

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