

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 104 OF 2017

ALROY JOSEPH FURTADO THR. PRAKASH
HARISCHANDRA MASURKAR., ... Appellant

Versus

KENNETH PEREIRA AND 6 ORS., ... Respondents

Mr. Joaquim Godinho, Advocate for the Appellant.

Mr. C.A. Coutinho, Advocate for the Respondent No. 1.

Coram:- C. V. BHADANG, J.

Date:- 25th September 2017

ORAL ORDER:

This First Appeal can be disposed of on a short count.

2. The appellant, who is said to be a mentally disabled individual, has filed Special Civil Suit No. 6/2017/A, before the learned Senior Civil Judge at Vasco, in which the learned Trial Court by an order dated 12.05.2017, had appointed one Mr. Prakash Masurkar as next friend on behalf of the appellant/plaintiff. The respondent no. 1 (defendant no. 1) filed an application (Exhibit-13), for recalling the order dated 12.05.2017, on the ground that the next friend, Mr. Prakash Masurkar is neither having any connection with the appellant/plaintiff nor is he having any interest in the property in dispute. Therefore, he could not be appointed as the next friend.

It was contended that the appellant is having siblings and other relatives, who are defendant nos. 2 to 6 and the appellant is being personally looked after by his sister i.e. defendant no. 4. It was therefore contended that the defendant no. 4 could be appointed as his next friend under the criteria provided under the Mental Health Act.

3. The learned Trial Court by the impugned order dated 16.08.2017, has allowed the application thereby recalling the order dated 12.05.2017. The learned Trial Court has gone further in observing that the plaintiff being of unsound mind cannot maintain the suit and has dismissed the suit with costs. Feeling aggrieved, the appellant is before this Court.

4. I have heard Mr. Godinho, the learned Counsel for the appellant and Mr. Coutinho, the learned Counsel for the contesting respondent no. 1. Perused the impugned order.

5. It is contended by Mr. Godinho, the learned Counsel for the appellant that the learned Trial could have appointed any other fit and willing person to be the next friend and the suit could not have been dismissed once the order dated 12.05.2017 was recalled. The learned Counsel pointed out that under Order XXXII, Rule 4(4) of CPC, where there is no other person fit and willing to act as guardian for the party, the Court may appoint

any other person to be a guardian. In short, it is contended that the Court could have appointed any other fit and willing person to be the next friend/guardian of the appellant.

6. Mr. Coutinho, the learned Counsel for the respondent no. 1, in all fairness, does not dispute this preposition.

7. In such circumstances, the Appeal is disposed of in the following terms:

(a) The appeal is allowed.

(b) The impugned order to the extent dismissing the suit, is hereby set aside.

(c) Special Civil Suit No. 6/2017/A is restored to the file of the learned Senior Civil Judge at Vasco, for disposal according to law.

(d) It will be open for the learned Trial Court to appoint any other fit, willing and eligible person to be the guardian/next friend of the appellant, having regard to the provisions of Order XXXII, Rule 4(4) of CPC.

(e) The interim relief stands vacated.

(f) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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