

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9712 OF 2017

Santosh Rohidas Deshmukh	..	Petitioner
Versus		
The State of Maharashtra & Ors.	..	Respondents

Mr. Ashok B. Tajane for petitioner
Mr. S.B.Kalel, AGP for State respondent Nos. 1 to 5
Mr. Vitthal B. Kondedeshmukh i/b. Prashant Patil for respondent No.7 to 11.

CORAM : SHANTANU S. KEMKAR &
G.S.KULKARNI, JJ

DATE : OCTOBER 12, 2017

ORAL ORDER: (PER SHANTANU KEMKAR, J):-

1. Leave to amend the prayer clauses (a) and (b) granted to the petitioner. Amendments to be carried out forthwith.

2] By this petition, filed under Article 226 of the Constitution of India, the petitioner is seeking a direction to appoint him as guardian of respondent No.6, Rohidas Deshmukh, who is his father with a direction about his right to enter into further transaction or complete the transaction as per the development agreement executed and registered on 5th July 2008 in respect of the land bearing Survey Nos.97/A/5/A and as per the amendments permitted.

3] The case of the petitioner is that his father respondent No.6

Rohidas had suffered severe injuries which he sustained in an assault on him. The said respondent No.6 owns various properties as described in the petition. According to the petitioner, the respondent No.7 is also suffering from mental illness. In the circumstances, the aforesaid relief in this petition has been prayed. In support of his contention, the petitioner has filed medical certificates regarding the ailment of the respondent No.6.

4] In terms of the order passed by this Court on 18th September 2017, the expert committee, consisting of Professor & Head, Department of Medicine, BJGMC, Pune, Associate Professor, Department of Psychiatry, BJGMC, Pune and Professor and Head of Department of Surgery, BJGMC, Pune, Sasoon General Hospital, Pune has given its opinion which reads thus:-

“This is to certify that Shri Rohidas Ganpat Deshmukh, 64 years, male was examined in this hospital and found that he is case of diffuse axonal injury to brain.

(.) Identity of Mr. Rohidas Ganpat Deshmukh is ascertained by PAN card and physical examination (mole on left forearm).

(.) After evaluation by Neurosurgeon, Surgeon, Apsychiatrist & Physicion, physical & Mental condition of patient is post traumatic diffuse axonal brain injury (genetative state).

(.) Patient is mentally unfit to take any rational and independent decision & he is not capable to taking care of himself & managing his property.

(.) The disability of the patient is permanent in nature & not likely to improve.

5] Learned Counsel for respondent Nos. 7 to 11 has not disputed the averments made in the petition as also the opinion of Expert Committee, he stated that the respondent Nos. 7 to 11 have no objection if the prayers in the petition are granted.

6] Taking into consideration, the facts and the aforesaid opinion of the Expert Committee, we find ourselves in agreement of the view taken by the Madras High Court in the case of Sairabanu Mohammed Rafi Vs. State of Tamil Nadu & Ors., (reported in LAWS (MAD) 2016 1 185 Writ Petition No.28435 of 2016 decided on 6th January 2016, wherein in similar circumstances, the Division Bench in paras 4 and 5 has observed thus:-

“4. In view of the above, there appears to be no dispute on facts. The petitioner's husband is in coma. Neither under the Mental Health Act nor under the Guardian and Wards Act, 1890, there is any provision for appointment of a guardian in such a situation. Though the petitioner could have approached the jurisdictional Civil court by way of common law remedy, in view of the report of the 3rd respondent and the urgency expressed, coupled with the fact that there is no dispute on facts, this Court is inclined to consider the prayer sought by the petitioner.

5. Accordingly, while accepting the report of the 3rd respondent, it is hereby ordered that the petitioner is appointed as guardian of her husband Mr. Mohammed Rafi, residing at No.12, Nachimuthu Nagar, Koranad, Mayiladuthurai, for the purpose of dealing with his immovable properties and also for the purpose of operating his bank accounts. It is made clear that this order is passed considering the peculiar facts and circumstances of the case and this order will not stand in the way of the legal heirs of the petitioner's husband questioning the transaction of the petitioner on behalf of her ailing husband. The writ petition is disposed of accordingly. No costs.

7] In these circumstances, accepting the medical opinion we hereby appoint the petitioner as guardian of his father Rohidas Deshmukh residing at Survey No.97/A/5/4, Deshmukhwadi, Shivane, Taluka Haveli, Dist. Pune and allow the petition in terms of amended prayer clauses (a) and (b) which read as under:-

(a) The writ, order or direction, mandamus be issued to appoint petitioner as guardian of Rohidas Deshmukh with right to enter into further transaction or complete the transaction as per the development agreement executed and registered on 5th July 2008 in respect of the land bearing Survey No.97/A/5/2 admeasuring 10 R and Survey No.97/A/5/4.

(b) The writ, order or a direction like Mandamus may be issued directing the State of Maharashtra to mutate the names of other co-owners namely the petitioner and respondent No.6 to 11 as owners to all the

properties in the name of Rohidas Deshmukh especially Survey No.97/A/5/4 admeasuring 10 R, Survey No.97/A/5/4 admeasuring 12 R situated at Shivane, Taluka Haveli, Dist. Pune and Survey No.97/A/1 admeasuring 36R, Survey No.97B both at Shivane Taluka Haveli, Dist. Pune as well as Survey No.160/1 out of 25/29 out of + 167/2/26 plot No.14 admeasuring 110 sq.mtr at Kothrud Pune.”

8] We also appoint the petitioner as guardian of his father for the purpose of operating bank accounts.

9] Petition is disposed of in the aforesaid terms.

(G.S.KULKARNI, J)

(SHANTANU S. KEMKAR, J.)