

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.9346 of 2020

M.Premila

...Petitioner

Vs.

1.The State of Tamilnadu,
Rep. By its Secretary,
Department of Health and Family Welfare,
Secretariat, Fort St.George,
Chennai 600 001.

2.The District Collector,
Tiruvallur District,
District Collector Office,
Tiruvallur.

3.The Tahsildar,
Poonamallee Taluk,
Tiruvallur District.

...Respondents

Prayer .:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of mandamus to appoint the petitioner as a Guardian of her husband Mr.D.Mohan and to permit her to protect his interest, administer him including operate his bank account/s and in the event of necessity to mortgage the property unilaterally but sell the immovable property/ies standing in the name of her husband only with the written consent and knowledge of her two sons and to use the proceed towards treatment of her husband Mr.D.Mohan and to meet out the education expenses of her second son M.Prasanth, who has been pursuing his studies of Faculty of Medicine of Tbilisi State Medical University, Georgia, Europe.

For Petitioner : Ms.T.Madhumitha
For Respondents : Mr.M.D.Ilayaraja,
Government Advocate

O R D E R

This matter is taken up for hearing through Video Conferencing mode.

2. This Writ Petition is filed seeking for the following relief:

To issue a Writ of mandamus to appoint the petitioner as a Guardian of her husband Mr.D.Mohan and to permit her to protect his interest, administer him including operate his

bank account/s and in the event of necessity to mortgage the property unilaterally but sell the immovable properties standing in the name of her husband only with the written consent and knowledge of her two sons and to use the proceed towards treatment of her husband Mr.D.Mohan and to meet out the education expenses of her second son M.Prasanth, who has been pursuing his studies of Faculty of Medicine of Tbilisi State Medical University, Georgia, Europe.

3. The case of the petitioner is as follows:

i) Her husband is D.Mohan. Out of their wedlock, two male children were born, namely M.Gopinath, aged about 21 years and M.Prasanth, aged about 20 years. Out of the family partition between her husband and his elder brother, her husband got a share in the property. On 08.05.2018, her husband met with an accident resulting in sustaining grievous injuries all over his body. He was admitted in the hospital and was given treatment. Again, he was admitted and readmitted on several occasions at the hospital for giving treatment. The discharge summary issued by Apollo Hospital states that he sustained the following injuries.

"(1) Severe traumatic brain injury-Contusion on right Basal Ganglia.(2) Diffuse Axonal injury;(3) Multiple Bilateral Rib Fracture - S/P Fixation of Sternum and Locking Construction place on 10.05.2018; (4) Bilateral Hemopneumothorax-S/P Bilateral ICD (Removed); (5) Left Thumb Fracture; (6) Left Humerus Shaft Fracture - S/P Orif of Left Humerus fixation on (30.05.2018); (7) S/P Tracheostomy on 16.05.2018; (8) S/P Cardiac Arrest and multiple and grievous injuries all over his body and after that accident he is under unconscious/coma stage."

ii) Due to repeated admission in the hospital and discharge, the petitioner has to meet an expense of Rs.1 Crore towards the medical expenses to treat her husband. The petitioner is put to much difficulties to meet out the day today medical expenses for her husband and hence, she requested the 1st respondent through letter dated 29.12.2018, to grant leave and salary of her husband under the Scheme of Special Disability Leave. Based on the petitioner's request, the 1st respondent sent a letter to the Joint Director of Medical Services, who in turn, sent a medical team, which examined her husband and issued a Certificate dated 08.07.2019, as follows:

"Medical History o Mr.Mohan working as Supervisor Thirumazhisai Town Panchayat. He met with an accident on 08.05.2018 had severe brain injury. He was admitted at Apollo hospital Vanagaram on 09.05.2018 and he was diagnosed to have severe traumatic Brain injury/ contusion non right basal gangila/ diffuse axonal injury/ bilateral rib fracture. B/L Haemothoraz/ left thumb fracture/ Left humerus shaft fracture. He is admitted in Emergency room and critical care is given as per the need. Procedure were carried out to fix the

fractures and tracheostomy done to maintain ventilation. ICD done for hemothorax. He was discharge don 11.06.2018. He was regularly followed up by various consultants at Apollo hospitals. He was readmitted for various complications on 12.09.2018 and discharged on 19.09.2018.

Examination findings of Mr.Mohan (Home visit done on 12.02.2019 by Dr.Elango, M.D.):

He was not responding to oral commands, painful, stimuli, not moving his upper and lower limbs. He is on gastrostomy feed. He is under tracheostomy assisted respiration. His cardiovascular status maintained by drugs. Urination maintained by catheterization, he was having bed sores. His Blood pressure is 130/80mm/Hg. His pulse rate is 84/min. His Glasgow coma scale E4VTM4 = 5T/15. Which is equal to near comatose stage. His records verified and found to be Genuine.

He has availed leave from 09.05.2018 to till date, total number of days 290. His leave period was already ratified by the Medical Board on 22.02.2019 and leave was recommended for 90 days from 23.02.2019 to 23.05.2019 which was also ratified.

Opinion of the Medical Board:

Considering his Clinical Condition and Observation made from his Medical Records, Medical Board Opines that he may not fully recover in future to the Level expected to Discharge his Duties as Supervisor.

He may be Medically invalidated by presenting him to the Regional Medical Board, Rajiv Gandhi Government Hospital, Chennai.

His leave period from 09.05.2018 to 08.07.2019-426 Days is ratified."

iii) Since the petitioner is put to difficulty in meeting the financial crisis and to pay the debts and also to meet the educational expenses of her children, she has to be appointed as a guardian of her husband and permit her to protect his interest, administer him, including to operate his bank account and in the event of necessity, to mortgage or sell the immovable properties standing in the name of her husband with the written consent and knowledge of her two sons. Therefore, the petitioner has filed the present writ petition with the above prayer.

4. The sons of the petitioner have filed separate affidavits dated 12.09.2020 stating that they have no objection in appointing their mother as guardian of their father and also they have no objection to mortgage or sell the property comprised in Natham Survey No.413/1 of Ayyanambakkam Village, Ambattur Taluk, Tiruvallur District measuring an extent of 3135 sq.ft. and a building thereon consisting of ground floor and upper floors situated at No.15, Padasalai Street, Mel Ayyanambakkam, previously Maduravoyal Taluk and now of Poonamallee, Tiruvallur District, that stands in the

name of the father to meet out family expenses, Medical expenses and educational expenses.

5. Learned counsel appearing for the petitioner in support of his contention relied on an order made in W.P.No.4358 of 2016 dated 23.02.2016, wherein under similar circumstances, this Court has appointed the petitioner therein as guardian of her husband, who was in coma stage.

6. Learned Government Advocate submitted that the petitioner can approach the Civil Court by way of common law remedy and seek the relief.

7. Heard both sides and perused the materials placed before this Court.

8. There is no dispute to the fact that the petitioner's husband who met with an accident and sustained grievous injuries all over his body, is in comatose stage, as certified by the District Medical Board and the office of the Joint Director of Wealth Services, Tiruvallur dated 08.07.2009, which is extracted supra.

9. The petitioner has spent huge amount towards medical expenses and she has to meet the day to day expenses as well apart from spending educational expenses towards her sons. It is stated by the learned counsel for the petitioner that there is an urgency for considering the relief by this Court itself instead of approaching Civil Court, since the petitioner's son has to pay the fees to the College before the end of this month.

10. In view of the above stated facts and circumstances and also by considering the order passed in W.P.No.4358 of 2016 dated 23.02.2016 in an identical circumstances as well as the affidavits filed by the sons of the petitioner as stated supra, this Writ Petition is disposed of as follows:

a) The petitioner is appointed as guardian of her husband Mr.D.Mohan for the purpose of dealing with his property either by way of mortgage or sale of the property comprised in Natham Survey No.413/1 of Ayyanambakkam Village, Ambattur Taluk, Tiruvallur District measuring an extent of 3135 sq.ft. and a building thereon consisting of ground floor and upper floors situated at No.15, Padasalai Street, Mel Ayyanambakkam, previously Maduravoyal Taluk and now of Poonamallee, Tiruvallur District.

b) The petitioner is also permitted to operate the Bank Account maintained by her husband, D.Mohan.

c) The petitioner shall open separate account and deposit 1/4th of the sale proceeds, if the property is sold, towards the share of the mother of the said D.Mohan, who is also residing with the petitioner.

No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The State of Tamilnadu,
Rep. By its Secretary,
Department of Health and Family Welfare,
Secretariat, Fort St.George, Chennai 600 001.

2.The District Collector,
Tiruvallur District, District Collector Office,
Tiruvallur.

3.The Tahsildar,
Poonamallee Taluk,
Tiruvallur District.

+2ccs to Ms.T.Madhumitha, Advocate SR.No. 31474(14/10/2020)
W.P.No.9346 of 2020

rsv co
A.SK(28/09/2020)