



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

46 WRIT PETITION NO. 4988 OF 2023

Yogesh Nivrutti Barhate & others

....Petitioners

VERSUS

Vaibhav Yogesh Barhate
Minor U/g Of His Grand Father
Sanjay Tatyaraao Tikhe

.....Respondent

.....

Mr. B. N. Patil, Advocate for the Petitioners.

Mr. Mangesh Patil, Advocate (appointed) for the Respondent.

CORAM : R. M. JOSHI, J.

DATE :24th JUNE, 2024.

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. Defendant No. 1 who is the father of minor Vaibhav has filed this Petition raising objection to the order passed by the Trial Court rejecting the application filed vide Exhibit 22 seeking review of the order of appointment of the maternal grand-father of the minor as his next friend for prosecuting Regular Civil Suit No. 60/2021.

3. Learned counsel for the Petitioners submits that Petitioner No. 1 is the natural guardian of the minor, and though minor is in his custody and without there being reason or justification, the maternal grand father of the minor had filed a suit in the capacity of next friend of the minor for partition and injunction. It is his submission that without hearing the Petitioners and without recording any reason order of appointment of next friend has been passed. According to him such appointment cannot be done without obtaining consent of the guardian and hence the order cannot sustain.

4. Learned counsel for Respondent submits that the facts and circumstances in which the suit is filed, justifies the appointment of maternal grand-father of the minor as his next friend. It is his submission that within three years of the marriage, the wife of Petitioner No. 1 and mother of minor died and in connection with the said death offence is registered against Petitioners. He drew attention of the Court to the copy of plaint in Regular Civil Suit No. 60/2021 to point out that there are specific allegations against the Petitioners about they being intending to sell the joint family properties against the interest of the minor. He placed reliance on

the judgment of Hon'ble Supreme Court in case of Nagaiah and another vs. Chowdamma (dead) by Legal Representative and another, (2018) Supreme Court Cases 504, to support impugned order.

5. At this stage it would be relevant to refer to Order 32 Rule 4 of Code of Civil Procedure, without reads thus :-

4. Who may act as next friend or be appointed guardian for the suit :

(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit :

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be [in writing] be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested [or out of the property of the minor], and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

Perusal of above provision shows that any person who is of sound mind and has attained majority and who can represent and protect the interest of the minor can be appointed as his next friend in any case. There is no challenge that Respondent fulfills these conditions. Only in case where the minor has a guardian appointed or declared by the competent authority, no person other than such guardian shall act as next friend unless the Court considers, for the reasons to be recorded that, it is for the minor's welfare that another person be permitted to act as the case may be. Rule 3 provides that no person shall without his consent be appointed as guardian. It is

clear from these provisions that only in case where the guardian has been appointed or declared by competent authority, in that case for appointment of some other person, reasons are required to be recorded by the Court. In the instant case, it is not the case of the parties that any guardian is appointed by any competent authority. Thus, Rule 4(2) of Order 32 has no application to the present case.

6. Having regard to the allegations made by the Plaintiff in Regular Civil Suit No. 60/2021, though denied by Defendants by filing Written Statement, it is a fit case wherein the order passed by the learned Trial Court of appointing maternal grand-father of the minor as his next friend deserves to be maintained. Thus, there is no merit in the Petition. Hence, Petition stands dismissed.

7. Fees of the appointed counsel is quantified at Rs.10,000/- payable by High Court Legal Services Authority.

(R. M. JOSHI)
Judge

dyb