



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1772 OF 2024

Kaushal S/o Shirish Kunjir
Since mentally ill through his
natural guardian mother
Smt. Yogini Shirish Kunjir .. Appellant

Versus

The State of Maharashtra .. Respondent

Shri Rajendra S. Kasar, Advocate for the Appellant.
Shri D. B. Bhange, A.G.P. for the Respondent.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR ORDER ON : 09.06.2025
ORDER PRONOUNCED ON : 24.06.2025

FINAL ORDER :

. Heard Mr. Rajendra Kasar, learned counsel for the appellant and Shri D. B. Bhange, learned A. G. P. for the respondent/State finally at the admission stage.

2. Appellant is assailing order dated 28.08.2023 passed in Civil Enquiry Application No. 66 of 2024 by the learned District Judge, Ahmednagar, rejecting application U/Sec. 53 of the Mental Health Act (hereinafter referred as to the 'Act' for the sake of brevity) for appointment of guardian and refusing permission to sell the land belonging to her mentally retarded son.

3. Appellant is looking after her son, who is suffering from moderate intellectual disability (mental retardation), which is 75% permanent disability. She lost her husband in covid. The agricultural land bearing gut No. 81/3 devolves upon mentally ill son, which needs to be sold for various reasons viz to meet the expenses for his medical treatment, educational expenses and to repay loan of Rs. 5,00,000/-. It is contended that appellant was unable to cultivate the land in question and, therefore, being mother she has entered into an agreement of sell on 24.03.2023 and consideration is fixed at Rs. 23,75,000/-. It is her case that in the interest of son permission to sell the land needs to be granted.

4. Appellant produced on record disability certificate, certificate of the concern school, account statement of financial institution, medical bills, death certificate of her husband and the revenue record of the land in question. Learned District Judge by impugned order rejected application mainly on the ground that Sec. 53 of the Act does not refer to sell of the property. It is further held that for want of better particulars, it was not possible for the Court to examine need or welfare of disabled person.

5. Learned counsel for the appellant submits that there is nothing on record to doubt the requirement of the appellant to alienate the land. It is contended that under very compelling

circumstances permission is solicited to sell the land. It is further submitted that learned Judge overlooked provisions of Sec. 58 and 59 of the Act.

6. Learned Assistant Government Pleader for the respondent supports the impugned order.

7. Appellant submitted Civil Miscellaneous Application No. 66 of 2023 U/Sec. 53 of the Act on 11.04.2023 before the District Judge Ahmednagar. The Mental Health Act of 1987 (14 of 1987) was repealed on 29.05.2018 by Sec. 126(1). In that view of the matter application filed by the appellant before the District Court was not maintainable. The repelling act does not have any provision of making application before the District Court for appointment of guardian or manager. Therefore, whole exercise undertaken by the District Judge is futile. Appeal is liable to be dismissed, as the application is not maintainable.

8. For the reasons recorded above, the first appeal is dismissed. However, it would be open for the appellant to resort to appropriate remedy as permissible in law.

[SHAILESH P. BRAHME J.]

bsb/June 25