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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1272 OF 2019**

Shivamma Shankar Wale

Age : 80 years, Occ.: Nil,

R/o. Ishwar Nagar, Behind Samarth Building,

Akkalkot Road,

Solapur

Appellant

Versus

Ramesh Virpakshappa Wale,

Age : 54 years, Occ. : Service

R/o. Vatvruksha Swami Samarth Mandir

Akkalkot, District Solapur

Respondent

Mr. I. M. Khairdi for the Appellant.

Mr. Niranjan Shimpi for the Respondent.

CORAM: GAURI GODSE, J.

RESERVED ON: 16th JANUARY 2025

PRONOUNCED ON: 17th APRIL 2025

JUDGMENT:

1. This first appeal is preferred by the original opponent to challenge the cancellation of the Order appointing her as a guardian of her husband under the Indian Lunacy Act, 1912 ("Lunacy Act"). By order dated 27th March 1980, the appellant's Civil Miscellaneous

Application No. 55 of 1977 filed under Section 62 of the Lunacy Act was allowed, and the appellant was appointed as guardian of her husband Shivshankar Wale (“Shivshankar”). The respondent filed an application under Section 65 of the Mental Health Act, 1987 (“the 1987 Act”) for cancelling the guardianship order issued in the appellant's name and prayed for directing the appellant to submit accounts of the properties of Shivshankar. Respondent’s application is allowed by the impugned order. The respondent is the son of Shivshankar’s brother.

Facts in brief:

2. The appellant is the wife of Shivshankar. Due to his insanity, he was unable to look after himself and his property. Hence, the appellant applied Section 62 of the Lunacy Act. Shivshankar’s mother and two brothers opposed the said application. After considering the objections raised to the appellant’s application, the application was allowed on 27th March 1980, and the appellant was appointed as guardian of the person and property of Shivshankar. Based on the guardianship order, the appellant filed a suit for partition and separate possession against Shivshankar’s mother

and two brothers. The said suit was decreed, and Shivshankar was granted his one-third share.

3. Shivshankar's mother and brothers had preferred an appeal challenging the partition decree. The appeal was dismissed, and the partition decree was confirmed. The decree was challenged in this court by filing Second Appeal No. 260 of 1989. In the meantime, Shivshankar expired in 1990. Hence, the appellants in the second appeal had filed an application to bring on record the names of Shivshankar's wife and two daughters as heirs and legal representatives of Shivshankar. However, the said application was allowed to be withdrawn with a clarification that if information regarding Shivshankar was available, the appellants in the second appeal were granted liberty to file a fresh application. In spite of the liberty granted, no such application was filed in the second appeal. Hence, the second appeal stood abated. Thus, by Order dated 16th January 2025, the second appeal is dismissed as abated.

4. During the pendency of the second appeal, the respondent filed an Application under Section 65 of the 1987 Act seeking cancellation of the guardianship order. The respondent alleged that by obtaining a forged death certificate of Shivshankar, the appellant

and her daughters sold some of Shivshankar's property without the court's permission. The appellant contested the application and denied all the allegations. She contended that Shivshankar expired on 4th May 1990 and that the allegations against the appellant were false and baseless.

5. The learned District Judge held that Shivshankar was alive and that the appellant did not obtain permission to dispose of Shivshankar's property. Hence, according to the learned District Judge, in view of the provisions of Section 60 of the 1987 Act, it was the bounden duty of the appellant to furnish inventory and annual accounts of Shivshankar's property. By referring to the documentary and oral evidence led by the respondent, the learned Judge concluded that the appellant had not acted in the interest of Shivshankar. Hence, the learned District Judge held that in view of sub-section (1) of Section 69 of the 1987 Act, the appellant was liable to be removed as guardian of Shivshankar. Thus, the learned District Judge set aside the guardianship order issued on 27th March 1980, appointing the appellant as Shivshankar's guardian. By the impugned order, the appellant is directed to furnish accounts of Shivshankar's property. Being aggrieved by this judgment, Shivshankar's wife has preferred this first appeal.

Submissions on behalf of the appellant:

6. Learned counsel for the appellant submitted as under:

(a) The application is stated to have been filed under Section 65 of the 1987 Act with a prayer to set aside the order dated 27th March 1980 passed on an application filed by the appellant under the Lunacy Act. The Civil Miscellaneous Application No. 55 of 1977 filed by the appellant under Section 62 of the Lunacy Act was opposed by Shivshankar's brother Virpakshappa who was opponent no. 6. The say filed by opponent no. 6 was adopted by opponents nos. 8 and 9 in the application i.e. Shrikant (Shivshankar's brother) and Gurlingawwa Sangappa Wale (Shivshankar's mother). Shivshankar's other brother, Swaminath Sangappa Wale, was opponent no. 7; however, he did not file any reply. Shivshankar's daughters were also added as parties to the application filed by the appellant. The application was allowed after necessary inquiry contemplated under Section 62 of the Lunacy Act, and the appellant was appointed as Shivshankar's guardian.

(b) Virpakshappa's son, Vijaykumar, had filed Miscellaneous Civil

Application No. 94 of 1989 under the Lunacy Act to cancel the guardianship order issued to the appellant. The said application was rejected on 31st December 1991. Thereafter, Ramesh, i.e. another son of Virpakshappa, filed the present application in the year 2013 under the provisions of the 1987 Act for cancellation of the guardianship order issued in the name of the appellant. The application was filed through Vijaykumar as the power of attorney holder. Thus, only to avoid the objection of the principles of resjudicata, the same son of Virpakshappa filed the present application in the name of another son of Virpakshappa.

(c) Thus, with an intention to defeat the appellant's right to claim partition and get the property divided as per the partition decree, the son of Virpakshappa, making false allegations, applied for cancellation of the guardianship order.

(d) The oral evidence led by Vilas L Patil, i.e., the respondent's witness, was not trustworthy. In the examination-in-chief, vague statements were made that Shivshankar was seen near a temple at Solapur; however, no particulars were stated by the witness. The version of the witness that on seeing

Shivshankar, the witness telephonically informed the respondent about the same and helped Shivshankar to get onto a bus to go to Akkalkot was unbelievable, in as much as it was unnatural, that though aware that Shivshankar was a lunatic and was missing, the witness instead of bringing Shivshankar to the respondent, telephonically intimated the same to the respondent and permitted Shivshankar to travel alone from Solapur to Akkalkot. Thus, the oral evidence relied upon by the respondent to claim that Shivshankar was alive is not trustworthy.

(e) Filing of an FIR making false allegations cannot be accepted as a supporting evidence that Shivshankar was alive. The criminal proceedings are pending before the Judicial Magistrate First Class, Akkalkot, for filing the chargesheet. Thus, the pendency of proceedings could not have been relied upon by the learned District Judge to conclude that a forged death certificate was obtained by the appellant.

(f) The execution of the sale deed by the appellant and her daughters in respect of part of Gat No. 650 cannot be interpreted to mean that the appellant had committed a

breach of any of the conditions of the guardianship order. In view of the death of Shivshankar, the names of the appellant and her daughters were entered into revenue records with respect to Gat No. 650 as heirs and legal representatives of Shivshankar. Thus, the execution of the sale deed could not have been accepted as a ground for cancellation of the guardianship order.

(g) The impugned order is based on bald and vague statements.

The missing complaint allegedly filed by the appellant could not have been taken as a statement that Shivshankar was alive. The impugned order is not in accordance with the provisions of Section 69 of the 1987 Act in as much as the learned Judge failed to appoint any other person as manager or guardian of Shivshankar. Thus, the impugned order does not satisfy the parameters of Section 69 of the 1987 Act. The findings recorded by the learned Judge on the death of Shivshankar are beyond the scope and jurisdiction of the provisions of the Mental Health Act. Therefore, the impugned order is illegal and is liable to be quashed and set aside.

Submissions on behalf of Respondent:

7. Learned counsel for the respondent supported the impugned order and submitted as under:

(a) The scope of Section 69 of the 1987 Act would include the powers to decide all the issues that were in the interest of a mentally ill person. He relied upon the definition in Section 2(b) of the 1987 Act to submit that the definition would include the powers and jurisdiction of a court to decide all the issues, including the decision whether Shivshankar was alive or whether he could have been considered as dead in view of the certificate relied upon by the appellant. The learned District Judge could have appointed the Collector or a Manager in place of the appellant; however, not appointing any other person as guardian cannot be a ground to set aside the impugned order.

(b) In the earlier litigation, the appellant had defended the proceeding personally. But in the present proceeding, she is represented through her power of attorney holder, who is her son-in-law. The appellant's power of attorney holder would

have no personal knowledge about the facts or the whereabouts of Shivshankar or his death. Hence, the evidence led by the appellant cannot be accepted as sufficient evidence to support her contention that Shivshankar was dead.

(c) Respondent filed the application for cancellation of the guardianship order only considering the welfare of Shivshankar, and the respondent had no interest in taking away the appellant's property. The oral evidence led by the respondent through his witness, Vilas Patil, is trustworthy. In the cross-examination, none of the contentions submitted by the witness are disturbed. He relied upon the complaint filed by the appellant in 1999. According to the learned counsel for the respondent, the complaint indicates that Shivshankar was alive, according to the appellant, in 1999. The learned District Judge has correctly appreciated the facts, circumstances, and evidence on record by relying upon the presumption under the Evidence Act. Thus, the appellant failed to discharge her burden of Shivshankar's death.

(d) Therefore, the impugned order rightly sets aside the

guardianship order in the name of the appellant, in as much as only with an intention to dispose of Shivshankar's property, the appellant falsely contended that he was dead and got her and her daughters' names inserted in the revenue record to dispose of Shivshankar's property. Learned counsel for the respondent thus supported the findings recorded in the impugned order and submitted that the first appeal does not raise any ground to set aside the impugned order.

Consideration of Submissions:

8. I have considered the rival submissions of the parties. I have perused the record and proceedings of the first appeal. There is no dispute that Shivshankar was a lunatic. Admittedly, the appellant was appointed as a guardian and manager of the person and estate of Shivshankar by an Order dated 27th March 1980 on an application filed by the appellant under the Lunacy Act. Shivshankar's mother and two brothers opposed the application. However, the appellant was appointed guardian and manager upon making the necessary inquiry. Thereafter, the appellant, on behalf of Shivshankar, filed a suit for partition and separate possession. The suit was filed on 30th March 1981, and was decreed on 30th January

1984. Shivshankar's mother and brothers challenged the partition decree. The first appeal was dismissed on 16th August 1988.

9. The second appeal was preferred by the brothers and mother of Shivshankar in 1989 in this court. It is pertinent to note that the respondent's father, Virpakshappa, was appellant no. 1 in the second appeal. After his death, his heirs and legal representatives, including the present respondent, were added as party appellants in the second appeal. The appellants in the second appeal, including the respondent herein, filed an application to bring on record the names of the appellant and her daughters as heirs and legal representatives of Shivshankar. The partition suit was filed in the name of Shivshankar through the present appellant as his guardian. Hence, in view of the death of Shivshankar, appellants in the second appeal, including the present respondent, filed an application for bringing on record the names of Shivamma, i.e. present appellant and her daughters as heirs and legal representatives of Shivshankar in the second appeal. There is no dispute that the said application was withdrawn, with the liberty to file a fresh application in the event any information was received regarding Shivshankar. The said application was thus disposed of

as withdrawn on 2nd April 2016. Admittedly, no fresh application was filed by the appellants in the second appeal, contending that Shivshankar was alive. Thus, in view of the facts on record of the second appeal, Shivshankar was shown as deceased and in the absence of heirs and legal representatives of Shivshankar, the second appeal stood abated. Hence, this court dismissed Second Appeal No. 260 of 1989 as abated by an order dated 16th January 2025.

10. After filing the second appeal in this court, the son of Virpaksha, i.e. respondent's brother, Vijaykumar, filed Civil Miscellaneous Application No. 94 of 1989 under the Lunacy Act for cancelling the Order dated 27th March 1980 appointing the appellant as guardian and manager. Vijaykumar contented that Shivshankar was not traceable. Hence, by notice dated 1st February 1989, he called upon the appellant to provide the whereabouts of Shivshankar. He contended that he did not receive any satisfactory response; hence, he applied to cancel the order, appointing the appellant as guardian and manager. The appellant appeared in the said proceedings and contented that Shivshankar was missing, and despite search he was not found. The appellant further contended

that she had filed execution proceedings for execution of the partition decree. Hence, to stall the execution and deprive the appellant and her daughters of getting Shivshankar's share, Vijaykumar filed the application, making false allegations against the appellant. The said application was dismissed on 31st December 1991.

11. On 4th July 2013, the respondent filed the Civil Miscellaneous Application No. 209 of 2013 under the 1987 Act. The respondent filed the application through his brother Vijaykumar as his power of attorney holder. The respondent examined Vijaykumar and one Vilas Patil to support his contentions. Vilas Patil deposed that he had seen Shivshankar in the month of Shravan of 2012 in a temple at Solapur, and he dropped Shivshankar at a bus stand to take a bus to Akkalkot. He further deposed that he accordingly informed the said fact to the respondent and his brother on telephone. The respondent's brother, Vijaykumar, filed a criminal complaint alleging that the appellant had prepared a forged death certificate and an FIR was registered on 16th December 2014. Thus, the respondent relied upon the oral evidence and the criminal proceedings to support his contention that the appellant obtained a forged death

certificate to dispose of Shivshankar's property. The appellant examined her son-in-law as her constituted attorney to support her contentions.

12. The proceedings under the 1987 Act were decided on 13th December 2017 during the pendency of the second appeal. The order appointing the appellant as guardian and manager under the Lunacy Act on 27th March 1980 is set aside by the impugned order by accepting the respondent's contention that Shivshankar was alive and that the appellant had acted against the interest of Shivshankar.

13. The Order appointing the appellant as guardian and manager of the person and estate of Shivshankar was passed by exercising powers under the relevant provisions of the Indian Lunacy Act. Under Section 62, the District Court was empowered to direct an inquisition for the purpose of ascertaining whether the concerned person is of unsound mind and incapable of managing himself and his affairs. Chapter V of the Act deals with the proceedings for holding an inquiry and the judicial powers over the person and estate of the lunatic, including the powers of appointing and removing managers and guardians. The Mental Health Act 1987,

came into force on 1st April 1993. Under Section 98 (1) of the 1987 Act, The Indian Lunacy Act 1912 was repealed. Under sub-section (2) of Section 98 (1) of the 1987 Act, the action taken under the Lunacy Act in so far as it is not inconsistent with the provisions of the 1987 Act is deemed to have been done or taken under the corresponding provisions of the 1987 Act. Chapter VI of the 1987 Act deals with the judicial inquisition regarding an alleged mentally ill person possessing property, custody of his person and management of his property. Chapter VI includes the powers of appointing and removing managers and guardians and action to be taken if the mental illness of the person has ceased.

14. In the present case, the learned District Judge inquired into the allegation that the guardian and manager obtained a forged death certificate and disposed of the lunatic's property. Thus, while deciding the prayer for the appellant's removal as manager and guardian of Shivshankar, the learned District Judge exercised powers under Section 69 of the 1987 Act. While exercising the powers under Section 69, the learned Judge disbelieved the death certificate and held that Shivshankar was alive. It is also held that the appellant sold Shivshankar's property without the court's

permission by making a false statement that Shivshankar was dead. Therefore, the learned Judge held that the appellant is liable to be removed as guardian as she acted against the interest of Shivshankar. Thus, considering the scope of inquiry under the provisions of Chapter VI of the 1987 Act, it cannot be said that the findings recorded by the learned judge are beyond the scope of his powers and jurisdiction. Considering the cause of action for filing the application, the findings recorded in the impugned judgment on bar of limitation and principles of resjudicata would not require any interference. However, it is necessary to ascertain whether the findings recorded in the impugned judgment are supported by valid and sufficient evidence.

15. I have carefully perused the application filed under the Mental Health Act. The respondent alleged that the appellant had filed a false affidavit on 20th January 2011, stating that Shivshankar expired on 4th May 1990. The respondent alleged that some untoward incident had occurred with Shivshankar, and the appellant intended to dispose of Shivshankar's properties. It was alleged in the application that the appellant was responsible for the untoward incident of Shivshankar. The respondent alleged that the appellant

failed to care for Shivshankar and his property. Since the appellant and her daughters executed the sale deed and disposed of some of Shivshankar's property, the respondent filed the application to cancel the guardianship order. It is pertinent to note that the respondent did not plead that Shivshankar was alive.

16. The appellant contested the application filed by the respondent and denied all the allegations. The appellant contended that the respondent had filed the application with false allegations only to deprive the appellant and her daughters of getting the property pursuant to the partition decree. The appellant contended that after an exhaustive search done by her and her brother, she learnt that Shivshankar had expired on 4th May 1990. The appellant contended that only to harass her and deprive her of the property in her old age; the respondent made false and baseless allegations against her.

17. The respondent examined his brother as his constituted attorney to support the application. The respondent's witness reiterated the allegations made in the application. It was alleged that the appellant did not take any care and failed to protect Shivshankar and his property. The respondent's witness alleged that a false

certificate was obtained by the appellant recording the death of Shivshankar. He stated that the appellant obtained a forged death certificate and executed a sale deed for one of the properties belonging to Shivshankar, i.e. Gat No. 650. He stated that since the appellant was appointed as guardian of Shivshankar, she was not entitled to execute any sale deed without obtaining necessary permission from the court. Thus, it was stated by the witness that the appellant, with an intention to grab Shivshankar's property, had obtained a forged death certificate and disposed of Shivshankar's property. The respondent's witness produced on record copies of the application filed by the appellant before the Talathi, the death certificate attached to the application and the appellant's affidavit affirmed before the Executive Magistrate.

18. The respondent examined a villager, Vilas Patil as his witness, who deposed that Shivshankar was alive. He deposed that he saw Shivshankar in a temple at Solapur in the month of Shravan in 2012. He further stated that he helped Shivshankar board a bus to go to Akkalkot and informed about it to the respondent and his brother. It is pertinent to note that this oral evidence is not supported by any pleading.

19. The respondent produced on record papers of a criminal complaint filed by his brother alleging that the appellant obtained a forged death certificate. The complaint registered by way of FIR No. 316 of 2015 was also produced on record. Thus, the respondent led evidence to support his submissions that the appellant disposed of Shivshankar's property by obtaining a fraudulent death certificate.

20. The appellant examined her son-in-law as her constituted attorney in support of her contentions. He denied the allegation that Shivshankar was alive. He also denied that they had obtained any forged death certificate. In cross-examination, he deposed that there was an entry in the crematorium about Shivshankar's death on 4th May 1990. He admitted that criminal proceedings were initiated against him and the appellant; however, he denied that the death certificate was issued based on an affidavit filed by the appellant. He denied the allegation that they had prepared any forged death certificate.

21. The learned District Judge examined the rival contentions and noted the admitted facts between the parties. The relations between the parties are not disputed. The rejection of the earlier application filed by the respondent's brother to cancel the guardianship order

was also not disputed. The learned District Judge examined the affidavit filed by the appellant to confirm Shivshankar's death and the death certificate. The sale of some part of Gat No. 650 by executing a registered sale deed was also examined by the learned District Judge.

22. The learned District Judge relied upon the oral evidence of Vilas Patil that he saw Shivshankar in February 2012 to hold that Shivshankar was alive. Learned District Judge referred to Section 107 of The Indian Evidence Act, 1872 ("Evidence Act") read with the presumption under Section 108 of the Evidence Act. The learned District Judge held that if a person is proved to have been alive within 30 years, it is to be presumed that the person is alive, and the burden would be upon the person alleging the death of the said person. Thus, the learned District Judge held that since Shivshankar was last seen in the year 2012, the burden would shift upon the appellant to prove the death of Shivshankar.

23. The learned District Judge also referred to the criminal proceeding initiated alleging the death certificate to be a forged document. The respondent had produced on record a copy of the complaint filed by the appellant on 22nd February 1999. The

respondent interpreted the said complaint to mean that the appellant herself had made a missing complaint, which indicated that Shivshankar was alive on the date of filing the complaint. Thus, based on these allegations, the learned Judge examined the rival contentions by referring to the provisions of Section 60 of the 1987 Act. The learned Judge observed that the appellant did not obtain permission to dispose of Shivshankar's property. Hence, according to the learned District Judge, in view of the provisions of Section 60 of the 1987 Act, it was the bounden duty of the appellant to furnish inventory and annual accounts of Shivshankar's property. By referring to the documentary and oral evidence led by the respondent, the learned Judge concluded that the appellant had not acted in the interest of Shivshankar. Hence, the learned District Judge held that in view of sub-section (1) of Section 69 of the 1987 Act, the appellant was liable to be removed as guardian of Shivshankar. With these observations and findings, the learned District Judge set aside the guardianship order issued on 27th March 1980, appointing the appellant as Shivshankar's guardian. By the impugned order, the appellant is directed to furnish accounts of Shivshankar's property.

Analysis and conclusions:

24. Notably, the respondent did not plead that Shivshankar was alive. The oral evidence of Vilas Patil, that he saw Shivshankar and informed about it to the respondent and his brother, is not supported by any pleading. The pending criminal proceeding referred to and relied upon by the respondent could not have been accepted by the learned District Judge as a ground to believe that the death certificate was a forged document. In the absence of any evidence to indicate that the death certificate issued recording Shivshankar's death was set aside by the court of competent jurisdiction, the learned Judge erred in proceeding on the ground that the certificate was forged. The death certificate is issued under the provisions of the Registration of Births and Deaths Act 1969 and the Rules framed thereunder. Admittedly, the certificate's validity is not challenged before a competent forum having jurisdiction to set aside or cancel the certificate. The respondent produced the death certificate; however, failed to adduce any evidence by examining the concerned registering authority who issued the certificate.

25. The learned District Judge erred in holding that the death certificate is obtained by making a false application before the

Talathi, for which the appellant is prosecuted. The learned Judge ignored that the death certificate was issued on 14th January 2011. Thereafter, on 20th January 2011, the appellant's affidavit confirming Shivshankar's death was affirmed before the Executive Magistrate and the application dated 20th January 2011 was filed before the Talathi to enter the name of the appellant and her daughters in the revenue record as heirs of Shivshankar. Thus, the learned Judge has misappreciated the facts and the evidence on record.

26. The learned Judge erroneously held that if, as per the complaint filed on 22nd February 1999, Shivshankar was missing, the appellant made a false statement on the affidavit that Shivshankar died on 4th May 1990. According to the learned Judge, if Shivshankar died on 4th May 1990, there was no reason to file a missing complaint on 22nd February 1999. Thus, the learned Judge held that the appellant had made a false affidavit about Shivshankar's death. In my opinion, the learned District Judge erred in relying upon the copy of the complaint dated 22nd February 1999, purportedly filed by the appellant in the Akkalkot Police Station, complaining that Shivshankar was missing. The learned Judge ignored that there was no supporting pleading that such complaint

was filed. The appellant's witness in his evidence denied filing any such complaint. Thus, it cannot be assumed that the complaint was filed by the appellant.

27. The respondent did not lead any evidence to challenge the information and material relied upon by the registering authority to record Shivshankar's date of death. A perusal of the death certificate produced on record indicates that it is issued under Sections 12 and 17 of the Registration of Births and Deaths Act 1969, read with Rules 8 and 13 of the Maharashtra Registration of Births and Deaths Rules 2000. Admittedly, the death certificate is not challenged before the competent jurisdictional forum. The death certificate issued under Section 17 is certified by the Registrar or any other officer authorised by the State Government to give such certificate as provided in Section 76 of the Evidence Act, and is admissible in evidence for the purpose of proving the death to which the entry relates. A perusal of the death certificate produced on record indicates that it was issued on 14 January 2011. The certificate records the date of Shivshankar's death as 4 May 1990. The remarks column in the certificate refers to the order passed by

the Executive Magistrate. The learned District Judge ignored the admissibility of the death certificate.

28. After the death certificate was issued, the appellant filed an affidavit dated 20th January 2011 before the Executive Magistrate stating that Shivshankar died on 4th May 1990. The appellant and her daughters also applied before the Talathi to enter their names as heirs of Shivshankar. Accordingly, their names were entered as heirs of Shivshankar. The appellant and her daughters executed a sale deed dated 1st February 2012 for alienating Shivshankar's undivided share inherited by them. Thus, the sale deed was not executed as Shivshankar's guardian. Hence, permission from the court was not necessary for disposing of Shivshankar's property. Hence, executing the sale deed cannot be a ground for accepting any misappropriation of Shivshankar's property. The order entering the name of the appellant and her daughters in the revenue record as heirs of Shivshankar and the sale deed executed by the appellant and her daughters was never challenged.

29. There is no dispute that the earlier application for cancellation of the guardianship order was filed by the respondent's brother, who also filed the present application as the respondent's constituted

attorney and also deposed on his behalf. The oral evidence of Vilas Patil that Shivshankar was seen is unbelievable. His evidence is not supported by any pleading. This witness knew that Shivshankar was a lunatic and was missing. Thus, it is unnatural that instead of escorting Shivshankar to his home, he allowed Shivshankar to board a bus alone and telephonically informed the respondent that he saw Shivshankar. Vilas Patil has vaguely stated that he saw Shivshankar in the Shravan month of 2012 in Siddheshwar temple in Solapur. The respondent has neither pleaded nor deposed to corroborate this oral evidence. Thus, the oral evidence relied upon by the learned Judge for holding that Shivshankar was alive is not valid and reliable.

30. The burden to prove as contemplated under Sections 107 and 108 of the Indian Evidence Act, is not correctly applied by the learned District Judge. The application under Section 69 of the 1987 Act is filed by the respondent on the ground that the appellant obtained a forged death certificate of Shivshankar and disposed of his property without the court's permission. Thus, the burden was upon the respondent to prove that the death certificate was forged and that Shivshankar was alive. The respondent failed to plead and

prove that Shivshankar was alive. The respondent failed to prove that the death certificate was forged. Thus, the burden contemplated under Sections 107 and 108 of the Indian Evidence Act would not apply to the appellant.

31. The learned Judge has erroneously presumed that the appellant had made a false statement about Shivshankar's date of death as 4th May 1990. The affidavit sworn by the appellant before the learned Executive Magistrate, after issuance of the death certificate is misinterpreted. The learned judge has not recorded any valid reasons for disbelieving the death certificate. Thus, the findings recorded by the learned Judge for holding that Shivshankar was alive are without sufficient evidence on record. The findings recorded by the learned Judge for disbelieving Shivshankar's death are based on erroneous findings.

32. While deciding the application under Section 69 of the 1987 Act, the learned District Judge declared that Shivshankar was alive despite the death certificate produced on record. There is no alienation of Shivshankar's property. The appellant and her daughters alienated the property they inherited through Shivshankar. Thus, there was no need to obtain the court's

permission for the alienation. The reasons recorded by the learned District Judge to cancel the guardianship order are without any sufficient cause as contemplated under Section 69 of the 1987 Act. Hence, the findings recorded by the learned Judge to cancel the guardianship order are not sustainable in law.

33. It is pertinent to note that even in the appellant's application filed under the Lunacy Act, Shivshankar's mother and brothers, including the respondent's father, had raised objections based on the status of the family estate. It was contended that the land, Gat No. 650, was purchased by Shivshankar's father in the name of Shivshankar, and it was not ancestral property. Since the beginning, it has been the appellant's grievance that she and her daughters are deprived of Shivshankar's rights to family property. Thus, it is apparent that to defeat the appellant's right along with her daughters to claim partition and separate possession in the execution of the partition decree, Shivshankar's brothers and brother's sons repeatedly raised false objections to challenge the order appointing the appellant as guardian and manager of Shivshankar and his estate.

34. Without any valid proof that Shivshankar was alive, there is no sufficient cause shown to invoke Section 69 of the 1987 Act to cancel the guardianship order. Hence, the reasons recorded in the impugned judgment to cancel the guardianship order are not sustainable in law. Therefore, the impugned judgment and order deserve to be quashed and set aside, and the respondent's application must be rejected.

35. For the reasons recorded above, the first appeal is allowed by passing the following order :

(i) The impugned judgment and order dated 13th December 2017 passed by the learned District Judge-6, Solapur, in Civil Miscellaneous Application No. 201 of 2013, is quashed and set aside.

(ii) Civil Miscellaneous Application No. 201 of 2013 is rejected.

(iii) The appeal is allowed in the aforesaid terms with no order as to costs.

[GAURI GODSE, J.]