

Arunkumar Balakrishnan Vs. Notapplicable

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Court : Chennai

Decided On : Mar-07-2013

Judge : R. Sudhakar

Appellant : Arunkumar Balakrishnan

Respondent : Notapplicable

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

07. 03/2013 CORAM THE HON'BLE MR.JUSTICE R. SUDHAKAR OP.86 of 2013
ARUNKUMAR BALAKRISHNAN FOR PETITIONER : AL.GANTHI MATHI
ORDER: ORIGINAL PETITION No. 86 of 2013 R. SUDHAKAR,J., This Original
Petition is filed under Order 1 Rule 9 of the O.S. Rules read with Section 53 of the
Mental Health Act 1987 praying to appoint the petitioner as Guardian and Manager
of the mentally ill person, namely, her husband Mr.Arunkumar K.Balakrishnan till
he recovers from his mental illness.

2. The wife of Arunkumar K. Balakrishnan has filed this petition to appoint her as
guardian in terms of Section 53 of the Mental Health Act in respect of her
husband, who is said to be a mentally ill person.

3. The brief facts of the case are as follows:- Thiru Arunkumar K.Balakrishnan and
the petitioner were married on 25.9.1995. It is stated that two minor children by
names Hari Balakrishnan and Niranjana were born in wedlock. The said

Arunkumar K. Balakrishnan was employed as Special Investigation Officer in M/s. ABB Transmission & Distribution Limited, Abu Dhabi. His normal work place is at Abu Dhabi, UAE. In September 2012, Arunkumar K. Balakrishnan fell sick and was diagnosed as suffering from Subarachnoid Hemorrhage due to rupture of ACOM aneurysm and was admitted at Apollo Speciality Hospital, Chennai for Neuro Care by Neurosurgeon. He is being treated by Dr.M.Balamurugan, senior consultant Neurosurgeon and he has undergone two major neuro surgeries.

4. According to the petitioner, the said Arunkumar K.Balakrishnan is unable to take any decision or sign any legal document consequent to the sickness that he has undergone and inspite of best medical efforts, he is unable to get over the illness. When the petitioner contacted the Doctor concerned, he opined that the clinic and mental status of the Arunkumar K.Balakrishnan is weakening and he is not in a position to take decision or sign any legal document. In view of the said peculiar situation, the wife, who is unable to wind-up the operation in Dubai and also facing difficulty in surrendering the house and settling the movables, including the car at Abu Dhabi, has now approached this Court to appoint her as the Guardian of the mentally ill-person Arunkumar K. Balakrishnan, the husband, by filing the present Original Petition. In support of the Original Petition, the Certificate of Marriage dated 10.11.1995 is filed as Document No.1.

5. Heard Mr.AR.L.Sundaresan, the learned senior counsel representing Mrs.AL.Ganthimathi, learned counsel appearing for the petitioner.

6. Considering the averments made in the Original Petition and the arguments made by the learned counsel for the petitioner, the points that arise for consideration are as follows:- (1) Whether the person by name, Arunkumar K.Balakrishnan is in fact mentally ill or not? (2) Where the alleged mentally ill person Arunkumar K.Balakrishnan is incapable of taking care of himself and of managing his property as stated by the petitioner? (3) To what relief? 7. Point Nos.1 and 2:- Clause 2 of Section 50 of the Mental Health Act enables the Court to call for a report concerning the mentally ill person. Clause 4 of Section 50 of the Act provides for holding of an inquisition by appointing two or more persons to act as assessors.

8. In this case, this Court on 7.2.2013 has passed the following order to call for a report from the Apollo Speciality Hospital. "Registry is directed to call for the report from the Apollo Speciality Hospital, Padma Complex, 320 Anna Salai, Chennai-600 035, wherein the alleged mentally ill person/ petitioner's husband is taking treatment by 18.2.2013.

2. Learned counsel for the petitioner is directed to effect paper publication in one issue of Tamil Daily 'Makkal Kural' of Chennai Edition calling for the objections if any. Publication shall be effected on or before 11.2.2013 and the objections, if any, shall be filed in Court on or before 18.2.2013.

3. For the appearance of objectors if any, call on 18.2.2013." 9. As per the direction of this Court as above, paper publication in one issue of Tamil Daily Makkal Kural of Chennai Edition calling for the objections if any was effected. Till date no objection is received.

10. As per the direction of this Court, Dr.M.Balamurugan, Sr.Consultant Neurosurgeon, Apollo Speciality Hospital, Padma Complex, 320, Anna Salai, Chennai-35 has sent a report dated 08.3.2013, which reads as follows:- "This is to certify that Mr.Arunkumar K.B., 45 year old gentleman (UHID:235293) was admitted under my care at Apollo Speciality Hospital, Chennai from 10.10.2012 to 20.12.2012 for ruptured ACOM aneurysm. He underwent endovascular coiling on 1.10.2012. He was discharged and taken to CMC, Vellore for Rehabilitation. He was readmitted under my care at Apollo Speciality Hospital, Chennai on 4.1.2013 for hydrocephalus, for which he underwent ventriculopenitoneal shunt procedure on 18.1.2013 and is on Robotic rehabilitation. He will require further rehabilitation for 3 months. He will be unable to rejoin work for 6 months to 1 year. His present disability is 80%." 11. On going through the report of the Doctor, who is the assessor, it is evident that the said Arunkumar K.Balakrishnan is certified as mentally ill person and incapable of taking care of himself and managing his property. According to the report of the doctor, the Said Arunkumar K.Balakrishnan will require further rehabilitation for 3 months. He will be unable to rejoin work for 6 months to 1 year. His present disability is 80%.

12. In view of the reasons stated in the Original Petition and on the basis of the doctor's report as above, this Court finds that the person by name, Arunkumar K.Balakrishnan is in fact mentally ill. He is incapable of taking care of himself and of managing his property. Accordingly, the points 1 and 2 are answered affirmatively.

13. Point No.3: On the basis of the doctor's report, it is evident that the affairs of the said Arunkumar K. Balakrishnan has to be managed by a Court appointed guardian. The wife, who is the petitioner herein and taking care of the mentally ill person Arunkumar K.Balakrishnan, has stated that she is willing to act as a guardian of her husband Arunkumar K. Balakrishnan to take charge and maintain the mentally ill person and also manage the properties.

14. Pursuant to the order of this Court, paper publication has been effected on 9.2.2013. Proof of paper publication has been filed on 13.2.2013 and there is no objection so far. Hence, the petitioner, the wife is a fit person to be appointed as guardian for the person Arunkumar K.Balakrishnan and to manage his properties.

15. One other plea, which arose for consideration before this Court is whether the petition can be maintained before this Court in view of the specific definition of District Court under Section 2 (b) of the Mental Health Act, 1987 and it reads as follows:- "Section 2(b):- "District Court" means, in any area for which there is a City Civil Court, that Court, and in any other area the Principal Civil Court of original jurisdiction, and includes any other Civil Court which the State Government may, by notification, specify as the Court competent to deal with all or any of the matters specified in this Act." 16. It is stated by the learned senior counsel that despite the above provision, the power of the High Court under Clauses 12 and 13 of the Madras High Court The Letters Patent, this Court has the power to try and determine any suit that falls within the jurisdiction of any Court whether within or outside the presidency of the Madras City, and which is subject to its superintendence, when the said High Court thinks proper to do so.

17. Clauses 12 and 13 of the Madras High Court Letters Patent reads as follows:- " Clause 12:- Original Jurisdiction as to suits:- And we do further ordain that the said High Court of Judicature at Madras in exercise of its ordinary original civil

jurisdiction, shall be empowered to receive, try, and determine suits of every description if, in the case of suits for land or other movable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary Original jurisdiction of the said High Court: or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Causes at Madras, in which, the debt or damage, or value of the property sued for does not exceed hundred rupees. Clause 13: Extraordinary original civil jurisdiction:- And We do further ordain that the said High Court of Judicature at Madras shall have power to remove, and to try and determine, as a Court of Extraordinary Original Jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of Madras, subject to its superintendence when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court." The above provision clearly enable this Court to exercise jurisdiction in respect of the present issue and for reasons stated hereunder.

18. In this case, the mentally ill person Arunkumar K.Balakrishnan, is now presently treated in Apollo Hospital, Chennai within the jurisdiction of this Court and therefore, there is no impediment for this Court to exercise the extraordinary power under clause 13 of the Madras High Court Letters Patent, despite Section 2(b) of the Mental Health Act. It is to notice that earlier this Court issued a direction on 7.2.2013 for paper publication and a report has been called for by this Court. It is a fit case to exercise jurisdiction considering the mental ill-health that the petitioner's husband is suffering. The Court in order to substantial justice is inclined to entertain the Original Petition as maintainable. The jurisdiction of this court is not ousted.

19. From a perusal of the report of the Doctor, who assessed the said Arunkumar K.Balakrishnan, it is evident that the said person is mentally ill and unable to take care of himself and manage his property. Hence, the need to appoint a guardian

under Section 53 of the Mental Health Act is justified. No other person is more qualified to be appointed as a guardian and there is no adverse remark against the petitioner/wife. Hence, the petitioner/wife is appointed as the guardian of the mentally ill person Arunkumar K.Balakrishnan till he recovers from his mental illness to be his guardian and to take care of his properties. This Original Petition is allowed accordingly. 14.3.2013 Index: Yes Internet:Yes Office to note:- Issue copy on 5.4.2013 ra/ts R.SUDHAKAR,J., ra/ts Order in O.P.No.86 of 2013 Date:14.3.2013

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