

S.Ramji vs Mrs.G.Banumathi on 8 December, 2022

Author: Senthilkumar Ramamoorthy

Bench: Senthilkumar Ramamoorthy

O.P.No.52

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2022

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P.No.527 of 2022

S.Ramji
S/o.Late.Subba Reddy

... Petitioner

v.

1. Mrs.G.Banumathi
W/o.A.Gopanna

2. Mrs.Gayathri
W/o.Hari

3. Mr.Ramesh Babu
S/o.Late. Subba Reddy

4.Mr.Jambunath
S/o.Late.Subba Reddy

5.Mrs.Suneetha
W/o.Late.Bhaskar

6.B.Yugesh
S/o.Late Bhaskar

... Responden

PRAYER: Original Petition filed for appointment of Guardian and Est
of Mentally Ill-person (under clause XVII of the Letters Patent of

1/9

<https://www.mhc.tn.gov.in/judis>

prayed that (a) to appoint Mr.S.Ramji, son of late.N.Subba Reddy, t

petitioner herein as the guardian of the person and manager of the more-fully set-out in Schedules 'A' 'B' 'C' and 'D', of the mentally ill person Mr.Ranganath; (b) grant permission for the sale of 1/7th share of the mentally ill person Mr.Ranganath more-fully set-out in Schedule-D hereunder; (c) permit the petitioner to deposit the sale proceeds of the share in D-Schedule property and utilize the interest for the welfare of the mentally ill person Mr.Ranganath; and (d) any other relief as this Court deem fit and proper in facts and circumstances of this case and to render justice.

For Petitioner : Mr.T.C.S.Raja Chockalingam

For Respondents : Mr.R.Ganesh Babu

ORDER

This petition is presented by one of the brothers of Mr.S.Ranganath, who is said to be afflicted with schizophrenia. By this petition, the petitioner seeks appointment as the guardian of the person and manager of the properties of Mr.S.Ranganath. In addition, permission is requested for the sale of 1/7th share of Mr.S.Ranganath in the property described in schedule-D to the petition and for the deposit of the sale proceeds thereof, including the utilization of the interest from such deposit.
<https://www.mhc.tn.gov.in/judis>

2. The petitioner states that his brother, Mr.S.Ranganath, is afflicted with schizophrenia. All the siblings of the petitioner are arrayed as respondents in this petition. The petitioner states that his father, Mr.N.Subba Reddy, died on 26.03.1990. It is stated that the properties described in schedule A, B, C and D are the self-acquired properties of the petitioner's father, late Mr.N.Subba Reddy. Consequently, upon his demise on 26.03.1990, right, title and interest in the said properties devolved upon his seven children. The petitioner and his siblings intend to sell schedule D property and have identified the buyer in respect thereof. Since the petitioner's brother, Mr.S.Ranganath, has 1/7th share in the schedule-D property, permission is sought for the sale of the said 1/7th share and for dealing with the proceeds thereof.

3. In order to establish the petitioner's entitlement, evidence was recorded. Dr.N.M.Meena, Assistant Professor at Kilpauk Institute of Mental Health, Kilpauk, Chennai-600 010, was examined as PW1. In course of the examination of PW1, she deposed that Mr.S.Ranganath is afflicted by schizophrenia. Consequently, PW1 stated that he is not in a position to take <https://www.mhc.tn.gov.in/judis> decisions and requires assistance. The petitioner was examined as PW2. In course of the examination-in-chief of PW2, the 28 documents which are set out at the foot of this order, were exhibited as Exs.P1 to P28. These documents include the death certificate of late N.Subba Reddy (Ex.P24), the death certificate of the petitioner's mother, S.Santha Bai (Ex.P26), the joint consent affidavit of Respondents 1 to 6 (Ex.P28) and the title and revenue records relating to schedule A to D properties (Exs.P2 to P22).

4. In response to a question as to the applicability of the Mental Healthcare Act 2017 (the Mental Healthcare Act), learned counsel for the petitioner submitted that the said Act does not provide for the appointment of a guardian of the property of a mentally-ill person. As regards the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities

Act, 1999 (Act 44 of 1999), he submitted that the said Act deals with mental retardation but not with mental illness, such as schizophrenia. On examining the definition of mental illness under Section 2 (s) of the Mental Healthcare Act, it is clear that the definition of mental illness therein is wide but excludes mental retardation. <https://www.mhc.tn.gov.in/judis> Mental retardation is defined in Section 2(g) of Act 44 of 1999 as a condition of arrested or incomplete development of the mind of a person, which is specially characterized by sub-normality of intelligence. As correctly submitted by learned counsel for the petitioner, schizophrenia is not a form of mental retardation although it qualifies as mental illness. In any event, the powers of this Court under clause 17 of the letters patent are wide and may be exercised, in appropriate cases, notwithstanding the enactment of statutes such as the Mental Healthcare Act.

5. The assertions in the petition have been duly proved by adducing evidence. All the siblings of the petitioner arrayed as respondents. They have filed consent affidavits and agreed to the appointment of the petitioner as guardian of the person and property of Mr. S.Ranganath. In these circumstances, the petitioner is entitled to succeed.

6. Accordingly, O.P.No.527 of 2022 is allowed on the following terms:

(i) by appointing Mr.S.Ramji as the guardian of the person and as <https://www.mhc.tn.gov.in/judis> manager of the properties described in the schedule A to D as regards the mentally-ill person, Mr.S.Ranganath;

(ii) permission is granted for sale of the 1/7th share of Mr.S.Ranganath in the property described in Schedule D to the petition; and

(iii) the sale proceeds from the sale of the property, as regards the 1/7th share of Mr.S.Ranganath, shall be deposited in an interest bearing fixed deposit account in a nationalised bank. Such deposit shall be for an initial term of five years. The petitioner is permitted to utilize only the interest accruals from such fixed deposit for the welfare of Mr.S.Ranganath.

08.12.2022 kal Index : Yes / No Petitioner's witness:

P.W.1 - Dr.N.M.Meena, Assistant Professor at Kilpauk Institute of Mental Health, Kilpauk, Chennai-10 P.W.2 – Mr.Ramji Documents exhibited by the petitioners:

<https://www.mhc.tn.gov.in/judis> Exhibit Description No. Ex.P1 The disability certificate of Mr.S.Ranganath dated 21.11.2022. Ex.P2 The photocopy of the registered Sale Deed dated 17.11.1969 (Compared with the original) Ex.P3 The photocopy of the registered Sale Deed dated 07.05.1958 (Compared with the original) Ex.P4 The photocopy of the registered Sale Deed dated 22.06.1965 (Compared with the original).

Ex.P5 The photocopy of the registered Sale Deed dated 10.12.1973 (Compared with the original) Ex.P6 The photocopy of the registered Sale Deed dated 19.06.1975 (Compared with the original) Ex.P7 The photocopy of the registered Sale Deed dated 21.04.1976 (Compared with the original) Ex.P8 The photocopy of the registered Sale Deed dated 28.02.1983 (Compared with the original) Ex.P9 The photocopy of the registered Sale Deed dated 31.03.1983 (Compared with the original) Ex.P10 The photocopy of the registered Sale Deed dated 10.04.1983 (Compared with the original) Ex.P11 The photocopy of the registered Sale Deed dated 17.03.1984 (Compared with the original) Ex.P12 The photocopy of the registered Sale Deed dated 27.08.1984 (Compared with the original) Ex.P13 The photocopy of the registered Sale Deed dated 17.09.1984 (Compared with the original).

Ex.P14 The photocopy of the registered Sale Deed dated 06.07.
(Compared with the original)
Ex.P15 The photocopy of the registered Sale Deed dated 10.01.

<https://www.mhc.tn.gov.in/judis>

Exhibit No.	Description
	(Compared with the original)
Ex.P16	The photocopy of the registered Sale Deed dated 29.07. (Compared with the original)
Ex.P17	The photocopy of the registered Sale Deed dated 27.08. (Compared with the original)
Ex.P18	The photocopy of the registered Sale Deed dated 29.09. (Compared with the original)
Ex.P19	The photocopy of the registered Sale Deed dated 02.10. (Compared with the original)
Ex.P20	The photocopy of the registered Sale Deed dated 30.06. (Compared with the original)
Ex.P21	The photocopy of the registered Sale Deed dated 20.02. (Compared with the original)
Ex.P22	The computer generated Patta bearing No.52
Ex.P23	The photocopy of the Higher Secondary Course Cert of S.Ranganath (Compared with the original)
Ex.P24	The photocopy of the death certificate of N.Subba Redd (Compared with the original)
Ex.P25	The photocopy of the death certificate of .Bhaskar (Co with the original)
Ex.P26	The computer generated death certificate of S.Santha B
Ex.P27	The joint consent affidavit given by the respondents 1
Ex.P28	My declaration of willingness to accept the office of

guardian of the person and property of the mentally ill person Mr.S.Ranganath.

<https://www.mhc.tn.gov.in/judis> SENTHILKUMAR RAMAMOORTHY,J kal
08.12.2022 <https://www.mhc.tn.gov.in/judis>