

Stereo.HCJDA 38.

Judgment Sheet
IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

....

F.A.O No.117 of 2023.

Mst. Naghma Parveen, etc.

Versus

Public at Large, etc.

JUDGMENT.

Date of hearing: **02.12.2025.**

Appellants by: Mr. Khalid Ashraf Khan, Advocate.

Respondents No.2 to 9: M/s Rana M. Javed Iqbal, Imran Baig, Rao Ayub Gohar, Muhammad Sajid Iqbal Chaudhry and Usama Bahadur Advocates.

Respondent No.10 by: Mr. Kashif Nadeem, Advocate.

AHMAD NADEEM ARSHAD, J. Through this appeal, the appellants have called into question the validity and legality of judgment dated 25.10.2023 passed by learned District Judge, Multan, pursuant whereto their application under Section 29 of the Mental Health Ordinance, 2001 (Ordinance No.VIII of 2001), for appointment of guardian of their father/respondent No.2 Mian Muhammad Akbar was dismissed.

2. Tensely, the facts forming background of the instant appeal are that the appellants filed an application under Section 29 of the Mental Health Ordinance, 2001 (*The Ordinance, 2001*) for their

appointment as guardian of their father/respondent No.2 namely Mian Muhammad Akbar by taking prior permission from the Advocate General Punjab. They averred that respondent No.2 is a well-off person having large number of properties and living with his wife and sons. They maintained that their father is mentally and physically unfit and suffering from old Isheamic Stroke Caretied Stenosuis (Left I.C.A) Stage I, Parkinsons's Disease and Dementia, Comorbrids of Hypertension and some other diseases, and by taking benefit of his disability their brothers are taking undue benefits from the property of their father. They maintained that they be appointed as guardian of respondent No.2 for the following reasons:-

- i. To take proper care of the father (Mian Muhammad Akbar), who is mentally ill.*
 - ii. To prevent him (Mian Muhammad Akbar) from causing injury himself or to others.*
 - iii. To bring back the mentally ill person (Mian Muhammad Akbar) to the said facility on the expiry of the period of leave.*
 - iv. To save the holdings of the person (Mian Muhammad Akbar).*
3. Respondents contested the application by filing written statement/written reply. Learned District Judge, Multan, after examining the respondent No.2 and hearing both sides dismissed the application being not maintainable vide judgment dated 25.10.2023. Feeling aggrieved, the appellants have filed instant appeal.

4. I have heard learned counsel for the parties at length and gone through the record with their able assistance.

5. After hearing learned counsel for the parties and going through the record, it has been observed that the appellants filed application under Section 29 of the Ordinance, 2001, for their

appointment as guardian of respondent No.2 namely Mian Muhammad Akbar Dhareja who happens to be their father. The reason assigned by the appellants for appointment is that their father is suffering from old Isheamic Stroke Caretied Stenosuis (Left I.C.A) Stage I, Parkinsons's Disease and Dementia, Comorbids of Hypertension and some other diseases. They maintained that by taking benefit of the disability of their father, their brothers are taking undue benefits from the property of their father.

6. Section 29 of the Mental Health Ordinance, 2001, provides a mechanism for judicial intervention when a person who owns or controls property is alleged to be mentally disordered. Under this provision, a relative of the person may apply to the designated Court of Protection in the area of the person's residence, seeking an inquiry into the person's mental capacity. The application must be accompanied by the written consent of the relevant Advocate General of the Province, ensuring a safeguard against frivolous or malicious petitions. Upon receiving the application, the court conducts an inquiry to determine whether the individual is indeed mentally disordered and incapable of managing themselves, their property, or their affairs. If the court concludes that the person lacks such capacity, it may take necessary measures under the Ordinance, including the appointment of a guardian for personal care and a property manager to oversee the individual's estate. The provision is intended to protect mentally disordered persons from exploitation, neglect, or mismanagement, while ensuring that their rights are

safeguarded through a fair and transparent judicial process. Section 29 of the Ordinance, is reproduced as under:-

29. Judicial proceedings.— Whenever any person is possessed of property and is alleged to be mentally disordered, the Court of Protection, within whose jurisdiction such person is residing may, upon application by any of his relatives having obtained consent in writing of the Advocate General Punjab by order direct an inquiry for the purpose of ascertaining whether such person is mentally disordered and incapable of managing himself, his property and his affairs.

7. Section 30(1)(d) of the Ordinance, 2001, provides that the Court may require the alleged mentally disordered person to attend, at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or to any person from whom the Court may desire to have a report of the mental capacity and condition of such mentally disordered person. For facility of reference, Section 30(1)(d) is reproduced hereunder:

"30. Regulation of proceedings of the Court of Protection.—
(1) The following provisions shall regulate the proceedings of the Court of Protection with regard to the matter to which they relate, namely:-
(a) Notice shall be given to the mentally disordered person of the time and place at which it is proposed to hold the inquiry;
(b) if it appears that personal service on the alleged mentally disordered person would be ineffectual, the Court may direct such substituted service of notice as it thinks fit;
(c) the Court may also direct copy of such notice to be served upon any relative of the alleged mentally disordered person and upon any other person to whom in the opinion of the Court notice of the application should be given;
(d) the Court may require the alleged mentally disordered person to attend, at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or to any person from whom the Court may desire to have a report of the mental capacity and condition of such mentally disordered person;"

8. It is matter of record that the application was earlier filed before the District Judge, D.G. Khan. In order to satisfy the

requirement of Section 30(1)(d) ibid, District Judge, D.G. Khan, summoned the respondent No.2 on 11.10.2021 and after interviewing him observed as under:

"Respondent No.2 Mian Muhammad Akbar while appearing in the Court has given intelligent answers to the questions put to him."

9. Subsequently, while accepting the Transfer Application filed by the appellants before this Court, vide order dated 12.06.2023 matter was entrusted to District Judge, Multan, for decision of the application. He also summoned and examined respondent No.2 on 05.10.2023 and observed that respondent No.2 is well oriented, well dress and well behaved and apparently no mental disability and ailment in his person and personality was noticed. Relevant portion of order dated 05.10.2023 is reproduced as under:-

"Mian Muhammad Akbar Dhareja (respondent No.2) stated that his name is Mian Muhammad Akbar Dhareja and he is 75 years old. His father's name is Mian Ghulam Hussain Dhareja, name of his wife is Safia and she is his only wife. Out of his wedlock he has at present two sons and four daughters. His one son Mian Muhammad Waseem died some years ago, his another son Muhammad Yousaf was a banker and now he is helping him in agricultural affairs/business and other son Mian Muhammad Faheem is a government servant and is serving in Intelligence Bureau whereas his four are daughters namely Mst. Naghma, Mst. Asma, Mst. Gull Fareen and Mst. Najma. He recognized/identified his two daughters Naghma and Gul Fareen present in the court. He stated that he is M.A LL.B. General appearance of respondent No.2 Mian Muhammad Akbar Dhareja is observed/noticed as being well oriented, well dressed and well behaved while appearing before this court and responded to all the questions put to him by this court normally/comfortably and politely. It was also

observed that respondent No.2 entered and left the court room on foot with normal walk though with slight help."

10. During the pendency of this appeal, this Court also summoned respondent No.2 who appeared in the Court on 27.10.2025. This Court examined the respondent No.2 and passed the following order:

"In compliance with the previous order, respondent No.2 is present before the Court in person. He has been examined at some length and has responded to all the questions put to him by the Court in an intelligent and satisfactory manner. There is a written request for adjournment on behalf of the learned counsel for the appellants; therefore, the case cannot proceed today. One last opportunity is granted to the learned counsel for the appellants to argue the case, failing which the interim relief already granted shall stand vacated automatically."

11. Today, two connected Civil Revisions filed by the appellants are also pending this Court which are being decided through separate judgments. Proposition involved in those Civil Revisions is that the appellants challenged the gift mutations executed by their father/respondent No.2 in favour of his sons etc. Even in those suits, respondent No.2 appeared before the Court on two different dates and acknowledged the valid execution of the mutations, upon which the plaints of the suits were rejected under Order VII Rule 11 C.P.C.

12. The entire edifice of the appellants' case rests on the assertion that respondent No.2 is mentally disordered and incapable of managing his affairs. However, this assertion stands completely demolished by the unimpeached judicial observations recorded by three different Courts at three different stages: first by the learned District Judge, D.G. Khan on 11.10.2021, thereafter by the learned District Judge, Multan on 05.10.2023, and finally by this Court on

27.10.2025. On each occasion, respondent No.2 appeared in person, responded coherently, gave intelligent answers, demonstrated complete awareness of his personal, familial and financial affairs, and exhibited no sign whatsoever of mental incapacity. It is settled law that when the alleged mentally disordered person himself appears before the Court and is found to be mentally sound upon judicial examination, no further inquiry survives, nor can medical certificates produced by adversarial parties override the Court's direct assessment made under Section 30(1)(d) of the Ordinance, 2001.

13. The appellants' conduct also creates serious doubt about the bona fides of their claim. They not only failed to rebut the repeated judicial observations regarding their father's mental soundness, but also simultaneously pursued civil litigation seeking cancellation of gift mutations executed by respondent No.2. In those independent proceedings as well, respondent No.2 appeared twice before the civil court and affirmed the valid execution of the impugned mutations. The appellants thus seek, through the Mental Health Ordinance, 2001, a remedy which is plainly collateral to their property disputes.

14. During the course of arguments, learned counsel for the appellants emphasized that the appellants filed the application after obtaining the consent of the Advocate General, as specifically mandated under Section 29 of the Mental Health Ordinance, 2001. He added that the Advocate General, after examining the application, forwarded it to the Court, thereby fulfilling the statutory precondition.

Learned counsel argued that in these circumstances, the learned District Judge was not justified in dismissing the application on the ground that it was not maintainable. In this regard, it has been observed that the grant or refusal of consent by the Advocate General is not a judicial determination; rather, it constitutes a procedural formality designed to prevent frivolous, vexatious, or malicious applications from reaching the Court. The role of the Advocate General is limited to conducting a preliminary review and determining whether there is a *prima facie* case that warrants the Court's attention, but he has no authority to adjudicate substantive questions concerning the individual's mental capacity or property management. All critical issues, including the appointment of a guardian for the person and a manager for the property of a mentally disordered person, are to be examined and decided exclusively by the Court before which the application is filed. The Court is required to consider medical reports, evidence from the parties, and other relevant circumstances to determine whether the person is indeed mentally disordered and incapable of managing their affairs. The ultimate decision regarding the guardianship of the person and the management of their property rests solely with the Court. The Advocate General's role is limited to providing statutory clearance for the petition to be entertained. Consequently, the dismissal of an application on the ground of maintainability, despite compliance with the requirement of consent under Section 29, undermines the substantive objectives of the Ordinance, which aim to protect

mentally disordered persons and ensure that their personal and property interests are legally safeguarded.

15. Learned counsel also agitated that the District Judge should have referred the matter for constitution of a Medical Board for medical examination of respondent No.2 in order to ascertain whether he is of sound mind or otherwise. In this regard, suffice is to observe that when the Court itself examined the respondent No.2 in person on different occasions and found no clue or gesture indicating mental unsoundness, then there was no need to refer respondent No.2 to the medical board.

16. The Mental Health Ordinance, 2001 is a beneficial and welfare-oriented statute, designed with the singular purpose of safeguarding the rights, dignity, and well-being of individuals who are genuinely suffering from mental disorders. It seeks to ensure that such vulnerable persons are treated with compassion, protected from exploitation, and provided with necessary care through lawful supervision where required. The protective framework of the Ordinance cannot be stretched, distorted, or weaponized to advance ulterior motives or settle intra-family property disputes. Courts have consistently held that proceedings under mental health laws must not be invoked lightly or for collateral objectives, as doing so undermines the very spirit and sanctity of the legislation. Guardianship under this Ordinance is not a tool to gain control over the property of a competent adult, nor does it serve as an alternate forum for contesting civil rights already determined or disputed

elsewhere. When the alleged mentally disordered person appears before the Court, responds intelligently, and demonstrates full command over his personal and financial affairs, the law does not permit the misuse of mental health jurisdiction to circumvent valid transactions. The Ordinance demands strict scrutiny of mala fide intent, for the dignity of a mentally sound person must not be compromised merely to serve the financial ambitions of another. Any attempt to mould this protective statute into a strategic instrument for achieving property-driven objectives is not only legally impermissible but morally reprehensible. The Courts are therefore duty-bound to prevent such abuse and preserve the beneficial character of the law.

17. Undeniably, respondent No.2 is a man of means, possessing substantial holdings and resources, yet it is deeply distressing that his own children, instead of showing gratitude and respect, have chosen to question his mental competence. An elderly man has been compelled to defend his dignity, sanity, and autonomy in the courts because his own flesh and blood have chosen vengeance over filial duty.

18. Islam commands respect and care for parents, as narrated in the Holy Quran, Surah Al-Israel (17:23–24):

"For your Lord has decreed that you worship none but Him. And honour your parents. If one or both of them reach old age in your care, never say to them 'even' 'ugh,' nor yell at them. Rather, address them respectfully. And be humble with them out of mercy, and pray, "My Lord! Be merciful to them as they raised me when I was young"

اور تمہارے پروردگار نے ارشاد فرمایا کہ اُسکے سو اکسی کی عبادت نہ کرو
 اور ماں باپ کے ساتھ بھالائی کرتے رہو اگر ان میں سے ایک یا دونوں
 بڑھاپ کو پہنچ جائیں تو ان کو اوف تک نہ کہنا اور نہ انہیں
 جھٹکتا اور ان سے بات ادب کے ساتھ کرنا اور عجز و نیاز سے ان کے
 آگے جھکے رہو اور ان کے حق میں دعا کرو کے اے پروردگار جیسا انہوں نے مجھے
 بچپن میں (شفقت سے) پورش کیا تو بھی ان (کے حال) پر رحم
 فرمدا۔"

19. Yet, the appellants' actions starkly violate this divine injunction. The appellants' actions reflect not only a moral failing but a stark misuse of the protective provisions of the Mental Health Ordinance, which were designed to safeguard those truly vulnerable, not to be weaponized against a competent and loving father.

20. Viewed in totality, the impugned judgment dated 25.10.2023 handed down by the learned District Judge is not only legally sound but eminently well-reasoned. It rests on proper appreciation of the statutory scheme, correct application of Section 30(1)(d) of the Ordinance, 2001, careful evaluation of the parties' conduct, and direct judicial assessment of respondent No.2's mental state. The appellants have utterly failed to point out any misreading, non-reading, perversity, jurisdictional defect or legal infirmity warranting interference in appellate jurisdiction.

21. Although learned counsel for the appellants argued the matter with vehemence and placed reliance upon a number of precedents, yet in view of the distinct and peculiar facts of the present case, the

cited authorities are clearly distinguishable and do not advance the appellants' case in any manner.

22. As an inevitable corollary of above discussion, this appeal, being devoid of merit and motivated by collateral considerations, is accordingly **dismissed**.

(AHMAD NADEEM ARSHAD)
JUDGE.

Approved for reporting.

JUDGE.

*M. Arsalan**