CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

FRIDAY, THE 20TH DAY OF OCTOBER 2023 / 28TH ASWINA, 1945

FAO NO. 32 OF 2023

AGAINST THE ORDER DATED 18.07.2022 IN OP /2022 OF DISTRICT COURT, WAYANAD

APPELLANT/PETITIONER:

ABOOTTY K.A.
AGED 51 YEARS
SON OF KOLANGOTTIL AYISHA, KOLANGOTTIL HOUSE, KANIYAMBETTA POST AND VILLAGE, VYTHIRI TALUK, WAYANAD DISTRICT., PIN - 673576

BY ADVS.
P.C.CHACKO(PARATHANAM)
ASHA P.KURIAKOSE

RESPONDENTS/RESPONDENTS:

1 KOLANGOTTIL PATHUMMA
AGED 69 YEARS
WIFE OF LATE ABDULLA, KOLANGOTTIL HOUSE, KANIYAMBETTA POST AND VILLAGE VYTHIRI TALUK, WAYANAD DIST, PIN - 673121

2 K. MOIDEEN
AGED 50 YEARS
SON OF KOLANGOTTIL AYISHA,AGED 50 YEARS, KOLANGOTTIL HOUSE, KANIYAMBETTA POST AND VILLAGE VYTHIRI TALUK, WAYANAD DIST., PIN - 673121

3 KADEEJA
AGED 56 YEARS
W/O. BEERAN, CHERAVATHODIKA HOUSE, KARANI POST, KANIYAMBETTA VILLAGE, VYTHIRI TALUK, WAYAND,, PIN - 673121

4 ASYA
AGED 51 YEARS
D/O. KOLANGOTTIL HOUSE, KANIYAMBETTA POST AND VILLAGE, VYTHIRI TALUK, WAYANAD, PIN - 673121

5 AYISHA
AGED 60 YEARS

W/O. LATE IBRAHIM, KOLANGOTTIL HOUSE, KANIYAMBETTA POST AND VILLAGE, VYTHIRI TALUK, WAYANAD, PIN - 673121

6 SHOUKATH
AGED 37 YEARS
S/O. IBRAHIM, KOLANGOTTIL HOUSE, KANIYAMBETTA POST AND VILLAGE, VYTHIRI TALUK, WAYANAD, PIN - 673121

7 SHAMEER
AGED 34 YEARS
S/O. IBRAHIM, KOLANGOTTIL HOUSE, KANIYAMBETTA POST AND VILLAGE, VYTHIRI TALUK, WAYANAD, PIN - 673121

8 SHAMSEER
AGED 32 YEARS
S/O. IBRAHIM, KOLANGOTTIL HOUSE, KANIYAMBETTA POST AND VILLAGE, VYTHIRI TALUK, WAYANAD, PIN - 673121

9 MUHAMMED SHAFI
AGED 30 YEARS
S/O. IBRAHIM, KOLANGOTTIL HOUSE, KANIYAMBETTA POST AND VILLAGE, VYTHIRI TALUK, WAYANAD, PIN - 673121

10 FAIZAL
AGED 29 YEARS
S/O. IBRAHIM, KOLANGOTTIL HOUSE, KANIYAMBETTA POST AND VILLAGE, VYTHIRI TALUK, WAYANAD, PIN - 673121

11 AMMED
AGED 72 YEARS
h/O. NABEESA KOLONGOTTIL, KOTTARAM HOUSE, KANIYAMBETTA POST AND VILLAGE,VYTHIRI TALUK, WAYANAD, PIN - 673121

12 NASEEMA
AGED 45 YEARS
D/O. NABEESA ,KOTTARAM HOUSE, KANIYAMBETTA POST AND VILLAGE,VYTHIRI TALUK, WAYANAD, PIN - 673121

13 AMEENA
AGED 32 YEARS
D/O. NABEESA, KOTTARAM HOUSE, KANIYAMBETTA POST AND VILLAGE,VYTHIRI TALUK, WAYANAD, PIN - 673121

14 HARRIS
AGED 35 YEARS
S/O. NABEESA KOLONGOTTIL, KOTTARAM HOUSE, KANIYAMBETTA POST AND VILLAGE, VYTHIRI TALUK, WAYANAD, PIN - 673121

15 SAKEER
AGED 35 YEARS
S/O. SULAIMAN, KOLAKKATTIL HOUSE, KARUTHUPARAMBU, MUKKOM, KOZHIKODE TALUK, KOZHIKODE, PIN - 673602

16 NOUSHAD
AGED 32 YEARS
S/O. SULAIMAN, KOLAKKATTIL HOUSE, KARUTHUPARAMBU, MUKKOM, KOZHIKODE TALUK, KOZHIKODE-673602. *ADDL.R17 & R18 IMPLEADED, PIN - 673602

17 ADDL.R17:
THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY,MINISTRY OF HEALTH AND FAMILY WELFARE,NEW DELHI.

18 ADDL.R18:
STATE OF KERALA.
REPRESENTED BY THE SECRETARY,HEALTH AND FAMILY WELFARE DEPARTMENT,GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM.
* ARE SUO MOTU IMPLEADED AS ADDITIONAL RESPONDENTS 17 AND 18 AS PER ORDER DATED 18/09/2023 IN FAO 32/2023.

SMT.LIGEY ANTONY – R1 TO R16

OTHER PRESENT:

V. RAMKUMAR NAMBIAR - AMICUS CURIAE,
SRI. GIREESH KUMAR - CGC,
GP SMT K.B SONY

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 20.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

J U D G M E N T

(Dated this the 20th day of October, 2023)

The appellant was the petitioner before the District Court, Wayanad. The petition was filed under Section 14 of the Rights of Persons with Disabilities Act, 2016 (for short, 'the Act') to appoint the appellant as the guardian of the person and property of one Sulaiman and also to grant permission to the appellant as guardian to execute the ratification/consent deed in respect of the petition schedule properties ratifying the execution of the deed of partition No.1627/2006 of SRO, Panamaram. The brief facts necessary for the disposal of this F.A.O. are as follows:

2. Respondents Nos.1 to 4 are the direct brothers and sisters of the appellant; respondents no.5 to 10 are the legal heirs of the late Ibrahim; respondents nos.11 to 13 are the children of one Nabeeza; and respondents nos.14 and 15 are the children of Sulaiman. The appellant is the brother of Sulaiman, who is aged 68 years and a mentally disabled person due to Sehizo-Phrenia and having 40% permanent disability. The Medical Board attached to the Department of Health Services, District Hospital, Mananthavadi, has issued

a certificate showing the disability. The appellant averred that he is looking after the affairs of Sulaiman, and residing with him. Sulaiman was married and had two children, but subsequently, the wife divorced Sulaiman by exercising fasq. The petition schedule properties originally belonged to the mother of the appellant and the respondents as per the certificate of jenm purchase issued by the Land Tribunal, Sulthan Bathery. On the mother's death, the property devolved to the petitioner, Sulaiman, and the respondents nos.1 to 4 jointly, along with Ibrahim and Nabeesa. Later, Ibrahim and Nabeesa died, and their rights devolved upon respondents nos.5 to 13. In 2006, they executed a deed of partition No.1627 of 2006, and thereby, the entire property was partitioned, and C schedule was allotted to Sulaiman. Sulaiman is under the care and custody of the appellant, including the property allotted to him. He has no adverse interest against Sulaiman. Therefore, the petition was filed.

3. On the presentation of the petition, the O.P. was not entertained for the reason that the court did not have jurisdiction under the Mental Health Care Act 2017. Thereafter, the counsel for the appellant gave a reply on 12.07.2022, stating that the issue is covered under the Rights of Persons with Disabilities Act, 2016**,** as he is suffering from Sehizo-Phrenia and 40% disability. He relied on the

judgment reported in 2021 (3) KHC 304. Thereafter, the learned Judge, by order dated 18.07.2022, returned the petition, stating as follows:

> "Heard counsel for the petitioner and perused the gazette notification, SRO No.609/2020 dated 23.09.2020, which shows that the Govt. of Kerala has notified and designated the Sub Divisional Magistrate of the area as the designated authority for granting limited guardianship under sub Section 1 of Section 14 of the Rights of Persons with Disabilities Act, 2016 and therefore, the Court is not the competent authority to recourse the said jurisdiction. Hence, the petition is returned."

4. The issue that arises for consideration is whether the District Court has the jurisdiction under Section 14 of the Act to entertain the petition for provision for guardianship. For a proper understanding of the case, Section 14 of the Act is extracted below:

> "**14. Provision for guardianship**.-(1) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government:
>
> Provided that the District Court or the designated authority, as the case may be, may grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature and manner of support to be provided.

> Explanation - For the purposes of this sub-section, "limited guardianship" means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall operate in accordance to the will of the person with disability.
>
> (2) On and from the date of commencement of this Act, every guardian appointed under any provision of any other law for the time being in force, for a person with disability shall be deemed to function as a limited guardian.
>
> (3) Any person with disability aggrieved by the decision of the designated authority appointing a legal guardian may prefer an appeal to such appellate authority, as may be notified by the State Government for the purpose."

5. A reading of clause (1) would make it clear that from the date of commencement of this Act, where a District Court or a designated authority, as notified by the State Government, finds a person with disability, who had been provided adequate and appropriate support but unable to take legally binding decisions, may be provided with the support of a limited guardian. The proviso also clarifies that the District Court or the designated authority, as the case may be, may grant total support to the person with disability.

6. The learned Judge relied on SRO No.609/2020 and held that the District Court has no jurisdiction to entertain a petition of this nature. SRO No.609/2020 was issued on 23/09/2020 . It reads as follows.

> "In exercise of the powers conferred by sub-section (1) of section 14 of the Rights of Persons with Disabilities Act, 2016 (Central Act 49 of 2016), the Government of Kerala hereby designate the Sub Divisional Magistrate of the area as the designated authority for granting limited guardianship under the said Act."

The Government Order only designates the authority as Sub Divisional Magistrate of the area for granting limited guardianship. As per the order dated 22.08.2023, Sri.Ramkumar Nambiar has been appointed as the amicus curiae by this court. The rules framed under the Act are issued through a notification dated 28.03.2020 as per SRO No.262/2020. The amicus curiae, Sri.Ramkumar, relying on the rules framed, submits that a perusal of Rule 4 of the Kerala Rules would make things very clear. Rule 4 of the Kerala Rules reads as follows:

> "4. Granting of limited guardianship. (1) The designated authority/Court, before granting limited guardianship for a person with disability, shall satisfy itself that such person is not in a position to take legally binding decision of his own. The designated authority on receiving the application should grant the limited guardianship within a period of three months considering that his/her best interests will be protected by the Limited Guardian so appointed.
> (2) The District Collector shall act as the appellate authority and will be empowered to collect grievances, if any regarding the appointed limited guardianship, on the decisions of the designated authority."

7. The Rule 4 of the Kerala Rules prescribes that the designated authority/Court, before granting limited guardianship to a person, shall satisfy that such person is not in a position to take legally binding decision. So the designating authority designated by the State Government as Sub-Divisional Magistrate and the court has concurrent jurisdiction to entertain a petition under Section 14 of the Act. This is made further clear by Rule 7, which deals with the **'Matters to be considered by the court or designated authority for appointing Limited Guardianship'.** Rule 7 reads as follows:

> " (i)On receipt of the application for appointment of limited guardian, the court or the designated authority shall scrutinize the application and call for any supporting document or information and consult with the disabled persons in such manner as specified in sub-rule (2)."

8. The manner of consultation of different categories of persons of different disabilities is further discussed below under Rule 7. As far as physical disability is concerned, it is stated that for locomotor disability, the court or the designated authority shall seek the assistance of technical experts or the service of any other person as the designated authority may decide. Rule 7 (2) (b), (c), (d) and (e) would also make it clear that the court or the designated authority is given the concurrent jurisdiction to consider the matters in respect of the persons coming under the Act.

9. Rule 8 deals with '**qualification of person to be appointed as a limited guardian'**. Sub-Rule (1) of Rule 8 reads that, while taking decision on the appointment of limited

guardian, the District Court or the designated authority as the case may be, shall ensure that the person whose name suggested as limited guardian:

> " is above 25 years of age; however, a relative aged 18 years or above can also be appointed as Limited guardian and should be a citizen of India, sound mind, and not convicted for any offense, and not a destitute or declared insolvent or bankrupt or is not disqualified under Rule 13."

9. The counsel for the appellant, Sri. P.C Chacko, submits that the District Court fell in error in interpreting the provisions of the Act, especially Section 14 and the Kerala Rules framed by the Govt. of Kerala as per SRO No.262/2020, wherein Rule 4 very specifically says that the application can be entertained by a District Court or the designated authority, the District Judge ought not to have relied on SRO No.609/2020, which only designates the authority as Sub-Divisional Magistrate and there is no reason for any doubt that the District Court has no jurisdiction to entertain the petition.

10. The learned Government Pleader, Smt.K.B Sony, as well as the Central Government Counsel, Sri.Girish Kumar submits that, as per Section 14 (1) of the Act, the District Court or the designated authority has concurrent jurisdiction when entertaining a petition. The party is given the option of either the jurisdiction of the District Court or the designated authority. Therefore, the legislature, in its wisdom, had drafted the section to give concurrent jurisdiction to the District Court as well as the designated authority.

11. A combined reading of Section 14 (1) coupled with Rules 4, 7 and 8 of the Kerala Rules, it is amply clear that the District Court or the designated authority notified by the State Government has concurrent jurisdiction to entertain a petition or appointment of a limited guardian of person who is coming under the definition of 'person with disability' under Section 2(s) of the Act.

So, I have no hesitation in holding that the District Judge fell in error in returning the petition for want of jurisdiction. Therefore, the order passed by the learned District Judge dated 18.7.2022 is set aside, and it is held that a petition under Section 14(1) of the Rights of Persons with Disabilities Act is maintainable before the District Court. The party who intends to file the application for limited guardianship can choose either the District Court or the Designated Authority. The appellant is, therefore given the liberty to re-present the petition before the District Court having jurisdiction over the area. The Registry shall return the original of the petition produced before this court in this F.A.O., so as to enable the appellant to approach the District Court. It is made clear that I have not expressed any merits of the case, and the question of jurisdiction alone is decided.

F.A.O. is allowed, accordingly.

Sd/-

BASANT BALAJI, JUDGE

JS/dr downloads