

2014 S C M R 1446

[Supreme Court of Pakistan]

Present: Tassaduq Hussain Jilani, C.J., Ijaz Ahmed Chaudhry and Sh. Azmat Saeed, JJ

NAVEED MUNIR---Petitioner

Versus

ADDITIONAL DISTRICT AND SESSIONS JUDGE, LAHORE and another---
Respondents

Civil Petition No.1495-L of 2011, decided on 16th July, 2014.

(On appeal from order dated 27-6-2011, passed by the Lahore High Court, Lahore in W.P. No.26514 of 2010)

(a) Punjab Court of Wards Act (II of 1903)---

---S. 6---Guardians and Wards Act (VII of 1890), S. 7---Constitution of Pakistan, Art. 185(3)---Minor incapable of managing his valuable immovable property and other affairs---Guardian. appointment of---Mala fide of step-mother and paternal relatives of the minor---Effect---Not in the best interest of minor to appoint either a paternal cousin or stepmother as guardian of his person and/or property---Power of Court of Wards to make an order assuming the superintendence of the person and property of minor---Scope---Parents of minor boy (who was 11 years old) were divorced---Father contracted second marriage---Minor's father passed away leaving behind valuable properties, including agricultural land, commercial shops, residential houses, etc. and bank accounts---Biological mother of minor could not be traced despite many efforts of the court---Step-mother and a paternal cousin of the minor were locked in litigation with each other for guardianship of the minor---Both the step-mother and paternal cousin of minor submitted an undertaking before the Supreme Court that parties agreed not to litigate the issue of guardianship further before different forums, thus the Supreme Court may pass an appropriate order for welfare of the minor---Supreme Court observed that the interest of various parties in the minor may well be motivated by the property that he had inherited, rather than any natural love or affection; that if the minor had not inherited such property, he would perhaps have ended up in an orphanage or abandoned in the street; that the conduct of the paternal cousin, step-mother and the other paternal relatives of the minor had not been above-board; that the funds and immovable property inherited by the minor were not safe from the mala fide actions of his paternal relatives and step-mother, who attempted to transfer the same to third parties; that the minor was in the physical custody of his step-mother, who had other children from her previous husband; that the living conditions, as per the report of the Local Commission, appointed by the Supreme Court, did not appear to be very conducive to his well-being, and serious security concerns were also expressed by the minor himself; that in such circumstances it may not be in the best interest of the minor to appoint either his paternal cousin or stepmother, as a guardian of his person and/or property, and that present case was a fit case where the suo motu powers conferred by S. 6 of the Punjab Court of Wards Act, 1903, may be exercised by the competent authority by making an appropriate order assuming the superintendence of the person and property of the minor---Supreme Court directed that the Commissioner of the Division concerned should ensure that the matter of the assumption of the superintendence and control of the person and the property of the minor was be considered by the competent authority in terms of S. 6 of the Punjab Court of Wards Act, 1903, so that appropriate notifications were issued, orders passed and appointments made; that till the minor attained the age of 18 years, the Commissioner concerned shall report every three months about the person and property of minor

to the Registrar of the Supreme Court for information of the court; that till the formal notification was issued in terms of the Punjab Court of Wards Act, 1903, the Receiver appointed and the Committee constituted by the Supreme Court to oversee the minor's performance in school will continue to function and perform their duties; that the Commissioner concerned shall file periodic quarterly reports to the Registrar of the Supreme Court regarding the details of the income that accrued from the properties of the minor, the expenditures incurred on the minor, the educational progress of the minor, the step taken or continued to ensure the health, security, well-being and welfare of the minor, and for protecting and preserving his property, and any other matter effecting the welfare of the minor---Petition for leave to appeal was disposed of accordingly.

(b) Guardians and Wards Act (VII of 1890)---

---S. 7---Constitution of Pakistan, Art. 185(3)---Parental jurisdiction of the Supreme Court---Scope---Best interest of minor---Formalistic approach commonly associated with the adjudication of adversarial civil disputes may not be conducive to the exercise of parental jurisdiction by the Supreme Court---More proactive role may have to be adopted so as to ensure the protection of the best interest of the minor.

Gohar Razzaq Awan, Advocate Supreme Court along with Petitioner in person.

Mrs. Tasneem Amin, Advocate-on-Record along with Mst. Kausar Parveen in person, Khalid, Advocate and Mehmood Advocate for Respondents.

Ejaz Qutab, Advocate Supreme Court on Court's Call.

Ch. Muhammad Hanif Khatana, Additional P.-G., Punjab, Aman Anwar, A/C, Raiwind and M. Arshad, Naib Tehsildar, Amici Curiae.

Date of hearing: 28th March, 2014.

JUDGMENT

SH. AZMAT SAEED, J.---This Civil Petition for Leave to Appeal arises out of the Order dated 27-6-2011, passed by the learned Lahore High Court, Lahore, whereby a Constitution Petition i.e. Writ Petition No.26514 of 2010, filed by the, present petitioner, was dismissed.

2. The issue involved in this case pertains to the guardianship of an unfortunate minor, namely, Sanaullah Siddique. The brief facts necessary for adjudication of the lis at hand are that Nasir Ahmad Shahid married Mst. Rehmat Bibi, as a consequence, whereof the minor Sanaullah Siddique was born on 16-4-2003. The marriage ended in divorce whereafter Mst. Rehmat Bibi, who statedly hailed from Chitral, returned thereto and contracted a second marriage. The minor remained in the custody of his father, Nasir Ahmad Shahid, who contracted a marriage on 5-3-2006 with respondent No.2-Mst. Kausar Parveen. It appears that respondent No.2 was previously married and has offspring therefrom. Nasir Ahmad Shahid died on 17-3-2007. He was a man of means and owned considerable property, including agricultural land, commercial shops and residential houses, etc. which were inherited by the minor.

3. The present petitioner, who is the nephew of the late Nasir Ahmad Shahid, filed an application on 26-3-2008, under the Guardians and Wards Act, 1890 (hereinafter referred to as the Act of 1890), for being appointed, as a Guardian of the minor, Such application was allowed by the learned Guardian Judge vide Order dated 8-5-2008 and a Guardianship Certificate in this behalf, was issued. The present petitioner alleged that the minor was kidnapped/abducted by respondent

No.2 and on his complaint, F.I.R. No.399 of 2008 dated 10-6-2008, was registered under section 363 at Police Station, Raiwind, Lahore.

4. Subsequently, on 16-1-2009, respondent No.2 filed a application under section 12(2) Civil Procedure Code, 1908, to call into question the aforesaid Order dated 8-5-2008, passed by the learned Guardian Judge, whereby the present petitioner was appointed as Guardian of the minor. The said application was dismissed on 27-2-2009 for failure to deposit the process fee. Being aggrieved, respondent No. 2 challenged the said Order through an appeal, which was withdrawn on 1-7-2009 in order to avail an alternate remedy under Order IX, Rule 13, C.P.C. On 25-7-2009, respondent No. 2 moved an application under Order IX, Rule 13, C.P.C. read with section 151, C.P.C. for setting aside the Order of the learned Guardian Judge dated 8-5-2008. The said application was dismissed vide Order dated 25-9-2010, inter alia, on the ground that the same was barred by limitation. Contemptuously, on 4-2-2009, respondent No.2 filed an application seeking to be appointed as a Guardian for the person and the property of the minor. The said application was allowed by the learned Guardian, Judge, Lahore, vide Order dated 7-5-2009, which Order was challenged by the present petitioner through an application dated 1-7-2009.

5. Respondent No. 2 challenged the aforesaid Order dated 25-2-2009, whereby her application under Order IX, Rule 13, C.P.C. has been dismissed. The appeal filed, in this behalf, by respondent No.2 was allowed vide judgment dated 25-11-2010 and the case was remanded back to the learned Guardian Judge for a decision upon the application under Order IX, Rule 13, C.P.C. on merits and after framing of issues and recording of evidence.

6. Being aggrieved, the petitioner invoked the constitutional jurisdiction of the learned Lahore High Court, Lahore, challenging the judgment dated 25-11-2010, passed by the learned Additional district Judge, Lahore, by way of a Constitutional Petition i.e. Writ Petition No.26514 of 2010, which failed to find favour and was dismissed vide Order impugned dated 27-6-2011.

7. The petitioner challenged the Order of the learned Lahore High Court, dated 27-6-2011 through the instant Civil Petition for Leave to Appeal, which came up for hearing firstly on 10-11-2011 and it was noticed that during the courses of the litigation inter se the parties, referred to hereinabove, no effort had been made by the Courts, seized of the matter, to advert to the question of the welfare of the minor.

8. In the above backdrop, notice was issued to respondent No.2. At this juncture, it may be pertinent to mention that the petitioner disputed the status of respondent No.2, as the widow of Nasir Ahmad Shahid, claiming that she i.e. respondent No. 2 had not been legally divorced by her previous husband, prior to her marriage with Nasir Ahmad Shahid, who on discovery of the aforesaid facts divorced her. During the course of the proceedings, which followed, it came to light that a large number of cases, involving the minor's property were pending adjudication and various claimants started to surface in this behalf basing their claim upon acts of the parties to the proceedings as well as other relatives of the minor. It also came to light that the funds had been withdrawn from the Bank accounts of late Nasir Ahmad Shahid. Besides the petitioner, other relatives of the late Nasir Ahmad Shahid had also initiated legal proceedings pertaining to the minor and his property.

9. Pursuant to the Order of this Court, the minor was produced in the Court. It was also discovered that the minor was in the custody of respondent No.2 and was studying in B.V.S. Grammar School, Lahore. It was also noticed that no male blood relation was residing with the minor. Efforts were also made to locate the real mother of the minor, namely, Mst. Rehmat Bibi. The Court was informed that after her divorce from the minor's father, she had married one, Haji Ali Zaman, who had since passed away in the above perspective, on 5-3-2012 this Court issued notice to said Mst. Rehmat Bibi, and the Inspector General of Police, KPK, was directed to effect

service of the same. The notice issued to the biological mother, namely, Mst. Rehmat Bibi could not be served, as her whereabouts could not be ascertained.

10. Efforts were also made to identify the property of the minor to ensure its protection and preservation for which purpose, inter alia, the Assistant Commissioner (Saddar), Lahore, was appointed, as the Receiver, by this Court, vide Order dated 8-3-2012, in the following terms:--

"(1) We appoint Ms. Saima Afzal, Assistant Commissioner, Saddar, to be the receiver of both the agricultural and the urban properties and in the said capacity, she will undertake the following tasks forthwith:-

(i) she would take immediate control of the afore-referred properties, receive their rent/lease and deposit it in some profit bearing account of National Savings, Ministry of Finance, Government of Pakistan and would disperse it for the welfare of the minor in terms as directed by the Court in this regard;

(ii) she will ascertain the current lease income of the agricultural property and rent of the urban properties as also the potential value and she will be free to negotiate further increase in lease or rent;

(iii) she will make a probe into the movable and immovable properties left behind by the deceased further of the minor, if not so far brought to the notice of this Court;

(iv) we have been informed that the house in which the deceased father was living was a joint property. She will probe into that and if it is not a joint property, she will take immediate control of the house and if it is a joint property, she in her capacity as receiver, take appropriate measures to have the property partitioned."

11. A Local Commission was also appointed to ascertain the current living condition of the minor. The Report submitted, in this behalf, was incorporated in the Order of this Court, dated 14-3-2012 and including the following observations:--

"The minor was interviewed in private by the Local Commission. He seemed confident and did not complain about his living conditions. He also stated that he does not go out due to security reasons and plays football or cricket on the roof of the house. Further, the Local Commission did not see any items of children's interest in this house the minor stated that he did not go out of the house as he had enemies who wanted to hurt him and said that he had to change houses for security reasons. The minor was generally satisfied with his environment and did not report any harsh treatment from his stepmother.

The Local Commission believes that the minor is in decent health and his living conditions and schooling is that of a low-income family. The Local Commission observes that the family members are very conscious of a threat to the minor; and the entire routine is guided by this fear."

12. In order to ensure the best education for the minor, efforts were made to seek his admission in Aitcheson College, Lahore or Lawrence College, Ghora Gali. Subsequently the minor was admitted in Aitcheson College, Lahore, where he is now studying and is accommodated in a hostel thereof.

13. On the aforesaid date of hearing i.e. 14-3-2012 the petitioner undertook that all the suits filed to challenge the status of respondent No.2 would be withdrawn, as is mentioned in the said Order. It was also noticed that on the said date of hearing that the late Nasir Ahmad Shahid had inherited some property from his mother along with other heirs, situated in Moza Pipli Wala,

Tehsil City, District Gujranwala, which has not been partitioned. Appropriate Orders, in this behalf, were also issued.

14. It was also brought to the notice of the Court that some litigation was pending against the said property qua the share of Nasir Ahmad Shahid. Appropriate Orders, in this behalf, were also passed by this Court, inter alia, on 16-3-2012, 20-3-2012, 22-3-2012 and 27-3-2012. On 30-3-2012, this Court, was informed by the petitioner that six cases were filed by him, which are mentioned in para 7 of the said Order, which may be dismissed as withdrawn. Consequently, an Order of dismissal thereof was passed by this Court. It was also brought to the notice of this Court that eight cases are still pending in various courts, the details whereof are enumerated in para No.8 of the said Order dated 30-3-2012 and this Court was pleased to pass the following Order:--

"Since it is being alleged that the afore-referred cases have been filed by relatives of deceased Naseer Ahmed Shahid to usurp the property of deceased with a view to deprive the minor and his widow and welfare of the minor requires that his property be secured, we without commenting on the merits of these cases direct learned District and Sessions Judge, Lahore to ensure that the afore referred cases are decided strictly in accordance with law within 6 weeks of the receipt of this order. The record of the Civil Court be de-sealed and returned forthwith. To come up on 5-4-2012."

15. One Jamil Ahmed, another nephew of Nasir Ahmad Shahid, who had withdrawn/received various amounts belonging to the minor and respondent No.2 refunded the same through cheques, the factum whereof was recorded by this Court vide Order dated 5-4-2012. Such refund has also been effected by the petitioner.

16. This Court, vide Order dated 6-2-2013, directed as follows:--

"(i) The judgment and decree obtained by petitioner dated 8-5-2008 (in Naveed Munir v. Public at Large) and the one obtained by respondent Mst. Kausar Parveen dated 7-5-2009 (in Kausar Parveen v. Public at Large) are set aside. The applications for guardianship filed by both of them shall be deemed to be pending before the learned Guardian Judge Lahore to be decided within a period of two months of the receipt of this order.

(ii) During the interregnum, by mutual agreement of the parties, a committee comprising of the Principal Aitcheson College Lahore, Mr. Ejaz Kuttab, Advocate Supreme Court/Additional District Judge (R) and Mrs. Neelam Ismail Qureshi is constituted which shall oversee the child's performance in school and Mr. Ejaz Kuttab shall submit monthly progress report about the educational progress of the child to the Deputy Registrar (L) of this Court.

(iii) Till the question of guardianship is finally decided, the interim custody of the minor shall remain with the respondent step-mother. However, petitioner Naveed Munir shall have a right to meet the minor every fortnight at a place and time to be decided by the member of the committee Mr. Ejaz Kuttab.

(iv) The receiver of the properties/Assistant Commissioner Raiwind shall submit monthly report about the income and other affairs of the properties of the minor to the Deputy Registrar (L) of this Court.

(v) A copy of this order shall be sent to the learned District and Sessions Judge, Lahore who shall entrust both the above referred guardianship applications to a Guardian Judge of his choice with a view to ensure that the matter is finally decided within two months of the receipt of this order under intimation to this Court.

(vi) The parties shall have a right of appeal as mandated in law."

17. On 27-6-2013, this Court was informed that since the learned Guardian Judge has decided the matter of the custody of the minor, which has been challenged by both the parties, hence the Committee may have become functus officio. However, this Court directed that the Committee should continue to function in terms, as mandated by this Court.

18. During the course of the proceedings, the contentious postures of the parties especially the petitioner, gradually softened. He voluntarily accepted the legal status of respondent No.2 as a widow of the deceased Nasir Ahmad Shahid and he unilaterally withdrew the cases initiated by him against respondent No.2. Ultimately, both the petitioner and respondent No.2 instead of battling through the hierarchy of the legal system agreed that this Court may pass an appropriate order for the welfare of the minor. Consequently, both the petitioner and respondent No.2 submitted, an undertaking to this Court on 28-3-2014, which is reproduced herein below:--

"(1) It is humbly submitted that two cases titled Naveed Munir v. Kausar Parveen and Kausar Parveen v. Naveed Munir are pending adjudication before learned ASJ, Lahore. Muhammad Ashiq Jora.

(2) That now in the above titled Civil Petition No.1495-L of 2011 both the parties have agreed that with regard to the custody of minor namely Sana Ullah whatsoever this honourable Court deems fit may decide, the matter.

(3) That both the parties will abide the decision of this honourable Court."

19. Sanaullah Siddique, the minor is now about 11 years old. He was unfortunately orphaned in 2007, when his father Nasir Ahmad Shahid, passed away. Sanaullah Siddique's biological mother Mst. Rehmat Bibi had been earlier divorced by his father Nasir Ahmad Shahid whereafter she returned to her family in Chitral. Every effort to locate the said Mst. Rehmat Bibi by the KPK Police under Orders of this Court, failed to bear fruit. The unfortunate minor became the centre of sordid litigation regarding the guardianship of his person and property in between the petitioner, a paternal cousin and respondent No.2 his stepmother. Nasir Ahmad Shahid owned valuable properties, including agricultural land, commercial shops and residential houses, etc. He also left behind funds/Bank accounts, which were inherited by the Minor, who has no siblings. The interest of various parties in the minor may well be motivated by the property that he has inherited, rather than any natural love or affection. If the minor had not inherited such property, he would perhaps have ended up in an Orphanage or abandoned in the street. The conduct of the petitioner and the other paternal relatives of the minor as well as respondent No.2 has not been above-board. The funds inherited by the minor were withdrawn and not accounted for requiring orders of refund thereof by this Court. The immovable property of the minor was also not safe from the mala fide actions of his paternal relatives and respondent No.2, who attempted to transfer the same to third parties, creating innumerable claimants, some of whom were summoned by this Court and where possible appropriate orders for the preservation of the property of the minor, were passed. The minor was in the physical custody of respondent No.2 his stepmother, who has other children from her previous husband. The living conditions, as per the Report of the Local Commission, appointed by this Court, did not appear to be very conducive to his well-being. Serious security concerns were also expressed by the minor himself. The education of the minor was also far from satisfactory, however, though the intervention of this Court, the minor has now been admitted to Aitcheson College, Lahore. We cannot also lose sight of the fact that the petitioner and his relatives would inherit from the minor.

20. While exercising our parental jurisdiction, in the instant case, we find ourselves confronted while a rather difficult situation as, we believe, on the basis of the facts and circumstances which have come to light during the course of the proceedings and referred to above, that it may not be

in the best interest of the minor to appoint either the petitioner or respondent No.2, as a guardian of his person and/or property. During the course of the proceedings, in the instant matter, as an interim measure, we were constrained to appoint the Receiver with regards to the property of the minor, including the Assistant Commissioner (Saddar), Lahore, and to oversee his educational needs, a Committee had to be constituted. However, such arrangements can neither be continued ad-infinitem nor the instant proceedings can remain pending before this Court till the minor reaches the age of majority, especially as the Members of the Committee are under no obligation to perform their functions.

21. A formalistic approach commonly associated with the adjudication of adversarial civil disputes may not be conducive to the exercise of parental jurisdiction by this Court. A more proactive role may have to be adopted so as to ensure the protection of the best interest of the minor. Fortunately, the law of the land does not fail the minor in the instant case, as after taking into account all the facts and circumstances, it appears that the only safe course of action would be to invoke the jurisdiction under the Punjab Courts of Wards Act, 1903 (hereinafter referred to as the Act of 1903). The minor has a proprietary interest in agricultural land, therefore, is a landholder, as defined by section 3(b) of the above-said Act of 1903. In view of his tender age, the minor is obviously incapable of managing his affairs. There is no relative qualified to be appointed as a guardian of his, person and property in terms of the Act of 1890. Thus, it appears to be a fit case where the suo motu powers conferred by section 6 of the Act of 1903, may be exercised by the Competent Authority by making an appropriate order assuming the superintendence of the person and property of the minor.

22. Consequently, we direct the Commissioner, Lahore Division, Lahore, to ensure that the matter of the assumption of the superintendence and control of the person and the property of the minor is considered by the Competent Authority in terms of section 6 of the Act of 1903 so that appropriate notifications are issued, orders passed and appointments made. Till the minor attains the age of 18 years, the Commissioner, Lahore Division shall report every three months about the person and property of the minor to the Registrar of this Court for information of this Court. Till the formal notification is issued in terms of the above-said Act of 1903, the Receiver appointed and the Committee constituted by this Court will continue to function and perform their duties, as already mandated.

23. With regards to the proceedings initiated variously by the petitioner and respondent No.2 under the Act of 1890, qua the minor, both the parties agreed that the question of such guardianship be decided by this Court, as it deems fit. The aforesaid consent is recorded in the undertaking tendered by the parties on 28-3-2014, reproduced hereinabove. Even otherwise, the provisions of the Act of 1890 are subject to any Order passed by the Court of Wards in view of section 3 of the above-said Act of 1890.

24. Consequently, any and all Orders passed, appointing a guardian of the person and/or property of the minor are hereby set aside and all the pending proceedings, including all the applications, appeals, reviews and revisions, arising therefrom are dismissed.

25. A copy of this Order shall be transmitted to the Commissioner, Lahore Division, Lahore, for compliance and a report, in this behalf, shall be submitted within a period of four weeks for our perusal in Chambers. Furthermore, the Commissioner, Lahore Division, Lahore, shall file periodic quarterly reports to the Registrar of this Court regarding the following matters:--

- (a) The details of the income that accrued from the properties of the minor.
- (b) The expenditures incurred on the minor.
- (c) The educational progress of the minor.

(d) The step taken or continued to ensure the health, security, well-being and welfare of the minor, and for protecting and preserving his property.

(e) Any other matter effecting the welfare of the minor.

Such periodic Reports will be examined by the Registrar and if found necessary, present the same to the Chief Justice of this Court, if any further action needs to be taken or direction issued to safeguard the interest of the minor.

27. Resultantly, this Civil Petition for Leave to Appeal is disposed of in the above terms.

MWA/N-6/SC Order accordingly.