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**Misc. Appeal No.2295 of 2014.**

**18.08.2017:-**

Shri Akash Rathi, learned counsel for the appellant.

None for the Respondents despite publication in newspaper.

Heard on the question of admission.

**O R D E R**

**THE** appellant has filed the present appeal under Section 76 of the Mental Health Act, 1987 [in brief “the Act of 1987”] being aggrieved by order dated 06.02.2013 by which his application under Section 50 of the Act of 1987 has been rejected.

[2] Facts of the case, in short, are as under :-

(a) That One Pakki Maszid through Intzamiya Committee filed a suit for ejectment and mesne profit against Mohd. Yunus Munshi and Mohd. Kamar Hussain Munshi from House No.22, Jawahar Marg, Indore. Since Mohd. Yunus Munshi is of unsound mind, therefore, on his behalf Mohd. Kamar Hussain Munshi has filed an application under Section 50 of the Act of 1987 before the District Court, Indore seeking declaration to the effect that he is a mentally ill person and unable to manage his property.

(b) Notice to General Public was issued by way of paper publication and thereafter statements of Mohd. Kamar Hussain Munshi, Naima Banu and Mohd. Salman were taken by way of affidavit. The learned Trial Court vide

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judgment dated 06.02.2013 has held that Mohd. Yunus Munshi is mentally ill person but since the details of the properties have not been disclosed, therefore, application under Section 50 of the Act of 1987 has been rejected. However, the liberty has been granted that he can file an application in Civil Suit No.9-A/2011 regarding his status of unsound of mind.

(c) Being aggrieved by the aforesaid, the appellant preferred an application under Order XLVII Rule 1 of CPC seeking review of order dated 06.02.2013. By order dated 07.10.2014 the learned 9<sup>th</sup> Additional District Judge, Indore has rejected the same. Hence, the present appeal is filed before this Court.

[3] I have heard the arguments of Shri Akash Rathi, learned counsel for the appellant.

[4] The appellant has filed an application under Section 50 of the Act of 1987 seeking declaration that he is a mentally ill person because one Pakki Maszid through Intzamiya Committee has filed the suit against him for eviction. That Section 50 of the Act of 1987 provides that where an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either by his relatives or by Advocate General to the District Court within whose local limits mentally ill person resides. On receipt of such application, the District Judge shall, by personal service or by such other mode of service, serve a notice on

the alleged mentally ill person to attend the proceedings.

[5] Under Section 51 of the Act of 1987, the District Court is required to record its findings on two issues, namely (i) whether the alleged mentally ill person is in fact mentally ill or not ? (ii) if such person is mentally ill, then whether he is incapable of taking care of himself or managing his property ? Under Section 52 of the Act of 1987, where the District Judge records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself or managing his property, he shall make an order for the appointment of a guardian under Section 53 of the Act or of a manager under Section 54 of the Act of 1987 for management of his property. If he is capable of taking care of himself but not capable of managing his property, then he shall pass an order under Section 54 of the Act of 1987 regarding management of his property. Section 50 to 54 of the Act of 1987 are reproduced below :-

**“50. Application for judicial inquisition.—(1) Where an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either—**

- (a) by any of his relatives, or**
- (b) by a public curator appointed under the Indian Succession Act, 1925 (39 of 1925), or**
- (c) by the Advocate-General of the State in which the alleged mentally ill person resides, or**
- (d) where the property of the alleged mentally ill person comprises land or interest in land, or where the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any law for the time being in force in the State, by the Collector of the District in which such land is situate,**

to the District Court within the local limits of whose jurisdiction the alleged mentally ill person resides.

(2) On receipt of an application under sub-section (1), the District Court shall, by personal service or by such other mode of service as it may deem fit, serve a notice on the alleged mentally ill person to attend at such place and at such time as may be specified in the notice or shall, in like manner, serve a notice on the person having the custody of the alleged mentally ill person to produce such person at the said place and at the said time, or being examined by the District Court or by any other person from whom the District Court may call for a report concerning the mentally ill person:

Provided that, if the alleged mentally ill person is a woman, who according to the custom prevailing in the area where she resides or according to the religion to which she belongs, ought not to be compelled to appear in public, the District Court may cause her to be examined by issuing a commission as provided in the Code of Civil Procedure, 1908 (5 of 1908).

(3) A copy of the notice under sub-section (2) shall also be served upon the applicant and upon any relative of the alleged mentally ill person or other person who, in the opinion of the District Court, shall have notice of judicial inquisition to be held by it.

(4) For the purpose of holding the inquisition applied for, the District Court may appoint two or more persons to act as assessors.

**51. Issues on which finding should be given by District Court after inquisition.**—On completion of the inquisition, the District Court shall record its findings on,—

(i) whether the alleged mentally ill person is in fact mentally ill or not, and

(ii) where such person is mentally ill, whether he is incapable of taking care of himself and of managing his property, or incapable of managing his property only.

**52. Provision for appointing guardian of mentally ill person and for manager of property.**—(1) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself and of managing his property, it shall make an order for the appointment of a guardian under section 53 to take care of his person and of a manager under section 54 for the management of his property.

(2) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of managing his property but capable of taking care of himself, it shall make an order under section 54 regarding

the management of his property.

(3) Where the District Court records a finding that the alleged mentally ill person is not mentally ill, it shall dismiss the application.

(4) Where the District Court deems fit, it may appoint under sub-section (1) the same person to be the guardian and manager.

**53. Appointment of guardian of mentally ill person.—(1) Where the mentally ill person is incapable of taking care of himself, the District Court or, where a direction has been issued under sub-section (2) of section 54, the Collector of the District, may appoint any suitable person to be his guardian. (2) In the discharge of his functions under sub-section (1), the Collector shall be subject to the supervision and control of the State Government or of any authority appointed by it in that behalf.**

**54. Appointment of manager for management of property of mentally ill person.—(1) Where the property of the mentally ill person who is incapable of managing it is such as can be taken charge of by a Court of Wards under any law for the time being in force, the District Court shall authorise the Court of Wards to take charge of such property, and thereupon notwithstanding anything contained in such law, the Court of Wards shall assume the management of such property in accordance with that law.**

(2) Where the property of the mentally ill person consists in whole or in part of land or of any interest in land which cannot be taken charge of by the Court of Wards, the District Court may, after obtaining the consent of the Collector of the District in which the land is situated, direct the Collector to take charge of the person and such part of the property or interest therein of mentally ill person as cannot be taken charge of by the Court of Wards.

(3) where the management of the property of the mentally ill person cannot be entrusted to the Court of Wards or to the Collector under sub-section (1) or sub-section (2), as the case may be, the District Court shall appoint any suitable person to be the manager of such property.

[6] In the present case the appellant has filed an application with a prayer that inquisition be made and declare that he is mentally ill person and unable to take care of his property. The learned District Judge on the basis of the material available on record has held that he is mentally ill person but rejected the application on technical ground

that the details of properties have not been filed.

[7] As per Chapter-VI of the Act of 1987, only one application is required to be made under Section 50 of the Act of 1987 and under which the District Judge is required to conduct inquisition and give a declaration under Section 51 of the Act of 1987. Therefore, the application filed by the appellant was very much maintainable under Sections 50 and 51 of the Act of 1987. The District Judge has wrongly rejected the application without giving any declaration. That Section 51 of the Act of 1987 mandates that the District Court shall record its findings whether the alleged mentally ill person is in fact mentally ill or not. If the appellant is declared mentally ill person, then another enquiry is required to be conducted as contemplated under Section 52 of the Act of 1987 whether he is capable of taking care of himself and managing his property. If he is incapable of managing himself, then guardian would be appointed and if he is not capable of managing his properties, then the manager would be appointed under Section 54 of the Act of 1987. If the appellant wants declaration that he is incapable of managing his property, then the District Court ought to have directed him to give a declaration about the details of the property instead of rejecting the application. For declaration under Sections 52, 53 and 54 of the Act of 1987, no separate application is required to be filed, entire enquiry can be conducted in one application filed under Section 50 of the Act of 1987.

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Therefore, the learned Court has wrongly rejected his application.

[8] In view of the above, the impugned order dated 06.02.2013 is hereby set-aside. The matter is remitted back to the District Court to decide the application as per Section 52 to 54 of the Act of 1987.

[9] The appeal is **allowed**.

[ **VIVEK RUSIA** ]  
**JUDGE**

(AKS)