

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) No.1656/2007.**

% **Date of decision: 3rd November, 2009**

MS MITHILESH CHAUHAN Petitioner

Through: Mr. Sachin Mittal, Advocate.

Versus

SHRI RAJESH KUMAR PANDEY ... Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 227 of the Constitution of India has been preferred against the order dated 22nd August, 2007 of the trial court. The respondent/plaintiff instituted the suit against the petitioner herein for ejectment of the petitioner from immovable property after the determination of tenancy of the petitioner, recovery of rent, mesne profits etc. The petitioner through her daughter filed a written statement. It was, *inter alia*, stated in the said written statement that the petitioner is mentally sick, suffering from psychiatric disease for the last several years and the documents on the basis whereof the respondent/plaintiff had instituted the suit had also been got executed by the respondent/plaintiff taking advantage of the said illness of the petitioner. The daughter of the petitioner who

had filed the said written statement on behalf of the petitioner thereafter also filed an application under Order 32 Rule 3(2) of the CPC for appointment of herself as the guardian of the petitioner for the purposes of the suit. It was stated in the said application that the petitioner herein is suffering from mental illness and psychiatric disease and is not in her full senses and is unable to take decisions for herself. The respondent/plaintiff contested the said application by filing a reply. It was controverted that the petitioner is mentally ill and it was further pleaded that the said plea has been taken malafide.

2. The trial court vide order impugned in this petition dismissed the said application of the daughter of the petitioner. The trial court has held that the petitioner in the written statement, filed through her daughter, had taken inconsistent stands; while at one place it was stated that the petitioner was ill at the time of execution of the documents relating to property in favour of the respondent/plaintiff, at another place the fact of the execution of the very same document has been denied. The trial court further held that no material had been placed before the court to show that the petitioner was unable to take her decisions or that a guardian was required for the purposes of the present suit. The trial court thus did not feel the need to hold any inquiry also into the status of mind of the petitioner.

3. This petition has also been preferred by the petitioner through her daughter. This court on 19th December, 2007 issued notice of this petition to the respondent and also stayed further proceedings in the suit. The respondent has failed to appear inspite of service and inspite of further proceedings in the suit having been stayed. The counsel for the petitioner has been heard.

4. The counsel for the petitioner has relied on ***B.K. Khanna Vs K.N. Khanna*** 1978 Delhi 48, ***Shakunthala Devi Vs K.S. Naidu*** AIR 2005 Madras 56, ***C.S. Navamani Vs C.K. Sivasubramanian*** AIR 2006 Madras 347 and ***Jairam Gurnani Vs Smt. Shanta Gurnani*** (1979) 15 DLT 8.

5. In *B.K. Khanna* (supra) it has inter alia been held that Order 32 clearly envisages that when a plea as to the state of mind of any of the parties to a proceeding is taken, before proceeding further, the question of the state of mind must be first determined by a preliminary inquiry.

6. I find that the Supreme Court in *Kasturi Bai Vs Anguri Choudhary* MANU/SC/0082/2003 has also held that where a plea of unsoundness of mind or of any of the parties to a proceeding of a party to a litigation being incapable of protecting his/her interest by way of any mental infirmity is taken, holding of an inquiry is a must. This court also in *Shri Jai Prakash Goel Vs State* MANU/DE/0780/2004 has held that the court is empowered to appoint a guardian only in the event a person is adjudged to be of unsound mind and/or incapable of protecting his or her interest in a litigation. It was further held that whenever such a plea is taken holding of an inquiry is a must.

7. The trial court in the present case has not returned any finding on the mental status of the petitioner and has been swayed by the inconsistencies in the written statement which was filed not by the petitioner but by the daughter of the petitioner though on behalf of the petitioner. This petition is also accompanied with certain documents in an attempt to show the mental status of the petitioner. However all that can be deciphered therefrom is that the petitioner is suffering from adjudgement disorder or anxiety. Whether such ailment leads to the petitioner being unable to look after her interest or not cannot be determined from the said documents.

8. A decree against a person of unsound mind and/or who is unable to look after his/her interest is a nullity. In the face of the pleas as aforesaid having been taken, no purpose would be served in proceeding with the suit without holding the inquiry. Such inquiry does not necessarily mean reference to the medical specialist. The trial court can direct the petitioner to appear before the court and the court can on putting questions to the petitioner arrive at a finding as to whether

the petitioner is a person of unsound mind or incapable of looking after her interest. Only if the trial court after holding such preliminary inquiry is not able to reach a definite conclusion as to the mental status of the petitioner, is the trial court to refer the petitioner to a medical specialist.

9. There is yet another aspect of the matter. If the petitioner is found to be a person of unsound mind and/or not capable of looking after her interest, it is the court which is to appoint her guardian. Merely because one of the daughters of the petitioner chooses to represent her in the court, does not vest the said daughter with any authority to represent the petitioner. The trial court appears to have accepted the written statement filed by the daughter of the petitioner as the guardian of the petitioner without arriving at any finding. Such written statement filed by another could not be accepted and acted upon in the trial court without a finding as to the mental status of the petitioner.

10. The petition is therefore allowed. The order impugned in the petition is set aside. The trial court before proceeding further with the suit is directed to hold a preliminary inquiry into the mental status of the petitioner and if finds the petitioner to be of an unsound mind or incapable of looking after her interest, to, after making inquiry of the near relatives of the petitioner, appoint one of them who has no interest adverse to the petitioner, as guardian of the petitioner for representing the petitioner before the trial court. Since the respondent has not contested this petition, no orders as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**November 3, 2009
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