

Neutral Citation No. - 2023:AHC:196908

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 6855 of 2023

Petitioner :- Smt Shivdulari

Respondent :- Sudheer Kumar And 4 Others

Counsel for Petitioner :- Dalvir Singh, Rahul Pandey

Counsel for Respondent :- Amit Kumar Srivastava

Hon'ble Jayant Banerji, J.

1. Heard Shri Rahul Pandey, Advocate appearing for the petitioner and Shri Amit Kumar Srivastava, Advocate appearing for the respondent no.2.

2. This petition has been filed seeking to set aside the orders dated 28.04.2023 and 05.05.2023 as well as the decree dated 08.05.2023 passed by the court of the Civil Judge, Fatehpur in Original Suit No.2 of 2023 (Smt. Shivdulari vs. Sudheer Kumar & Ors.).

3. It appears that a suit was filed in the name of the petitioner by one Raju Lodhi claiming himself to be 'Vaad Mitra' (next friend) for cancellation of a sale deed dated 17.11.2022 as well as for injunction. In the aforesaid suit, an application dated 07.02.2023 was filed under Order XXIII, Rule 1, C.P.C. by Smt. Shivdulari seeking to withdraw the suit on the ground that she had voluntarily and of her own freewill and accord executed the sale-deed sought to be challenged in the suit. Shivdulari had appeared in person in the suit before the trial court on 07.02.2023 on which date the Judge questioned her and passed the order dated 07.02.2023 which is as follows:-

"न्यायालय सिविल जज (सि०डि०) फतेहपुर।

मूलवाद सं०-02/2023

शिवदुलारी-बनाम- सुधीर कुमार आदि

शिवदुलारी वादिनी की ओर से वाद वापसी का प्रा० पत्र दिया शिवदुलारी स्वयं न्यायालय में उपस्थित। न्यायालय द्वारा शिवदुलारी से प्रस्तुत वाद के बारे में जानकारी की गयी। शिव दुलारी द्वारा कथन मेरी उम्र लगभग 60 वर्ष है। मेरा कोई

केस इस न्यायालय में दाखिल नहीं है। जो यह मुकदमा है उसे मैं वापस लेना चाहती हूँ। मैंने अपना बयान बिना किसी दबाव के दे रही हूँ।
वादिनी के बोलन पर उक्त तथ्य मेरे द्वारा अंकित किया गया।"

4. The so-called 'next friend' filed an objection dated 23.02.2023 to the application dated 07.02.2023 stating that Shivdulari is 'फातरुल अक्ल' (mentally unsound) and she is not able to look after her interest and it is her 'next friend', Raju Lodhi, who manages her affairs and looks after her well-being and, therefore, the application moved by her is not maintainable.

5. From the record of this petition, it further appears that an application dated 15.04.2023 was filed by aforesaid Raju Lodhi stating that Shivdhulari being of unsound mind should be medically checked by a 'medical panel'. On 15.04.2023, the trial court recorded the statement of the plaintiff-Shivdulari. A copy of the proceedings of 15.04.2023 is enclosed at page 64/65 of the petition which is as follows"-

"वाद संख्या 02/2023

15.4.2023

वाद पुकारा गया। उभय पक्ष के विद्वान अधिवक्ता वादिनी श्रीमती शिवदुलारी उप०। वाद मित्र रानू लोधी उप०। विपक्षीगण सतीश, मिथिलेश, प्रेमचन्द उप०। प्रस्तुत मामले में वाद मित्र की ओर से 30 ग प्रा० पत्र श्रीमती शिवदुलारी का **Medical Checkup** कराने के आशय से दिया गया। वादी शिवदुलारी के अधि० की ओर से आपत्ति की गयी। 30 ग पर उभय पक्ष को सुना गया।

पत्रावली वाद वापसी प्रा० पत्र 15 क के निस्तारण पर आज न्याया० द्वारा श्रीमती शिवदुलारी का पुनः बयान अंकित किया जा रहा है।

बयान वादिनी शिवदुलारी

शिव दुलारी उम्र 80 वर्ष लगभग पति स्व० राम औतार पता- रानी कालोनी, फतेहपुर।

शिवदुलारी का नाम व पता लिखे जाने के उपरान्त शिवदुलारी द्वारा कथन किया कि मेरे चार लड़के जिनके नाम हरिश्चन्द्र, राजू, प्रेम चन्द्र व राम सिंह हैं। मेरी एक लड़की जमुना है। मैंने कोई मुकदमा दायर नहीं किया है। मैंने प्लाट सुधीर को बेचा था। कितने में बेचा था। बैनामे में लिखा है। जो लिखा है, वही रुपया मिला था। मैं पढ़ी लिखी नहीं हुयी। मैंने अपनी स्वतंत्र इच्छा से प्लाट सुधीर को बेचा था। मैंने बिना किसी दबाव के प्लाट बेचा था। मैं रजिस्ट्री ऑफिस सुधीर के साथ गयी थी। सुधीर के अलावा और कोई साथ नहीं गया। प्लाट जो बेचा था वो अम्बेडकर स्कूल के बगल में है, उसी को बेचा था। मैं अभी अपने बेटे प्रेमचन्द्र के साथ रहती हूँ। मैं अपना आधार कार्ड आज नहीं लाई हूँ। हाँ मैं जानती हूँ कि मेरे लड़के राजू लोधी ने मेरे नाम से मुकदमा यहाँ दायर किया है। मैं अपने

बच्चों से कह रही थी, अपना-अपना हिस्सा ले लो, झगड़ा मत करो। प्लॉट जो बेचा था, उसका रूपया मेरे खाते में गया था। मेरा खाता बैंक में है, बैंक स्टेशन के आगे है। मुझे बैंक का नाम नहीं याद है। मैंने 5 से 6 महीने पहले प्लॉट सुधीर को बेचा था।

मुझे पालिश गिर गयी थी, मुझे उसी की दवा चल रही है। मैंने अपना बयान बिना किसी दबाव के आज दिया है। मैं अपनी मर्जी से प्लॉट बेचा था।

Court Observation- श्रीमती शिव दुलारी ने न्याया० में उपस्थित होकर खड़े रहकर आज यह बयान अंकित कराया गया है।

30 ग व 13 क पर सुना गया।

वास्ते नि० दि० 28.4.2023 पेश हो।

15/4/2023"

6. By the impugned order dated 28.04.2023, the application filed by the 'next friend', Raju Lodhi, for getting the medical checkup done of Shivdulari was dismissed on the ground that there are no documents in support of the application. The contention of the plaintiff-Shivdulari was also considered by the court in which she had stated that the suit has been wrongly filed by Raju Lodhi whereas Shivdulari had executed a sale-deed in favour of the defendant nos. 1 and 2 in her full senses and in the full knowledge of all her sons.

7. By the impugned order dated 05.05.2023, the application moved by Shivdulari for withdrawal of the suit and the objection filed by Raju Lodhi on the application were considered and the application for withdrawal was allowed. While allowing the application for withdrawal of suit, the trial court noticed the statements recorded by the court on 07.02.2023 and 15.04.2023 and referred to her statement in which she had said that she has made the statement before the court without any pressure and that she had once suffered from paralysis and she is taking medication for the same. Under the circumstances, the application was allowed.

8. The contention of the learned counsel for the petitioner is that once an application was moved by the 'next friend' for medical examination of Shivdulari, the trial court ought to have referred the matter to a panel of medical practitioners for evaluation. It is contended that, therefore, the orders of the trial court cannot be sustained. In support of this contention, the learned counsel has relied upon a judgment of the Supreme Court in

the case of **Kasturi Bai & Ors. v. Anguri Chaudhary**¹. Further referred to are judgments of this Court in the case of **Rishipal Singh & Ors. v. Balram Singh and Anr.**² and of the Orissa High Court in **Tirtha Pradhan vs. Balabhadra Pradhan**³.

9. In the judgment of the Supreme Court in **Kasturi Bai** (supra), under challenge before it was an order passed by a Division Bench of the High Court whereby it refused to entertain an application filed by the appellants under Section 151 C.P.C. for recalling an order passed by a learned Single Judge of the said High Court which, in turn, arose out of an order passed by the Additional District Judge dismissing the application filed by the respondents therein under Order XXXII, Rule 15 C.P.C. The appellant no.1 had alleged in the application before the Additional District Judge (A.D.J.) that she had lost her ability to understand and is not capable to give instructions to her lawyer or anybody else relating to the suit and, therefore, a prayer was made by her to be summoned in Court so as to enable the Court to inquire about her state of mind and upon medical examination, if necessary, a guardian be appointed for defending her in the suit. The application was dismissed by the A.D.J. Thereafter, a revision was filed before the High Court which was allowed holding that appointment of a guardian would not cause any prejudice to either parties. The appellants filed an application for recalling the order of the Single Judge on the ground that notices were not served upon them. However, that application, instead of being placed before the Single Judge who had disposed of the civil revision, was placed before a Division Bench which considered the said application to be an appeal against the order of the Single Judge and dismissed the same by the impugned order holding that the High Court had committed a manifest error in treating the application for recalling as an appeal against the order passed by the learned Single Judge, even though no intra-court appeal lay before a Division Bench. The Supreme Court observed as follows:-

1 (2003) 3 SCC 225

2 2020 (6) ADJ 336

3 AIR 1993 ORISSA 50

“11. On a bare perusal of the said provision, it is evident that the Court is empowered to appoint a guardian in the event a person is adjudged to be of unsound mind. It further provides that even if a person is not so adjudged but is found by court on inquiry to be incapable of protecting his or her interest when suing or being sued by reason of any mental infirmity, an appropriate order thereunder can be passed. The respondent did not contend that Appellant 1 herein is of unsound mind. As noticed hereinbefore, the respondent herself had filed an application before the trial court for holding an inquiry to the effect that she suffers from mental infirmity.

12. The learned trial court refused to do the same and in that view of the matter the High Court, in our opinion, while setting aside the said order could only issue a direction directing the learned trial Judge to hold an inquiry so as to enable it to arrive at a finding as to whether the respondent herein was incapable of protecting her interest by reason of any mental infirmity or not. As no such inquiry was held, there cannot be any doubt whatsoever that the learned Single Judge committed a jurisdictional error in passing the impugned judgment which, the Division Bench as noticed hereinbefore upheld.”

10. In my opinion, the aforesaid judgment of the Supreme Court is of no help to the petitioner. In the instant case, twice over the trial court has examined the plaintiff, Shivdulari, and has come to a conclusion that the application for her mental examination and the application for withdrawal are to be rejected and allowed, respectively.

11. Learned counsel for the petitioner has referred to paragraph 32, 47, 48, 52 and 53 of the judgment in **Rishipal Singh** (supra). Paragraph 32 is a narration of the substantial questions of law in the second appeal. Paragraph 47 is a narration of the provisions of the Order XXXII of the CPC. Paragraph 48 contains the narration of the statement of the person who was said to be mentally unsound. In paragraphs 52, 53 of the judgment, the Court has observed that it was the bounded duty of the trial court to undertake an inquiry contemplated under Order XXXII Rule 15 CPC and record a finding. Though the statement of the person stated to be of unsound mind was recorded on 6.8.1997, it was a statement recorded by the trial court pursuant to an examination under Order X Rule 2 CPC for purpose of conducting an inquiry under Order XXXII Rule 15 CPC. The Court observed that the inquiry remained inconclusive as is reflected

from order dated 6.8.1997. It was noticed that the first appellate court had misdirected itself in holding that the statement is inadmissible in evidence and is defective. This Court had observed that there was lack of proper inquiry and a finding of the court thereon, as envisaged under Order XXXII Rule 15 CPC.

12. As noticed above, in the instant petition, such a situation does not exist. In the present case, albeit the statement was recorded on 07.02.2023, that statement was made on an application filed by the plaintiff-Shivdulari for withdrawal of the suit. Thereafter, in view of the objection filed by the 'next friend' and the application filed by him for getting the plaintiff medically examined, the court proceeded to make an inquiry on 15.04.2023 and the statement of the plaintiff-Shivdulari was recorded. The examination of the plaintiff-Shivdulari was done on 07.02.2023, and the inquiry as contemplated under Order XXXII Rule 15 CPC was done on 15.04.2023. The impugned order dated 05.05.2023 was, thereafter, passed recording a categorical finding by the trial court in view of the statement of Shivdulari and the inquiry.

13. The facts in the case of **Tirtha Pradhan** (supra) are different from the case in hands and, therefore, that judgment is not applicable.

14. I have perused the proceedings of 07.02.2023 and 15.04.2023 that have been enclosed with the record. In my opinion, under the circumstances, no interference in the orders of the trial court dated 28.04.2023 and 05.05.2023 is warranted.

15. The petition is, therefore, **dismissed**.

Order Date : 12.10.2023

SK

(Jayant Banerji, J)