

245

FAO No. 7534 of 2014 (O/M)
Date of decision : 26.5.2015

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH, J.

This judgment shall dispose of FAO No. 7534 of 2014, vide which the present appellant (respondent before the lower Court) has challenged the judgment dated 31.3.2014, passed by the learned Additional District Judge, Chandigarh, vide which application of the respondent herein (petitioner before the lower Court) under Sections 50 and 52 of the Mental Health Act, 1987 (in short 'the Act') was allowed and respondent herein (petitioner before the lower Court) was appointed as a Guardian and Manager of the property of appellant after holding that the present appellant (respondent before the lower Court) is mentally ill person and incapable of taking care of himself as well as his property.

FAO No. 7534 of 2014 (O/M)

-2-

Dr. Gurdial Singh, respondent/petitioner, who happens to be the father of present appellant, had claimed in his application before the learned Additional District Judge, Chandigarh, that he has got two sons and one daughter. His elder son Parminder Singh Chhina alias Peter Chhina (appellant in the present appeal) is suffering from the mental illness. It was stated that he was suffering from paranoid schizophrenia. It was further averred that the present appellant/respondent had gone to USA in 1979. Respondent/petitioner as well as his wife Dr. Mohinder Kaur, during their various visits to USA from years 1987 to 1991, made every effort to get the present appellant/respondent treated there, but he refused the treatment. As a result of which, he suffered financially and was in heavy debt in USA. Therefore, the respondent/petitioner asked the present appellant/respondent to come to India. The present appellant/respondent accordingly came to India in the year 2004 and remained admitted in Dr. V.S. Memorial Mental Health Research Institute (Old Government Mental Hospital) from 18.6.2004 to 2.8.2004 i.e. for 45 days. After his condition improved, the present appellant/respondent was discharged from the hospital for further treatment at home. However, the present appellant/respondent failed to take medication and follow-up treatment. On 19.4.2007, he entered the room of respondent/petitioner with a hired gunman and intimidated him

FAO No. 7534 of 2014 (O/M)

-3-

(respondent herein) as well as his 86 years old bed ridden wife. A case under Section 25 of the Arms Act was registered against the said gunman. The present appellant/respondent had shown dangerous propensities, which showed that his mental condition was unstable. The respondent/petitioner being father of the present appellant is interested in the welfare of his son and has no adverse interest against him.

In view of the persistent delusional state of the present appellant, the respondent/petitioner filed an application dated 24.7.2007 before the learned Chief Judicial Magistrate, Chandigarh, (in short 'the CJM') for taking his son in protection on account of his serious mental illness. The CJM, Chandigarh, ordered the admission of the present appellant in the psychiatric department as an indoor patient for observation and treatment. The present appellant/respondent remained under treatment from 25.7.2007 to 16.8.2007. It was asserted that the present appellant is mentally incapable of looking after his affairs and property. The present appellant/respondent has 1/3rd share and 1/5th share in SCO No. 40, Sector-26, Madhya Marg, Chandigarh and SCO No. 75, Sector 40-C, Chandigarh, respectively. These properties were purchased by the petitioner/respondent and his wife and both the sons were given share in the said properties. The other son of the respondent/petitioner Narinder Pal Singh Chhina looks after all the

FAO No. 7534 of 2014 (O/M)

-4-

properties. Both the SCOs are on rent. The rent is collected by Narinder Pal Singh Chhina through cheques and the share of the present appellant/ respondent is deposited in the bank account of the present appellant i.e. account No. 001301076484 with ICICI Bank. The share of the present appellant/respondent comes to Rs. 1,21,000/-. The respondent/petitioner has provided residence and mess to the present appellant/respondent. The present appellant/respondent shares the electricity charges to the extent of his share.

It is stated that of late due to mental instability and disorder, the present appellant had started squandering his rental income. Certain property dealers are misguiding him for their own personal gains and interest and the present appellant/respondent is unable to comprehend their real intentions. On 31.8.2007, the respondent/petitioner had received a letter from the Estate Officer, Chandigarh, informing that the present appellant/respondent intends to sell his 20% share i.e. 1/5th share in SCO No. 75, Sector-40-C, Chandigarh, to Subhash Chand Gulati and Smt. Kavita Gulati, who are tenants in the shop, which is detrimental to the interest of the present appellant/respondent. The share of the present appellant/respondent is being exchanged for a booth, which is grossly improper and adverse to his interest. The present appellant/respondent cannot ascertain as to what is good or bad for

FAO No. 7534 of 2014 (O/M)

-5-

him.

The respondent/petitioner sought advice from the Government Medical College Hospital, Sector-32, Chandigarh, regarding mental condition of the present appellant. The medical assessment of the present appellant/respondent was conducted by the department of psychiatry and it was found that the present appellant/respondent is suffering from mental illness and he might take decision, which would be detrimental to his well being. The respondent/petitioner was advised by the medical authorities to have regular follow up treatment of the present appellant.

Present appellant/respondent had put in appearance and filed the written statement claiming that he is a qualified engineer by profession, having completed his Bachelor of Science in Electrical Engineering from Panjab University in 1977 and Master of Science in Electrical and Computer Engineering from Wayne State University, USA in the year 1981. He has worked with several renowned multi-national companies. He has no history of mental illness other than depression and that too was way back in the year 1987. The shareholding in the property was admitted by the present appellant/respondent and it was stated that he made major contribution towards the development of various properties, preceding his departure for USA.

It was stated that the present appellant/respondent lived

FAO No. 7534 of 2014 (O/M)

-6-

in USA for 25 years. He had executed a General Power of Attorney in favour of the respondent/petitioner, so that he could look after his property in India. The trouble started when the present appellant/respondent revoked the General Power of Attorney on 7.5.2004 and got it registered with the Notary Public. But, despite that, the respondent/petitioner has been dealing with his property. Therefore, he (present appellant) filed a complaint before the Economic Offences Wing. The present appellant/respondent thereafter got the said General Power of Attorney cancelled and got it registered with the Sub Registrar, Chandigarh. It was stated that in July, 2007, the present appellant/respondent signed an agreement to exchange his 20% share in SCO No. 75, Sector-40-C, Chandigarh, with a booth owned by Mr. Gulati. This infuriated the respondent/petitioner, who moved a complaint on 24.7.2007 under Section 20 of the Mental Health Act, 1987, before the CJM, Chandigarh. The present appellant/respondent was taken into custody and was produced by the police personnel before the Court. He was not given opportunity of hearing and was referred to General Hospital, Sector-32, Chandigarh and remained admitted there. The father and brother of the present appellant used to visit in General Hospital, Sector-32, Chandigarh, and poisoned the mind of the doctor, who examined him. The doctor opined that the present appellant is not required to be admitted in hospital and treatment, if

FAO No. 7534 of 2014 (O/M)

any, could be done at home. It is further stated that the doctor had claimed that the present appellant is suffering from 'Persistent Delusional Disorder', which contradicts the allegations of the respondent/petitioner that the present appellant is suffering from 'Paranoid Schizophrenia'. It was further averred that the present appellant/respondent had offered to sell his share in SCO No. 75, Sector-40-C, Chandigarh, to the respondent/petitioner, who had got an agreement of transfer of lease rights drafted. A neighbour and property dealer, named, Kashmiri Lal Arora was part of the negotiation, but later on the respondent/petitioner backed out from the said settlement and threatened the present appellant/respondent as well as Mr. Arora. It was also claimed that though rent of tenanted premises is collected by his brother Narinder Singh Chhina, but the same is not handed over to him in time.

From the pleadings, following issues were framed :-

1. Whether respondent is mentally ill person ? OPP
2. If issue No. 1 is proved, whether respondent is incapable of taking care of himself ? OPP
3. If issue No. 1 is proved, whether respondent is incapable of managing his property ? OPP
4. If issue No. 1 is proved, whether the guardian is to be appointed for taking care of and for managing the property of respondent ? OPP
5. If issue No. 4 is proved, who is to be appointed as guardian for taking care of respondent and for managing

FAO No. 7534 of 2014 (O/M)

-8-

his property ? OPP

6. Whether this application/petition is not maintainable in the present form ? OPR
7. Relief.

It also comes out that after the respondent/petitioner led the evidence, the present appellant (respondent before the lower Court) also led the evidence by examining himself as RW1, but thereafter slipped away from the proceedings and was proceeded against ex-parte on 26.3.2010. Therefore, the arguments were heard ex-parte and matter was decided on merit.

Issues No. 1 to 5 were taken together and decided in favour of the respondent/petitioner and accordingly, the impugned order dated 31.3.2014 was passed by the learned Additional District Judge, Chandigarh.

In view of the fact that the advocate of the present appellant/respondent had not filed the *Vakalatnama* and suddenly left this Court on 8.1.2015, this Court, vide order dated 9.2.2015, appointed Ms. M.S. Kahlon, to act as an amicus-curiae to represent the case of the appellant.

I have heard the learned counsel for the parties and have also carefully gone through the file.

So far as the relationship between the parties is concerned, the same is not disputed. It is not disputed that the

FAO No. 7534 of 2014 (O/M)

-9-

respondent/petitioner is the father of the present appellant/respondent. An application under Sections 50 and 52 of the Mental Health Act, 1987 was filed on 1.11.2007 and was decided on 31.3.2014. This Court is to examine whether on the date when the application was filed, the present appellant/respondent was mentally ill and whether he continued to be mentally ill during proceedings before the lower Court.

In the pleadings, it is not denied that the present appellant/respondent was got treated from Mental Health Research Institute, Amritsar, from 18.6.2004 to 2.8.2004. It is also not denied that in July, 2007, the respondent/petitioner had filed an application before the learned CJM, Chandigarh, and that on the orders of the learned CJM, Chandigarh, the present appellant/respondent was got treated at Government Medical College and Hospital, Sector-32, Chandigarh, from 25.7.2007 to 16.8.2007. The copy of the application filed before the learned CJM, Chandigarh, is (Ex.PW4/5).

The report of Dr. B.S. Chavan, Professor and Head of Psychiatry Department, Joint Director-GIMRC-32 and Member Secretary-Chandigarh Mental Health Authority is dated 7.9.2007 (ExPW2/2). The extract from the report submitted by Dr. B.S. Chavan are reproduced as under :-

“On the basis of medical assessment of your son Sh. Parminder Singh Chhina during his admission in the

FAO No. 7534 of 2014 (O/M)

-10-

Psychiatry ward between 25/7/07 to 16/8/07, it appears that your son is suffering from mental illness and has been diagnosed to have "*Persistent Delusion Disorder*". It is possible that because of the mental illness, he might take decisions which may be detrimental to his well being. Some of these decisions may be based on his misinterpretations of the situation due to his mental illness. Since his mental illness has affected only a part of his psychological functioning, he might still look after himself. However, he may not look after his property well and may need assistance of the family in this regard. In order to safeguard his interest, you can apply for guardianship for the management of his property under Section 52 to 54 of the Mental Health Act, 1987 to the Court."

It is also not disputed that the present appellant/respondent had filed a civil suit for injunction in the year 2007 against his father, brother and others for permanent injunction restraining them from dispossessing him from entire top floor of House No. 1552, Sector-18-D, Chandigarh. The incident of year 2007, in which a case under Section 25 of the Arms Act was registered against the gunman, hired by the present appellant/respondent is also not disputed. The earlier report dated 22.7.2007, submitted by same doctor (Dr. B.S. Chavan) to the CJM, Chandigarh, is Ex.PW4/7. Relevant extract from the same is reproduced as under :-

FAO No. 7534 of 2014 (O/M)

-11-

“It is submitted that as per the direction of Hon'ble Court, Sh. Parminder Singh Chhina alias Peter Chhina S/o Sh. Gurdial Singh, resient of House No. 1852, Sector-18-D, Chandigarh, was directed to be examined in the Psychiatry Department GMCH-32, Chandigarh for whether he needs indoor treatment for a mental disorder, as alleged by his father.

Sh. Parminder Singh was admitted in psychiatry Ward on 25.07.07. During his admission in the ward, the patient was observed and examined and in our opinion, he is suffering from Persistent Delusional Disorder and he needs further admission and treatment as an indoor patient.”

Therefore, it is established that when the present petition was filed before the learned Additional District Judge, Chandigarh, the present appellant/respondent was suffering from disease 'Persistent Delusional Disorder' and he was advised further treatment. The opinion of the doctor recorded above shows that the mental illness affects only part of his psychological functioning and the patient might look after himself. However, he may not look after his property well. The attempt to exchange property bearing SCO No. 75, Sector-40-C, Chandigarh, is already discussed above, which is not disputed by either party.

It is to be noted that in pursuance to the order of the learned Additional District Judge, Chandigarh, six monthly report is required to be filed. One such case summary dated 28.11.2014 is

FAO No. 7534 of 2014 (O/M)

-12-

also reproduced as under :-

“As per the directions of Court of Additional and District Judge, Chandigarh the assessment of your son Mr. Parminder Singh was carried out by department of Psychiatry, GMCH, Chandigarh and it appears that your son is suffering from Mental illness and has been diagnosed to have Persistent delusional disorder. It is possible that because of the mental illness, he may refuse medicines but requires regular treatment. So our Home Based Team will look after him. Since his mental illness has affected only part of his psychological functioning, he might still look after himself. He might however take decisions that may be detrimental to his well being. Some of these decisions may be based on misinterpretation of situation. Due to his illness, he may not look after his property well. In order to safeguard his interest, you can apply for guardianship under sec 52 to 54 of Mental Health Act, 1987.”

It shows that the same doctor (Dr. B.S. Chavan) is still of the same opinion as given earlier. In the light of the medical opinion reproduced above, which is not contradicted by the contrary medical opinion, now, the evidence of the parties will be scanned.

Narinder Pal Singh, brother of the present appellant/respondent, had appeared as PW4 and reiterated the stand taken in the petition. The respondent/petitioner had also examined Dr. Rajiv Arora (PW1) to prove the treatment in the year 2004.

FAO No. 7534 of 2014 (O/M)

-13-

Dr. Rohit Garg of Department of Psychiatry, Sector-32, Chandigarh, appeared as PW2 and proved the treatment from 25.7.2007 to 16.8.2007 at Government Medical College and Hospital, Sector-32, Chandigarh, and stated that the present appellant/respondent was found to be suffering from mental illness, which is called 'Persistent Delusional Disorder'. It is further stated that the present appellant/respondent had taken visits as follow up on two more occasions i.e. 23.8.2007 and 20.9.2007, but did not visit thereafter. In cross-examination, he clarified that the present appellant/respondent was examined by a team of doctors including Prof. B.S. Chavan and he remained under treatment for 20 days. The opinion is based on the history and observation. He further clarified that the patient was found not suffering from Schizophrenia. The respondent/petitioner had tendered his affidavit in examination-in-chief, but did not appear for cross-examination.

Appellant-Parminder Singh/respondent had himself filed an affidavit in examination-in-chief and appeared in cross-examination as RW1. In examination-in-chief, he has reiterated his version given in the written reply, but his cross-examination will give an indication as to his mental health. In cross-examination, he has denied that Dr. B.S. Chavan had treated him at GMCH, Sector-32, Chandigarh. He admitted that the property in dispute was gifted to him by his parents. He stated that he is not sure where the marriage

FAO No. 7534 of 2014 (O/M)

-14-

of his daughter was solemnized as he was in India. He admitted that he had not sent money on the occasion of wedding of his daughter though, he had sent wearing apparels worth lakhs of rupees by courier. He stated that his father is 92 years of age. It also came out that the present appellant/respondent is an American national and his American passport had already expired and his permit to stay in India had also expired on 16.4.2007. He is now living in House No. 1552, Sector-18-D, Chandigarh at top floor, owned by his mother. He admitted that his house-hold belongings are lying in store in America since year 2004. It also came out that the present appellant/respondent is a divorcee for the last 25 years. To a question put to him as to whether he has filed permanent injunction suit against his father, he has stated it is irrelevant. It goes to show that the opinion of the doctor, discussed above, cannot be outrightly discarded.

Learned amicus-curiae for the appellant has vehemently argued that the respondent/petitioner wants to grab the property of the present appellant/respondent. It is argued that the respondent/petitioner is a retired doctor and is in a position to influence the opinion of the doctor.

I am of the view that the respondent/petitioner had retired from a prominent position in the health department in the year 1986. But, after about two decades of his retirement, he will not be in a

FAO No. 7534 of 2014 (O/M)

-15-

position to influence the report of the doctor, particularly when it is given in pursuance to the order of the Court. It is not denied that two properties i.e. one in Sector-26, Chandigarh and the other in Sector-40-C, Chandigarh, were purchased by the respondent/petitioner in the name of his two sons including the present appellant/respondent. It is unlikely that in the evening of his life, a father, who had gifted the property to his sons, will try to grab the same. The present appellant/respondent has already been provided accommodation at top floor in House No. 1552, Sector-18-D, Chandigarh. Therefore, it is apparent that the concern of the father of the present appellant is that his son, who is suffering from mental illness, does not waste the property.

The present appellant/respondent, while appearing as RW1, had admitted that he is getting Rs. 2,00,000/- as rental income. He is divorcee for the last 25 years and there is no one else to look after him.

Learned amicus-curiae for the appellant has further argued that in this case, Dr. B.S. Chavan was not examined.

I am of the view that Dr. B.S. Chavan, had submitted his report in pursuance to the orders of the learned CJM, Chandigarh. Dr. Rohit Garg (PW2) was examined and cross-examined about the mental illness of the present appellant/respondent. The present appellant/respondent was examined by a team of doctors and not by

FAO No. 7534 of 2014 (O/M)

single doctor and, therefore, the examination of one of the doctor is sufficient. In case of mental illness, the psychological evaluation is made. Dr. B.S. Chavan is not only the Head of Department of Psychiatry, but also a Member Secretary of Mental Health Authority, Chandigarh. The opinion of the doctor shows that before the filing of the application under Section 50 and 52 of the Mental Health Act, 1987, the present appellant/respondent was suffering from mental illness called 'Persistent Delusional Disorder' and that even after the passing of the order by the learned Additional District Judge, Chandigarh, on the application filed by the respondent/petitioner, he is recorded to be suffering from the same disease.

Therefore, I do not find any illegality or infirmity in the impugned order dated 31.3.2014, passed by the learned Additional District Judge, Chandigarh. The learned Additional District Judge, Chandigarh, has already taken sufficient safeguards for protection of the person and property of present appellant/respondent.

Consequently, the present appeal fails and is dismissed.

However, it shall always be open to the present appellant/respondent to apply for revocation of the said order whenever the said mental illness is cured.

(KULDIP SINGH)
JUDGE

26.5.2015
sjks