

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2794 of 2016

Date of Decision: 02.06.2016

Geeta Gupta

... Petitioner(s)

Versus

Balwant Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Harsh Aggarwal, Advocate
for the petitioner(s).

Mr. H.S.Batth, Advocate
for respondent No.1.

Mr. Vikas Gupta, Advocate
for respondent No.2.

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 15.3.2016, passed by learned Additional Civil Judge (Senior Division), Tarn Taran, whereby preliminary issue, framed on 18.8.2015, was decided.

The present controversy relates to the fact whether Balwant Singh has become infirm and a person of unsound mind and is incapable to protect his interest because of his old age. Applicant-Kashmir Singh has

sought permission to sue on behalf of Balwant Singh.

On this point, issue was framed and both the parties led their respective evidence. The Court below, after appreciating the evidence, returned the findings that applicant has been able to prove that Balwant Singh is mentally infirm and incapable to sue in the present case himself.

Learned counsel for the petitioner submitted that infact Balwant Singh was not a person of unsound mind, who could not decide about his good or bad. Rather, he had been getting different documents executed which includes sale deed dated 17.2.2014. The Court below also made following observations on 13.11.2015:

“The plaintiff Balwant Singh has been produced before this Court today. It has been observed by this Court that the said plaintiff Balwant Singh is more than 95 years of age and cannot walk after the assistance of sick and some person. Further it is observed that the said plaintiff seems to be hard of hearing and also is not able to see properly.”

Learned counsel for the petitioner, while assailing the findings, also submitted that while deciding the matter regarding appointment of guardian, the Court is to hold enquiry as contemplated under Order 32 Rule 15 CPC and only then find a person to be capable or incapable because of any mental infirmity of protecting his interest when suing or being sued and if appointment is made without any enquiry, the same is liable to be held illegal. On this point, reliance was placed upon the judgment rendered by this Court in ***Harjinder Singh v. Nachhattar Kaur 1991(2) RRR 499***.

Learned counsel for the respondents submitted that in this case

issue was framed on the point and both the parties led their respective evidence and the issue was decided after giving due opportunity to both the parties. More so, the observation so recorded by the Judicial Officer before deciding the said preliminary issue and the same does not call for any interference and present petition be dismissed being without any merit.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the matter in controversy before the Court was whether Balwant Singh was mentally infirm to protect his interest and for that purpose medical evidence was the most important document. Applicant has produced on file the Medical Certificate (Ex.P2) issued by the Department of Psychiatry, Government Medical College, Amritsar, but the same has not been proved in accordance with law because no doctor was examined to prove the same thereby giving opportunity to the counsel for the opposite party to cross-examine the said witness on that point. Needless to mention that age in itself is no criteria to decide mental infirmity of any person so as to grant or not to grant such a permission as required under Order 32 Rule 15 CPC. As per view taken by this Court in ***Harjinder Singh's case (supra)***, enquiry is must and the enquiry does not mean recording statement of the witness or permission to file certified document without there being any proof of the same and as such the enquiry conducted on preliminary issue cannot be held to be in accordance with law.

In ***Tirtha Pradhan and Others v. Balabhadra Pradhan and Another 1993 AIR (Orissa) 50***, appointment of guardian on the ground of of an old person on the ground of his mental infirmity without summoning

the Medical officer is improper and illegal.

Otherwise, it has also come on the file that Balwant Singh had been executing registered sale deed on different dates and executing important documents and the Court below has not considered these documents to be relevant for the purpose of enquiry.

Consequently, present petition is hereby accepted and the impugned order dated 15.3.2016 stands set aside. The case is remanded back to the Court below to decide the matter in controversy afresh after holding proper enquiry as required under law. The parties are directed to appear before the Court below on 4.7.2016.

(Shekher Dhawan)
Judge

June 02, 2016
“DK”