

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**SAO No.55 of 2016 (O&M)
Decided on: 05.08.2016**

Harnek Singh (since deceased) through his LRs

....Appellant

Versus

Dilbagh Singh

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Sanjay Jain, Advocate
for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against the judgment dated 04.07.2016 passed by the District Judge, Ambala whereby the appeal preferred by Dilbagh Singh against order dated 09.12.2014 passed by the Civil Judge (Jr. Division), Ambala dismissing the suit filed by Pritam Kaur and Dilbagh Singh through their next friend Sh. Jasmer Singh being not maintainable has been allowed and the matter has been remitted to the trial Court for decision afresh in regard to Dilbagh Singh being a person of unsound mind or otherwise.

Smt. Pritam Kaur and Dilbagh Singh through Jasmer Singh son of Sucha Singh filed a suit to challenge the Will dated 21.11.2005 purported to be executed by Sh. Sarwan Singh, predecessor-in-interest of the plaintiffs whereby 50% of the suit land was bequeathed in favour of Dilbagh Singh son of Sarwan Singh and the remaining 50% was bestowed upon Harnek Singh son of Hari Singh, alleged to be nephew (brother's son of Sh. Sarwan Singh). The trial Court dismissed the application of Jasmer Singh for appointment of Guardian of Dilbagh

Singh vide order dated 08.05.2014. The application filed by the respondent/defendant for dismissal of the suit in view of order dated 08.05.2014 was allowed and the suit was dismissed being not maintainable.

Counsel for the appellant would contend that on an earlier occasion, Jasmer Singh filed a petition under Section 52 of the Mental Health Act, 1987 (in short 'the Act of 1987') for being appointed as Guardian of Dilbagh Singh which was dismissed vide order dated 14.06.2011. Against the said order, an appeal (i.e. FAO No.6751 of 2011) was filed by Jasmer Singh before the High Court but the same was withdrawn with liberty to file a petition under the National Trust for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (in short 'the Act of 1999'). The application filed by Jasmer Singh for being appointed as Guardian of Dilbagh Singh was dismissed by the trial Court vide order dated 08.05.2014 but the said order was never challenged by Jasmer Singh and thus, has attained finality. It is argued with vehemence that in view of the findings recorded by the Civil Court in the petition filed under Section 52 of the Act of 1987 and the order dated 08.05.2014 having not been challenged in appropriate proceedings, the Court of appeal committed a gross error rather illegality in setting-aside the order dated 09.12.2014 whereby the suit was ordered to be dismissed being not maintainable.

I have heard counsel for the appellant, perused the paperbook and the judgment passed by the Court of appeal.

Counsel for the appellant, in response to a pointed query

raised by the Court is not in a position to dispute that the Court of appeal is competent to examine correctness and legality of any interlocutory order passed during the course of trial unless correctness or otherwise of a particular order has already been tested in appropriate proceedings by any higher Court.

A perusal of the judgment of Court of appeal would make it evident that the Court has examined the order dated 08.05.2014 passed by the trial Court whereby application of Jasmer Singh for his appointment as Guardian of Sh. Dilbagh Singh was ordered to be dismissed. The Court has held by taking into consideration the provisions of the Act of 1987 and definition of 'mentally ill' person defined in Section 2(L) thereof that to be appointed as a Guardian to take care of the person and property of the mentally ill person under the Act of 1987 is one which is quite different from acting as a next friend of a person of unsound mind who wants to sue in accordance with law as has been observed by Hon'ble the Punjab and Haryana High Court in ***“Sunil Sardana vs Renu Rawal”*, 2008(2) All India Land Laws Reporter 332** that under the provisions of Order 32 CPC, it is enough if the person is incapable of protecting his interest. The concerned person may be even mentally infirm due to physical defect, which renders him incapable of receiving any communication. So much so, Order 32 Rule 15 CPC applies also to a person, who is of weak mind. Thus, scope of the provisions of the Act of 1987 is entirely different than that of Order 32 CPC. The Court has further noticed that after withdrawing FAO No.6751 of 2011, Jasmer Singh has filed an application under the Act of 1999. Another fact noticed by the Court is

that in another suit titled *Hari Singh vs Jagir Singh*, an order dated 25.05.2009 was passed by lower Court which was challenged before the High Court in CR No.4413 of 2009 titled "*Pritam Kaur vs Jagir Singh*" wherein the High Court remanded the matter to the trial Court for fresh decision for appointing Guardian for Dilbagh Singh. The parties were directed to file list of suitable relatives and then the Court was to adjudicate and determine suitable relative of Dilbagh Singh and in case no such suitable relative is found then the Court was to appoint a Court Guardian for Dilbagh Singh. It has further been held that Jasmer Singh moved the application before the trial Court on the strength of order passed by the High Court in aforesaid civil revision but unfortunately that application was dismissed on 08.05.2014 on the plea that order dated 11.10.2010 had been passed by the High Court in another suit.

Counsel for the appellant is not in a position to assail correctness of various factual and legal aspects examined by the Court of appeal in order to hold that the order dated 08.05.2014 passed by the trial Court cannot stand the test of judicial scrutiny, therefore, the order dated 09.12.2014 passed on the basis of Order dated 08.05.2014 cannot be allowed to sustain and liable to be set-aside.

As the Court of appeal has found that the order dated 08.05.2014 dismissing application of Jasmer Singh to be appointed as Guardian of Dilbagh Singh cannot be upheld for the detailed reasons given in the judgment, there is no merit in the contentions of the appellant that either the order of dismissal of the suit could not be set-aside during subsistence of the order dated 08.05.2014 or in view of

order passed in the proceedings initiated under the Act of 1987. In this view of the matter, I do not find any error much less illegality in the impugned judgment warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed *in limine*. However, nothing stated in this order shall be construed as an expression of opinion on merits of the inquiry to be conducted by the trial Court in compliance with the order passed by the Court of appeal.

05.08.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No