

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

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CM-6106-CII-2018 in/and
CR No.160 of 2017 (O & M)
Date of Decision:07.05.2018

Phulli Devi

...Petitioner

Versus

Sunita Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.K. Longia, Advocate
for the petitioner.

Mr. Saurabh Bajaj, Advocate.

Mr. B.R. Vohra, Advocate
for respondent No.1.

Mr. K.S. Banyana, Advocate
for respondent No.3.

ANIL KSHETARPAL, J.(Oral)

In a suit for declaration with consequential relief of permanent injunction and joint possession, Kuldeep Singh @ Baljeet Singh i.e. defendant No.1 was impleaded through his mother Smt. Phulli Devi being mentally unsound.

Learned Court with a view to determine this issue directed examination of Sh. Kuldeep Singh from a Medical Board in PGI, Rohtak. The Medical Board opined that Kuldeep Singh is of weak intellect and, therefore, not normal. After receipt of the report, the learned Court examined defendant No.1 in the Court and returned a finding that no guardian needs to be appointed.

Learned counsel for the parties are *ad idem* that once the Specialist in their field had opined, the Court was not justified in ordering that no guardian needs to be appointed. This Court is also of the opinion that the learned trial Court ought not to have substituted its opinion over and above the opinion given by the specialist from a reputed institution. In view of the aforesaid orders under challenge are set aside. It may be noted that a fresh application has been filed by the wife for appointing her as a guardian. On the other hand, mother is also claiming that she is entitled to be appointed as a guardian.

However, this dispute can only be resolved by the learned trial Court and is not subject matter of challenge before this Court.

In view of the aforesaid, revision petition is allowed. The order under challenge is set aside. Learned trial Court is requested to immediately appoint a guardian of defendant No.1 and thereafter proceed with the case as the suit is more than 4 years old. Needless to say that *inter se* claim between mother and wife for appointment of guardian would be decided by the trial Court.

All the miscellaneous applications shall stand disposed of.

07.05.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No