

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

**C.R. No.2356 of 2018
Date of Decision.28.05.2018**

Jagdeep Singh and others

.....Petitioners

Vs

Smt. Baljit Kaur and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Chawla, Advocate
for the petitioners.

Mr. Sandeep S. Majithia, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

Notice of motion.

Mr. Sandeep S. Majithia, Advocate accepts notice for the
respondents.

The revision petition is directed against the order dated
20.03.2018 whereby the application submitted by the wife of plaintiff
No.3, Mandeep Singh for appointing her to be guardian under Order
32 Rule 15 CPC as Mandeep Singh was mentally ill, had been
dismissed.

Mr. S.K. Chawla, learned counsel appearing on behalf of
the petitioners submitted that the suit for declaration in respect of
land described therein claiming right in the aforementioned property
was filed as the dispute with regard to estate of Tarlochan Singh was
involved.

The suit aforementioned was contested by the defendants
by filing the written statement, however, during the pendency of the

suit, an application (Annexure P-2) under Order 32 Rule 15 CPC was submitted by Satinder Kaur wife of Mandeep Singh to contest the suit on his behalf as guardian, for, he was suffering from Schizophrenia and the disease had taken a chronic turn and is incurable. The application was accompanied by a certificate of the doctor but the trial Court rejected the application on the premise that the applicant did not examine any witness in this regard. He further submitted that the provisions of Code of Civil Procedure referred to above had not been examined in the correct perspective as it was duty of the Court to hold enquiry, despite the fact that the application was opposed by the other side, thus, there is gross illegality and perversity.

Per contra, Mr. Sandeep S. Majithia, learned counsel appearing on behalf of the respondents-defendants submitted that it is a delaying tactic on behalf of the plaintiffs as the suit had already reached the stage of final arguments. No useful purpose would be achieved in contesting the aforementioned application as the purpose has been defeated, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book. It would be apt to reproduce the provisions of Order 32 Rule 15 CPC, which is as under:-

“15. Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind- Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of

protecting their interest when suing or being sued.”

On simple and plain reading of the aforementioned provisions, it is evident that it is the duty of the Court to order for an enquiry as and when an application is received under Order 32 Rule 15 CPC as to whether a person who has been sought to be sued through guardian had been adjudged unsound or not. But the Court put the entire blame on the petitioner of having not examined any witness. The act of court prejudice none is the maxim which would be applicable in the present case as no opportunity had been given to the plaintiffs to prove the certificate issued by the doctor certifying Mandeep Singh to be suffering from Schizophrenia. The Court below remained unmindful of the fact that if any person suffering from Schizophrenia does not disclose at the time of marriage that he is suffering from such disease, the marriage can be declared null and void as per the provisions of Hindu Marriage Act.

As an upshot of my finding, the order under challenge is set aside and the matter is remitted to the trial Court to decide the application afresh as expeditiously as possible and preferably within a period of three months from the date of receipt of certified copy of this order after affording opportunity to the petitioners to prove the contents of the application in accordance with law and equally to the defendants to rebut the same. The revision petition is allowed.

(AMIT RAWAL)
JUDGE

May 28, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No