

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

CR No. 5795 of 2018
Date of Decision: 04.09.2018

Surinder Kumar Chopra

.....Petitioner

Versus

Shashi Verma and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Aayush Gupta, Advocate for the petitioner.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 15.05.2018, passed by the Civil Judge (Junior Division), Kurukshetra (for short, the Trial Court) through which the Trial Court has appointed respondent No.1 as guardian/next friend of respondent No. 2.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that the respondents filed a suit seeking therein partition of the properties owned by the parties with separate possession. Rendition of accounts as also issuance of directions to the petitioner, who was the defendant in the suit, to furnish complete details of both movable and immovable properties including FDRs left by the parents of the parties which were in possession of the petitioner were also sought. The respondents had further prayed for issuance of directions to the bank to release the amounts lying deposited there which belonged to the parents of the parties to all the parties to the suit in equal share. Injunction to restrain the petitioner from changing the nature of the suit property was also prayed for.

While the suit was pending, the petitioner filed an application

stating therein that respondent No.2 was of unsound mind and therefore, after declaring him to be so, appropriate directions be passed by the Trial Court. On the petitioner's application, the Trial Court sought medical advice, as per which, respondent No.2 had mild level of mental retardation and his abstract thinking and judgment was impaired. The Trial Court then summoned respondent No.2 in person and put certain questions to him. On evaluating the answers given by respondent No.2, the Trial Court was of the opinion that respondent No.2 was unable, by reasons of mental infirmity, of protecting his own interests. After having arrived at the afore opinion, the Trial Court appointed respondent No.1 as respondent No.2's next friend to pursue the present litigation on his behalf which direction of the Trial Court is under challenge in the present proceedings.

Learned counsel for the petitioner submits that in a suit for partition and rendition of accounts, the interest of both the respondents was adverse to each other and therefore, respondent No.1 could not have been appointed as next friend/guardian of respondent No.2.

After having considered the submissions made by learned counsel for the petitioner, I find no merit in the same.

It is admitted that since 17.08.2016 i.e. for the last two years respondent No.2 is staying with respondent No.1. Further, the Trial Court has recorded in the order under challenge that during the examination of respondent No.2, the Trial Court was satisfied that respondent No.1, being sister of respondent No.2, was affectionate to him and was taking good care of him. On reading of the plaint, the Trial Court further found that the interest of respondent No.2 viz-a-viz the petitioner was adverse to each other and therefore, decided to appoint respondent No.1 as next friend of

respondent No.2 to pursue the present litigation on his behalf. No error on facts in the afore findings is pointed out. Thus, no interference is called for in the order of the Trial Court appointing respondent No.1 as the next friend of respondent No.2 especially when the objections raised by the petitioner that respondent No.1 would influence respondent No.2 were rightly rejected by the Trial Court on the ground that since respondent No.2 was admittedly staying with respondent No.1 even if someone else was appointed as his next friend, respondent No.1 could still influence him. The Trial Court has further observed that if at any stage of the litigation, respondent No. 1 is found acting adversely or to the prejudice of respondent No.2, remedial measures would be taken by the Court under Order 32 CPC.

No other point was urged.

In view of the above, the order impugned in the present petition warrants no interference.

Dismissed.

(DEEPAK SIBAL)
JUDGE

04.09.2018
sandeep

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