

2023:PHHC:162484

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3087-2023(O&M)

Date of Decision: December 18, 2023

Dr.Amita Sharma and another

...Petitioners

Versus

Dr.Ajay Sharma and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Prateek Sodhi, Advocate
for the petitioners.

Mr.Sukhpal Singh, Advocate
for respondent No.1.

Mr.Amit Sharma, Advocate
for respondent No.2.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 17.04.2023, passed by learned Court below, whereby, an application under Order 32 Rule 3 CPC, filed by the present petitioners, was dismissed and also allowed the application under Order 1 Rule 10, purported to have been filed by respondent No.2 i.e. Dr.Sita Sharma.

In pursuance of the notice issued, respondents made appearance through their respective counsel.

Learned counsel for the parties heard.

The facts, as culled out from the paperbook, are as follows:-

That, initially, Dr.Amita Sharma and Dr.Arpana Raj, who are petitioners before this Court, together with their mother Dr.Sita Sharma (who is respondent No.2 in the present petition), had filed a suit for declaration against Dr.Ajay Sharma, who is brother of the petitioners and son of respondent No.2 i.e. Dr.Sita Sharma, who was plaintiff No.3 before the Court below.

During the pendency of the said suit, the petitioners, who are daughters of Dr.Sita Sharma, had filed an application under Order 32 Rule 3 CPC for appointment of applicant-plaintiff No.1 i.e. Dr.Amita Sharma, as guardian of plaintiff No.3-Dr.Sita Sharma. Even, an application under Order 1 Rule 10 CPC was filed by respondent No.1-Dr.Ajay Sharma, thereby, seeking transposition of plaintiff No.3-Dr.Sita Sharma, as defendant No.2.

After hearing learned counsel for the parties, vide impugned order, the application under Order 32 Rule 3 CPC was dismissed, whereas, application under Order 1 Rule 10 CPC was allowed and consequently, plaintiff No.3-Dr.Sita Sharma, was transposed as defendant No.2.

Feeling aggrieved, the petitioners have filed the present revision petition.

At the very outset, it is submitted by learned counsel for the petitioners that learned Court below has not complied with the statutory requirement, with regard to the disposal of the application under Order 32 Rule 3 CPC, for appointment of the guardian of plaintiff No.3-Dr.Sita

Sharma.

In fact, no enquiry was conducted by learned Court below, to know about the mental health of Dr.Sita Sharma. It is submitted that only one medical certificate, issued by the doctor on 08.04.2022, filed at the instance of the defendant was taken into consideration, but however, the same could not be taken into consideration, as the probative value of the said certificate, could be gone through, while holding of the enquiry.

Order 32 Rule 15 CPC, reads as herein given:-

"15. Rules 1 to 14 (except rule 2-A) to apply to persons of unsound mind - Rules 1 to 14 (except rule 2-A) 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."

Perusal of the aforesaid statutory provision reveals that Rules 1 to 14 of Order 32 CPC, with regard to the appointment of the guardian, would apply to a person, who has been adjudged (either before or during the pendency of the suit), to be of unsound mind. It lays that the aforesaid rules shall also apply to person who, although not so adjudged, is found by the Court, on enquiry to be incapable, by reason of any mental infirmity, of protecting his interest, when suing or being sued. Thus, it becomes apparent that the aforesaid provisions, consist of two parts. The first part applies, where a person has been adjudged to be of unsound mind. In that case, no further enquiry is required to be held by the civil Court, vis-a-vis, the mental health of the person concerned and the provisions of Order 32 Rules 1 to 14 CPC, straightway apply to such person, who has been so declared to be of

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unsound mind. However, subsequent part of the aforesaid rule states about the situation, while dealing with the person, who has not been adjudged to be of unsound mind. In that event, it calls upon the trial Court to hold enquiry, as to whether, such person is, by reason of any mental infirmity, incapable of protecting his interest, as party to the suit.

Such being statutory provision, now reverting to the case in hand. It is pertinent to mention that an application was filed for the appointment of the guardian, solely on account of plaintiff No.3-Dr.Sita Sharma, to be suffering from dementia and to be not in a position to file and pursue the suit, in order to protect her rights. However, learned Court below has relied upon a certificate issued by a doctor dated 08.04.2022, which was produced by respondent No.1 and solely, on that account, it reached the conclusion about Dr.Sita Sharma to be mentally fit and obeying verbal commands, but due to old age, she is bed ridden and used to mark thumb impressions, on the documents.

However, in view of the aforesaid provision, solely on account of the medical certificate, the application could not be disposed of, in the manner, as done by learned Court below. Probative value of said certificate, could be established, only in pursuance of an opportunity given to the parties to lead evidence, while holding enquiry under Order 32 Rule 15 CPC. However, this enquiry, as such, has not been initiated and no opportunity has been provided to both the parties.

In the given circumstances, the order, so passed on an application under Order 32 Rule 3 CPC is erroneous and calls for

interference by this Court.

Simultaneously, it should also be noted that an application under Order 1 Rule 10 CPC was allowed, while considering the fact of the application bearing the thumb impressions of the applicant. However, as observed aforesaid, the application under Order 32 Rule 3 CPC, with regard to the appointment of the guardian of respondent No.2 is to be adjudicated and therefore, the transposition of plaintiff No.3 to defendant No.2, as such, is also not appropriate.

In view of the aforesaid fact situation, the impugned order, in toto, is hereby set aside. The case is remanded to the learned Court below, to comply with the provisions of Order 32 Rules 1 to 14 CPC, with regard to conducting of the enquiry and decide the application under Order 32 Rule 3 CPC afresh and also further, to consider the application under Order 1 Rule 10 CPC afresh.

In view of the aforesaid terms, the present revision petition stands allowed.

December 18, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No