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IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD
CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**
+ CIVIL REVISION PETITION No.1389 OF 2021

% Delivered on: 17-11-2021

Between:

M.Sudhakar @ M.Sudhakar Rao, .. Petitioner

Vs.

\$ Peerajee @ Reddy .. Respondent

! For Petitioner : Mr. Ganta Ramakrishna,
Lr. Counsel

^ For Respondent : Mr. Mahesh Raje,
Lr. Counsel

< Gist :

> Head Note :

? Cases Referred :

1. 2002(2)ALD 65
2. Laws (All) 2004 1056
3. 2016 159 (DRJ) 437 = MANU/DE/2311/2016
4. AIR 2008 Ker 145 = MANU/KE/0754/2007

CIVIL REVISION PETITION No.1389 of 2021

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order, dated 26.03.2021, passed in I.A.No.514 of 2019 in O.S.No.64 of 2014, by the Senior Civil Judge, Nirmal, wherein the said application was dismissed.

2. Heard Sri Ganta Ramakrishna, learned counsel for the petitioner and Sri Mahesh Raje, learned counsel for the respondent. Perused the record.

3-a. The petitioner herein had filed the above suit against the respondent herein seeking declaration of title and recovery of possession and for rectification of the entries in the revenue records. The said suit was posted for evidence of the petitioner herein. At this stage, the petitioner herein had filed an application vide I.A.No.514 of 2019 under Order XXXII Rule 15 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'the CPC') in the said suit, seeking to appoint Sri M.Satish Kumar, his son, as his next friend to prosecute the said suit. The petitioner herein had filed the said application on the ground that his health has been effected badly. Once he was having stroke in the brain and as a result of it, partially effected with paralysis. Therefore, he is unable to hear even after fixing ear aid and even talk properly. He was undergoing treatment for the said infirmities. In view of the said infirmities, it is impossible to him to represent the case for which he sought to appoint his son as his next friend.

3-b. The respondent herein filed counter denying all the allegations made in the plaint and contended that the provisions under Order XXXII Rule 15 of CPC does not apply to the present case, since the petitioner is not a mentally infirm person or a lunatic. Since last six years, he has been prosecuting the suit. He has also filed examination in chief in the month of August, 2019. The petitioner has also filed rejoinder along with an interlocutory application to seek permission for filing the rejoinder. The petitioner also filed an application vide I.A.No.369 of 2019 to amend the schedule of the property on the ground that he noticed incorrect boundaries while preparing an affidavit in lieu of examination in chief on 02.08.2019. On 28.03.2019, the petitioner appointed his son as General Power of Attorney and filed I.A.No.128 of 2019 under Rule 32 of the Civil Rules of Practice, with his signatures at Nirmal. Thus the petitioner came down to Nirmal to prepare all the above said application and signed at Nirmal. In view of the said circumstances, the petitioner is hale and healthy and no next friend needs to be appointed for him. The medical reports filed by the petitioner are created for the purpose of the present case and he has filed the present case intentionally to avoid his cross-examination.

3-c. The Court below vide order dated 26.03.2021 dismissed the said application vide I.A.No.514 of 2019 by holding that the petitioner herein has not filed any record to show that he is suffering with paralysis and he has filed only certificates issued by Dr. K.Kishore Kumar, M.D., stating that he is suffering with "Cerebro vascular accident". The petitioner did not file medical report in support of the said disease. The case of the petitioner is not that he is deaf and dumb and there is no evidence to show

that he is suffering with slight paralysis. The plaintiff filed his suit through GPA who was examined as P.W.1 and the petitioner herein seeking to appoint the same person as his next friend. There is no evidence of any unsoundness of mind, or he is not suffering with any physical disabilities affecting his cognitive skills. With the said findings, the Court below has dismissed the said application. Feeling aggrieved by the same, the petitioner herein has filed the present Revision.

4. Learned counsel for the petitioner, referring to the list of documents filed along with the said I.A.No.514 of 2019, would submit that the petitioner herein had filed medical reports, medical prescriptions and certificate issued by the Doctors. The Court below did not consider the same and erroneously dismissed the said application stating that the petitioner herein has not filed medical reports. Referring to the said medical reports, learned counsel for the petitioner would submit that the petitioner herein is aged about 75 years and he is not in a position to hear, despite fixing the ear aid, unable to talk properly due to paralytic stroke. Therefore, the petitioner herein is incapable to pursue his case. The Court below without considering the said facts erroneously dismissed the said application filed by the petitioner herein. He has also placed reliance on the decisions in **Leelason Breweries Ltd. Vs. Bheemi Reddy Lakshminarayana Reddy¹** and **Gyan Prakash Gupta Vs. Ahmad Maqsood Naquvi²**

¹ 2002(2)ALD 65

² Laws (All) 2004 1056

5. On the other hand, Sri Mahesh Raje, learned counsel appearing for the respondent, would submit that the Court below has rightly dismissed the application filed by the petitioner herein since the petitioner herein has not filed any medical reports to show that he is suffering with paralysis and also to support the certificate issued by Doctor K.Kishore Kumar. He has filed affidavit in lieu of his examination in chief in the month of August, 2019 and he has also filed rejoinder apart from filing an application to amend schedule of property on the ground that he has noticed incorrect boundaries while preparing affidavit in lieu of examination in chief. Within one month thereafter, he has filed present application seeking to appoint his son as next friend. Therefore, the petitioner herein has filed the said application in order to avoid cross-examination and to delay adjudication of the present proceedings. According to him, the Court below has conducted enquiry properly and rightly dismissed the application filed by the petitioner herein. With the said submissions, he sought to dismiss the present Revision.

6. In view of the said rival submissions, the points that arise for consideration before this Court are:-

- 1) Whether the petitioner is suffering from mental infirmities and by the reason of which, he is incapable of protecting his interest in the present suit?
- 2) If that is so, whether the order, dated 26.03.2021, passed in I.A.No.514 of 2019 in O.S.No.64 of 2014, by the Senior Civil Judge, Nirmal, is liable to set aside?
- 3) To what result?

Points 1 and 2

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7. It is not in dispute that the petitioner herein had filed the above said suit vide O.S.No.64 of 2019 seeking declaration of title, recovery of possession and for rectification of entries. It is also not in dispute that the petitioner herein is aged about 75 years. The said suit is posted for petitioner's evidence. At that stage, the petitioner herein had filed the above said application vide I.A.No.1514 of 2019 in O.S.No.64 of 2019 under Order XXXII Rule 15 CPC, seeking to appoint his son as next friend on the ground that due to old age, his health has been effected badly, once he was having stroke in the brain as a result of which, partially effected with paralysis and therefore he is unable to appear even after fixing the hearing aid and he is also unable to talk properly and he is undergoing treatment for the said effect and in view of the said infirmities, it is impossible to him, to represent the case.

8. In support of his contentions, he has filed a copy of original C.T.Scan of brain plain study, dated 25.09.1996 issued by N.Sanjeev Kumar, Radiologist, Tesla Diagnostics; report dated 19.01.2015 issued by A.Arunareddy, Audiologist, Karimnagar Speech and Hearing centre; medical prescription, dated 19.01.2015; the prescription dated 19.01.2015, issued by Dr.K.Vamsheekrishna Rao, Saanvi ENT Hospital; the report dated 07.08.2019 issued by Dr.Ch. Ramana Chary, Keshava E.N.T.Hospital, Karimnagar, and the certificate, dated 14.10.2019 issued by Dr.K.Kishore Kumar, M.D. A perusal of the list of documents filed by the petitioner along with the present Revision would reveal the said facts.

11. In the certificate, dated 14.10.2019, it is specifically mentioned that the case of the petitioner is known as “Cerebro vascular accident”. In the certificate, dated 07.08.2019, it is specifically mentioned that the petitioner has been diagnosed with ‘Bilateral Sensorineural Hearing Loss’. In the certificate, dated 19.01.2015, it is specifically mentioned that the petitioner herein is suffering with hearing problem. In the certificate issued by the Tesla Diagnostics, it is specifically mentioned that *the CT features of small irregular hypodense area involving the corona radiate on right side suggestive of infarct*. In the certificate issued by the Nizam’s Institute of Medical Sciences, Panjagutta, Hyderabad, dated 25.09.1996, it is specifically mentioned as follows:-

“IMPRESSION:-Atheromatous plaques of bilateral carotid arteries with 30-35% luminal narrowing without disturbance of flow velocities.

-Normal bilateral vertebral arteries.

-Brady cardia with reduced systolic peeks and prolonged diastolic phases.”

In the certificate issued by A.Aruna Reddy, dated 19.01.2015, Karimnagar Speech and Hearing Centre, it is specifically mentioned that there is reduction in hearing sensitivity since last two years. As stated above, the petitioner herein has filed the said medical reports along with the above said application. Though the Court below in the impugned order at paragraph No.7 mentioned about the filing of medical reports C.T.Sacn of brain 1996, ear report and prescription of ENT of 2015 and a certificate issued by a Doctor stating that the plaintiff case is of ‘Cerebro Vascular Accident’, dismissed the said application by mentioning in paragraph No.8 that the petitioner has not filed any record of his paralysis. The certificate

filed was issued by the Doctor stating that he is suffering with “Cerebro Vascular Accident” issued by Sri K.Kishore Kumar, M.D. and medical reports of the same. Thus, there are contradictory findings of the Court below in the impugned order.

12. At one stage, the Court below stated that the petitioner has not filed medical reports and in the very same order, there is mention about the petitioner filing of the medical reports which is contrary to the record. As discussed supra, the petitioner herein is at the age of 75 years. The petitioner herein has already filed an application under Rule 32 of the Civil Rules of Practice vide I.A.No.128 of 2019 appointing his son as G.P.A. holder and the same was allowed. Now the petitioner herein has filed the present application seeking to appoint his son as next friend but the Court below dismissed the said application. Therefore, according to this Court, the Court below has not conducted an enquiry under Order XXXII Rule 15 of the CPC properly.

13. It is apt to refer Order XXXII Rule 15 of CPC:-

“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, or protecting their interest when suing or being sued.”

14. The above said provision would clearly envisages to kind of persons it applies to and the circumstances under which the Court has to appoint next friend to protect their interest while suing or being sued.

15. It is the specific case of the petitioner herein that he is incapable of protecting his interest in O.S.No.64 of 2015 by the reason of his mental infirmity. According to him, his case falls under second category of Order XXXII Rule 15 of CPC. In view of the same, it is for the Court below to consider the case of the petitioner whether it falls under second category of Order XXXII Rule 15 of CPC. Without considering the same, the Court below has dismissed the application filed by the petitioner herein vide impugned order.

16. It is relevant to note that Delhi High Court had an occasion to deal with the scope and ambit of Order XXXII Rule 15 of CPC in **Radhika Kapoor Vs. State**³ wherein it is held that the respondent therein had suffered a serious road accident in the year 1999, which had caused severe damage to his brain and on the said ground, he sought to appoint a next friend under Order XXXII Rule 15 of the CPC. The Delhi High Court referring to definition of word 'infirmity' and also several decisions of the Apex Court and various High Courts and also the principles relating to the scope of enquiry under Order XXXII CPC and the duty cast on the court to conduct an inquiry to assess ability of a party stated to be suffering from mental infirmity including unsound mind have been laid down.

17. Paragraph No.5 of the said decision is relevant and it is extracted below:-

To understand as to who can be termed mentally infirm, a reference to the definition of the word 'infirm' which finds

³ 2016 159 (DRJ) 437=MANU/DE/2311/2016

mention in several dictionaries is apposite. In Collins, the word 'infirm' has been defined as 'weak or ill and usually old'. The Concise Oxford Dictionary refers to the word 'infirm' as 'a person who is not physically strong, especially due to age'. In Black's Law Dictionary, the word 'infirm' has been defined as 'weak, feeble, lacking moral character or weak of health'. In Webster's New World Law Dictionary, the word, 'infirm' has been defined as 'Debility caused by ill health or advanced age". The American Heritage Dictionary of the English Language defines 'infirmity' as 'the condition of being infirm, often as associated with old age; weakness or frailty; the infirmity brought on by the disease."

18. Referring to the same, it was held that the nature of formal enquiry contemplated under Order XXXII Rule 15 of CPC is not of a kind that is required to be conducted under the provisions of the Lunacy Act and the Court is well empowered to pass an order on an application filed under Order XXXII Rules 3 and 15 of CPC upon being satisfied about the party's mental competence. The rigorous of enquiry under the aforesaid provisions is therefore not so strict as required under the Lunacy Act for the reason that a complete distinction that can be drawn between a person who is mentally unsound, vis-à-vis one who is incapacitated on account of mental infirmity, which is a condition of a lesser degree. Merely because a person may be suffering from a low intellectual quotient (IQ), may not be a ground to treat him as being of unsound mind. But at the same time, upon enquiry, the court can arrive at a conclusion that he would not be capable of protecting his interest in a litigation, which is the underlying purpose of the aforesaid provision.

19. The Delhi High Court further referred decision in B.K.Khanna Vs. K.N.Khanna-ILR(1997) 2 Delhi 492, wherein it is held that while interpreting the provision of Order XXXII rule 15 CPC, it was observed that the said provisions “cast a mandatory duty on the Court to take steps to ensure proper representation for such persons so as to ensure that their interest in relation to the proceedings are fully protected. These provisions are a legislative recognition of the well-known principle that the State, as indeed, the Court, which is a part of the judicial wing of the State, is in locus parents to its citizens, who are either minors, or are incapable of protecting their interests in judicial proceedings by reasons of unsoundness of mind or mental infirmity.” It was therein also held that the cardinal principle of inquiry required to be conducted by a Court under Order XXXII Rule 15 of CPC, is only after arriving at the conclusion that a person is mentally incapable or unable to prosecute/defend the case, would the Court proceed to appoint a fit person as his guardian *ad litem*. While doing so, the Court must be mindful of the fact that such a person does not have any interest that is adverse to the applicant. With the said findings, the Delhi High Court, on examination of the facts of the said case, held that the person who sought appointment of a next friend appears to be a person of weak intellect, ineffectual and incapable of looking after his interests and affairs and allowed the said petition to appoint next friend.

20. In **Raveendran Vs. Sobana**⁴, Kerala High Court had an occasion to deal with the issue whether a deaf and dumb person can be said to be a

⁴ AIR 2008 Ker 145= MANU/KE/0754/2007

person suffering from mental infirmity and as one entitled to protection of Order XXXII Rule 15 of CPC, is the question to be considered. It held mental infirmity is not mental disorder. It is not mental illness or the particular context of Order XXXII Rule 15 of CPC, weakness of intellect to the extent of making a person incapable of protecting his interests in the litigation. Thus, a person who is not of unsound mind may, yet be a person who is mentally infirm. Thus, entitling him to the protection under Order XXXII Rule 15 of CPC. Idiocy or unsoundness of mind indicates an abnormal state of mind, whereas, mental infirmity only indicates weakness of mental strength. The proviso applies to dull-witted persons or persons with lesser degree of intellectual competence. A person who is not adjudged as one unsound mind under the Lunacy Act is still entitled to the protection under Order XXXII Rule 15 of CPC, if the Court is satisfied that the person before the Court is incapable of protecting his interests, either by reason of unsoundness of mind or intellectual incompetence due to mental infirmity. Mental infirmity may even be due to physical defects, if such defects render a person incapable of receiving any communication or communicating his wishes or thoughts to others. The scope of enquiry under Order XXXII Rule 15 of CPC is the assessment of the capability of a person either of unsound mind or suffering from any mental infirmity like deafness or dumbness, as to whether such defects or infirmities or weaknesses would render a person incapable of communicating his views, wishes or thoughts.

21. It is further held that the legal position is that mental infirmity in the context of Order XXXII Rule 15 of CPC is not mental person able of

protecting his interests, is sufficient to unfold the protective umbrella under Order XXXII Rule 15 of CPC. Such infirmity can also be caused by physical defects like deafness or dumbness, whereby a person is made incapable of communicating his wishes, views or thoughts to others who are not acquainted with him. If such a person is before the Court in a suit or proceedings either as plaintiff or defendant, the Court has a jurisdictional obligation to conduct an enquiry as to whether the person is capable of protecting his own interests. If in the judicial enquiry, if necessary and if required, conducted with the assistance of an expert, it is found that such person is incapable of protecting his interests in the suit or proceedings before the Court, the Court has an obligation to appoint a next friend for such person, and if the Court on the other hand finds that the person is otherwise capable of protecting his interests without a next friend, the Court shall remove the next friend if already available and permit the person, who is alleged to be of unsound mind or suffering from mental infirmity, to conduct the litigation himself. It is also further held a decree passed against a minor without appointment of guardian is a nullity. The same principle would apply as far as a person suffering from unsoundness of mind or mental infirmity is referred to in Order XXXII Rule 15 is concerned.

22. In view of the above said authoritative principle of law, as discussed supra, the Court below erred in holding that the petitioner herein has not filed medical reports. The Court below did not consider the specific pleading that the person who sought to be appointed as next friend specifically contended that he has no adverse interest to that of plaintiff.

Therefore, according to this Court, the petitioner herein aged about 75 years, suffering with various old age ailments including paralysis and hearing problem supported by medical evidence, is entitled for appointment of next friend. Therefore, according to this Court, the Court below erroneously dismissed the application vide I.A.No.514 of 2019 filed by the petitioner vide impugned order dated 26.03.2021 and therefore, the impugned order is liable to be set aside and accordingly set aside.

Point No.3

23. In the result, the Civil Revision Petition is allowed setting aside the order dated 26.03.2021, passed in I.A.No.514 of 2019 in O.S.No.64 of 2014, by the Senior Civil Judge, Nirmal and the said I.A.No.514 of 2019 is allowed appointing Sri M.Satish Kumar, son of the petitioner/plaintiff, as his next friend to prosecute the suit vide O.S.No.64 of 2014. There is no order as to costs.

24. As a sequel, miscellaneous petitions, if any, pending in this Revision, shall stand dismissed.

K. LAKSHMAN, J

Date: 17th November,2021.

Note: L. R. copy to be marked.

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