

(2008) 03 DEL CK 0168
In the Delhi High Court
Case No : F.A.O. (OS) 105 of 2008

Anuradha Jha

APPELLANT

Vs

Santosh Singh and Others

RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

Citation : (2008) 102 DRJ 86

Hon'ble Judges : Dr. M.K. Sharma, C.J.;Reva Khetrapal, J

Bench : Division Bench

Advocate : Pradeep Dewan and Rajiv Samaiyan, for the Appellant; Kamlesh Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.

CM No. 3166/2008 (exemption)

Allowed, subject to just exceptions.

FAQ(OS) No. 105/2008 & CM 3165/08, Cav. 68/08

1. This appeal is directed against the order dated 15th January, 2008 passed by the learned Single Judge. The appellant, who is defendant No. 1, is aggrieved by the said order as according to her, the person who is appointed as guardian ad litem of the defendant No. 2/respondent No. 4 herein could have interest adverse to the interest of the said person of unsound mind. Counsel for the plaintiffs (respondents herein) is also present in court. We have also heard her.

2. After hearing counsel appearing for the defendant No. 1 - appellant we find that the contention raised in this appeal pertains to the order of the learned Single Judge appointing the defendant No. 5/respondent No. 7 herein, being the elder sister of the defendant No. 2, as guardian ad litem for the purpose of the present suit;

3. The suit is instituted by the plaintiffs - respondents in which an application is also filed by the plaintiffs - respondents seeking appointment of guardian of the defendant No. 2 on the ground that the said defendant No. 2 is mentally infirm and is of unsound mind and that he is incapable of protecting his interests in the present case. The said, application was opposed by the appellant - defendant No. 1 and also by the defendants No. 7 to 9 being respondents No. 9 to 11 herein. In view of the objections taken, the said defendant No. 2 was got examined by the Medical Board. In fact the defendant No. 2 was examined twice by the Medical Board and two reports have been submitted. Both the aforesaid reports of the Medical Board are consistent in nature and they establish that the defendant No. 2 is suffering from schizophrenia residual type and that he is incapable of taking care of himself and defending the present litigation pending against him. The appellant did not dispute before us the aforesaid reports submitted by the Medical Board. The only submission that is sought to be made is that the stand being taken on behalf of the defendant No. 2 is adverse to his interest.

4. We have considered the said submission in the light of the findings recorded by the learned Single Judge. We find that the learned Single Judge discussed with the defendant No. 2 and found that his elder sister being defendant No. 5 has no adverse interest against him and that he would be supporting the case of the plaintiffs - respondents, for he finds that there is no adverse interest so far as he is concerned with his sister, who is defendant No. 5. He has also stated before the learned Single Judge that he is aware of the contents of the joint written statement, which is also filed on his behalf and along with defendants No. 3 and 5 and according to him, he has voluntarily admitted the claim of the plaintiffs.

5. Considering the facts and circumstances of the case, the learned Single Judge found that the defendant No. 5 has no adverse interest with that of the defendant No. 2 and, therefore, she was appointed his guardian ad litem.

6. In any case since the Court appointed guardian ad litem, it will have the responsibility to see that the interest of the defendant No. 2 is fully protected during the trial and, therefore, such responsibility will be discharged by the Court in all earnestness while passing orders in the suit. The learned Single Judge has stated that the very fact as to whether or not the defendants No. 3 to 5 are in collusion with the plaintiffs could be gone into only after all the parties produce their evidence on the aforesaid aspect. We fully agree with the aforesaid findings.

7. We find no merit in this appeal. The same is dismissed. The suit shall be proceeded with in accordance with the orders passed by the learned Single Judge and during the trial the observations made herein shall also be noticed.