
(2011) 03 P&H CK 0250
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1338 of 2011

Atul Bhaskar

APPELLANT

Vs

Mrs. Nisha and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2011) 03 P&H CK 0250

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jaswant Singh, J.—By filing the instant revision petition under Article 227 of the Constitution, Petitioner has prayed for setting aside the impugned order dated 15.12.2010 (P.1) passed by learned Civil Judge (Jr. Division), Amritsar whereby his application under Order 32 read with Section 151 CPC for appointing him as next friend/guardian of his mother Smt Romesh Bhaskar-Plaintiff/Respondent No. 5 has been dismissed.

2. Brief facts of the case are that the Plaintiff-Respondent No. 5 filed a civil suit No. 395 dated 21.7.2007 for separate possession by way of partition of 1/4th share in the suit property as described in the head note of the plaint against Defendants-Respondent Nos. 1 to 4.

3. During the pendency of the suit, present Petitioner filed an application under Order 32 read with Section 151 CPC for appointing him as next friend/guardian of the Plaintiff-Respondent No. 5. Notice of the same was issued. Upon notice, application was contested by the Plaintiff-Respondent No. 5 raising preliminary objections that the Petitioner is having no locus standi to file the application. It was further submitted that she (Plaintiff) is in sound disposing mind and is in a perfect mental condition. After hearing both the sides, the application was dismissed by the learned trial Court. Hence, the present petition.

4. Heard learned Counsel for the Petitioner and perused the paper book.

5. Learned Counsel for the Petitioner argues that the Plaintiff is suffering from acute depression and was not mentally sound to look after her interest. It is further argued that in case the impugned order dated 15.12.2010 (P.1) is not set aside, a grave injustice would be caused to the Plaintiff-Respondent No. 5 as she is not capable to pursue her case properly.

6. It is pertinent to mention here that neither the application nor its reply has been appended with the paper book by the Petitioner for the reasons best known to him. A perusal of the impugned order reveals that it is the specific case of the Plaintiff-Respondent No. 5 that the Petitioner himself had filed a civil suit on or about 26.7.2010 titled as Atul Bhaskar v. Nisha Bhaskar and Ors. wherein the Plaintiff-Respondent No. 5 had been impleaded as Defendant No. 4. Husband of Respondent-Defendant No. 1 had executed a will dated 16.2.2004 in favour of Defendant-Respondent Nos. 1, 2 and 3 and due to the intervention of close relatives, an agreement/compromise was executed between the Plaintiff and Defendants-Respondent Nos. 1 to 3 but the present Petitioner always created hindrance in the said compromise and he wanted to grab the property of late Amit Bhaskar. Plaintiff-Respondent No. 5 has filed an affidavit supporting the correctness of compromise. Copies of compromise as well as affidavit were exhibited before the learned trial Court as C. 1 and C. 2 respectively.

7. It further transpires that the Plaintiff-Respondent No. 5 was present in Court at the time of passing of the impugned order dated 15.12.2010 and the learned trial Court has observed that she is in good state of mind and understand the things properly. Relevant observations are reproduced hereunder:

Further the Court has observed the behaviour of Respondent/Plaintiff in the Court and it appears that she is in well State of mind and is in position to understands things.

8. Keeping in view the facts and circumstances of the case discussed hereinabove specially that the Petitioner himself had filed a suit titled Atul Bhaskar v. Nishar Bhaskar and Ors. and undisputedly impleaded the present Plaintiff-Respondent No. 5 as Defendant No. 4, this Court is fully in agreement with the findings recorded by the learned trial Court that the present Petitioner cannot be considered to be the best friend of the Plaintiff-Romesh Bhaskar (Respondent No. 5 herein). Moreover, taking into account the fact that the Plaintiff-Respondent No. 5 is in sound disposing mind, there is no need of appointing any next friend/guardian on her behalf.

9. No ground is made out to interfere.

Dismissed.