
(2013) 02 AHC CK 0110

In the Allahabad High Court

Case No : First Appeal From Order No. 519 of 2013

Jaishri Devi

APPELLANT

Vs

Smt. Rajwati

RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 1, Order 32 Rule 15, Order 32 Rule 4, Order 32 Rule 4(2), Order 39 Rule 1
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Mental Health Act, 1987 — Section 50, 52, 53, 54, 54

Citation : (2013) 3 ADJ 550 : (2013) 97 ALR 847 : (2013) 5 AWC 5178 : (2013) 121 RD 668

Hon'ble Judges : Rakesh Tiwari, J; Anil Kumar Sharma, J

Bench : Division Bench

Advocate : Rajesh Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

1. This appeal challenges the validity and correctness of the and order dated 30.11.2012 passed by the Additional Civil Judge (S.D.), Court No. 1, Aligarh in Original Suit No. 1918 of 2012, Jai Shree Devi v. Smt. Rajwati, whereby application No. 7C2 of the appellant preferred by her u/s 39 Rule 1 and 2 and Section 151 C.P.C. for temporary injunction has been rejected. The appellant has sought the relief of quashing the aforesaid order dated 30.11.2012 and has further prayed to direct the opposite party/defendant not to interfere in her peaceful possession of the appellant over the land in dispute.

2. Heard learned counsel for the appellant.

3. The brief facts of the case are that the appellant/plaintiff is the original holder of the land of area 1.728 hectare and Khata No. 17, Gata No. 128 Mi, total area 1.728 hectare situated at village-Haivatur, Pargana and Tehsil Khair, District Aligarh. It is stated that on 15.9.2012 at 1.00 O'clock, Govind Sharma son of Mahesh Chandra Sharma took the appellant/plaintiff at Tehsil-Khair, District

Aligarh and with collusion and mala fide intention to deceive her, got a sale deed executed in favour of opposite party/defendant for Khata No. 17 and Gata No. 128Mi area 0.536 hectare. The appellant/plaintiff has no knowledge about the sale deed as she is not mentally fit and is not able to think being a patient of neuropsychiatric under the treatment of Dr. Anil Gaur, Neuropsychiatric for last 8-9 months. After the forged sale deed was got executed in favour of opposite party/defendant, along with her family members they went at the Civil Court and prepared a notary certificate on 27.9.2012.

4. There was no occasion to get the notary certificate executed particularly when the sale deed had already been executed in which the signature/thump impression of the appellant-plaintiff and the sons had been taken. This is also stated that son of the appellant Navneet is a drunker and another Kallu is a minor.

5. It is alleged that Mohan Swaroop Sharma the real brother of the appellant-plaintiff made an application before the S.S.P. Aligarh stating facts and circumstances and also alleged forged act of the opposite party-defendant praying to direct the police station concerned to lodge FIR and investigate the matter but no action was taken. Aggrieved her brother filed an application u/s 156(3) Cr.P.C. before the A.C.J.M. Court No. 1, Aligarh which was treated as a complaint case; that Khatauni No. 1416 to 1424-F of village Haivatpur, Pargana and Tehsil-Khair, clearly shows that the appellant-plaintiff alongwith her sons is the owner of land of area 1.7280 of Gata No. 128Mi, Khata No. 128. The copy of the Khasara which has been issued on 25.9.2012 also proves that the crops have been shown by the appellant-plaintiff and her sons in the said area.

6. The appellant has relied upon the discharge certificate, which has been issued from the Mental Hospital, Agra showing that she had been under treatment of one Dr. Anil Gaur about for 8 to 9 months. It is also mentioned therein that old prescriptions had been lost by her. The discharge certificate for alleged period 19.12.2011 to 14.12.2012 has also been placed before us.

7. On the aforesaid averments and facts and circumstances appellant-plaintiff filed original O.S. No. 1918/2012, Jai Shri Devi v. Smt. Rajwati, before the Civil Judge (S.D.), Aligarh through Mohan Swaroop Sharma. The brother of the appellant-plaintiff has filed an affidavit in support of original suit in which she had prayed to the Court below to declare sale deed dated 15.9.12 executed in favour of opposite party-defendant as null and void said to have been executed by committing forgery and praying to restrain the opposite party-defendant in her peaceful possession nor to transfer or change the nature of land in dispute. Application under Order 39 Rule 1 & 2 and Section 151 Cr.P.C. was also filed in the suit praying temporary injunction. The Court framed three points and though opposite party-defendant was not present decided all three issues against appellant-plaintiff holding that she has no prima facie case and there is no loss to the appellant-plaintiff if temporary injunction is not granted in her favour. Application 7C2 accordingly rejected fixing 7.1.2013 for framing issues. The

appellant-plaintiff filed Civil Misc. Writ Petition No. 5837 of 2012 before this Court and the same was dismissed with liberty to file an appeal under Order 43 Rule 1 of C.P.C.

8. The contention of learned counsel for the appellant is that it is proved on record that appellant is a mental patient and was under treatment of Neuropsychiatric for a long time and is not able to differentiate between right and wrong. The opposite party/defendant has got executed forged sale-deed in her favour by the appellant-plaintiff and it is unbelievable as to how a patient of Neuropsychiatric can execute a sale-deed on 15.9.2012 and it is also not understandable why the notary certificate was obtained. The appellant is in possession of land in dispute consisting of area 1.7282 hectare Gata No. 128.

9. Having heard learned counsel for the appellant and on perusal of the record, we find from the array of the parties that Jaishri Devi s/o. Late Shiv Lal the appellant has filed the instant F.A.F.O. through her brother Mohan Swaroop Sharma s/o. Sri Gir Prasad Sharma, r/o. Village-Nahara, Police Station Lodha, District Aligarh.

10. Mohan Swaroop Sharma claimed himself to be the brother and he has filed the suit on her behalf. Apart from the facts narrated above we being not satisfied as to how the suit not filed by Sri Mohan Swaroop Sharma as next friend or guardian of the appellant Jaishri Devi, therefore, the appeal filed by him is maintainable which does not appeal to us. In this regard, we refer to the provisions of The Mental Health Act, 1987 and Order 32 Rule 4(2) and Rule 15 of the C.P.C. Chapter-VI of The Mental Health Act, 1987 provides for judicial inquisition regarding alleged mentally ill persons possessing property, custody of his person and management of his property. Section 50 provides for application for judicial inquisition into the mental condition of such person may be made either--

(a) by any of his relatives, or

(b) by a public curator appointed under the Indian Succession Act, 1925 (39 of 1925), or

(c) by the Advocate-General of the State in which the alleged mentally ill person resides, or

(d) where the property of the alleged mentally ill person comprises land or interest of land, or where the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any law for the time being in force in the State, by the Collector of the District in which such land is situate, to the District Court within the local limits of whose jurisdiction of alleged mentally ill person resides.

11. A perusal of Section 50 shows that application under the said section can only be made by the persons or authorities specified in clauses (a) to (d) of sub-section (1) of Section 50. Only thereafter Sections 52 to 55 would apply. Section

53 provides for appointment of Guardian of Mentally Ill person, which reads thus:

53. Appointment of guardian of mentally ill person.--(1) Where the mentally ill person is incapable of taking care of himself, the District Court or, where a direction has been issued under subsection (2) of Section 54, the Collector of the District, may appoint any suitable person to be his guardian.

(2) In the discharge of his functions under sub-section (1), the Collector shall be subject to the supervision and control of the State Government or of any authority appointed by it in that behalf.

12. Thereafter, Sections 54 to 64 pertains to management of property of the mentally ill person by the manager appointed, whereas Section 65 confers power upon a district Court on an application made to it by any person concerning any matter whatsoever connected with the mentally ill person or his property on making an order subject to the provisions of Chapter-II.

Thus it is clear that in case of property for mentally ill person and after holding inquisition into a mental condition by any of his relatives or by public servant appointed under Indian Succession Act, 1925 or by the Advocate General of the State be such a person resides or where the property or part thereof of the mentally ill is situate which can be lawfully entrusted to the management to a Court of Wards by the Collector of the district, to the District Court within a local limits of whose jurisdiction such person resides. Similarly under Order 32 Rule 15 read with Rule 4(2) apply to mentally ill persons for appointment of guardian/next friend by the Court and in this regard Rule 4(2) provides as the persons who may act as guardian or next friend.

13. The suit having been filed by the appellant Mohan Swaroop Sharma on behalf of Jaishri who is allegedly mentally ill person is not maintainable as it has not been filed either as next friend or guardian according to the provisions of Mental Health Act, 1987 or Rule 1 to 4 and 15 of Order 32 C.P.C.

14. We may also note that there are two children of the appellant Jaishri Devi namely, Navneet and Kallu. Navneet is above 21 years and Kallu is 16 years old. Since she is having a major son, in these circumstances there is neither any necessity nor any reason for her to allow her real brother Mohan Swaroop Sharma, to file the suit on her behalf on his own in the garb of next friend being her real brother without being appointed as a Manager or guardian of Jaishri Devi to contest the suit.

15. Upon a query made by the Court as to how the suit is maintainable, learned counsel for the appellant has not been able to reply in view of the provisions of Mental Health Act and the C.P.C. For all the reasons stated above, appeal stands dismissed.