
(2004) 09 DEL CK 0041

In the Delhi High Court

Case No : IAs No. 9693 of 1999, 13292 and 12548 of 2000 and 5197 of 2004 in
Test Cas. No.10 of 1987

Shri Jai Prakash Goel

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 15
Mental Health Act, 1987 — Section 2

Citation : AIR 2005 Delhi 83 : (2004) 114 DLT 222 : (2004) 77 DRJ 187

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : V.B. Andley, Hima Kohli, Rajinder Mathur and Charu Verma, for the
Appellant; Nitin Goel, for Respondent No.4, for the Respondent

Judgement

Vikramajit Sen, J.—The question before the Court is whether a guardian ad litem should be appointed for Respondent No.4, namely, Shri Brahm Prakash Goel, who has filed is No.9693/1999 invoking the provision of Order XXXII Rules 3 and 15. It has been prayed that the Wife of Shri Brahm Prakash, namely, Mrs. Meena Goel be appointed as his guardian ad litem. The first thing to be noticed is that this application has been proffered after a passage of over one decade since the filing of Probate Petition No.10/1987. It may also be recorded that Shri Brahm Prakash had earlier filed is No.10110/1998 praying that he be permitted to withdraw his No-Objection to the grant of Probate.

2. A person may not be adjudged as of unsound mind yet the Court may nevertheless consider it appropriate to appoint a guardian ad litem under Order XXXII Rule 15. However, the Court is not bound to make a rigorous or formal enquiry as contemplated by the Lunacy Act, and is competent to pass an order as soon as it is satisfied as to the party's mental competence. There is a vast difference between mental unsoundness and incapacity by reason of mental infirmity, the latter being of a lesser degree. The Collins/Cobuild English Dictionary defines "infirm" as weak or ill and usually old. The Concise Oxford

Dictionary states that "infirm" refers to a person who is not physically strong, especially through age. In Black's Law Dictionary "infirm" has been defined as - weak, feeble, lacking moral character or weak of health. Incapacity has been defined in the same treatise as want of legal ability of act. A person suffering from a low intellectual quotient (IQ) may not be viewable as of unsound mind, but there can be no gainsaying that he would be incapable of protecting his interests in a litigation. The Mental Health Act, 1987, in Section 2(l) defines "mentally ill person" as one who is in need of treatment by reason of any mental disorder other than retardation, thereby drawing a distinction between these states of health. Respondent No.4 would not be of unsound mind but there is no manner of doubt that he is incapable of protecting his interests in the litigation by reason of his infirmity and infliction of an abnormally low IQ. The parents of the parties recognized his mental impairment as is amply evident from the fact that a Trust was allegedly established by their mother. The Petitioner must have been aware of the advisability of having a guardian appointed for him. The Petitioner certainly gained from the situation in that he had dominion and control over the properties bequeathed to Respondent No.4. The Petitioner failed to take the precaution of filing an application under Order XXXII Rule 15. In *Kasturi Bai and Ors. v. Anguri Chaudhary* AIR 2003 SC 1773 the Hon'ble Supreme Court has opined as follows:-

10. Order 32, Rule 15, C.P.C. reads thus:

"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."

11. On a bare perusal of the said provision, it is evident that the Court is empowered to appoint a guardian in the event a person is adjudged to be of unsound mind. It further provides that even if a person is not so adjudged but is found by Court on inquiry to be incapable of protecting his or her interest when suing or being sued by reason of any mental infirmity, an appropriate order there under can be passed. The respondent did not contend that appellant No.1 herein is of unsound mind. As noticed hereinbefore, the respondent herself had filed an application before the trial Court for holding an inquiry to the effect that she suffers from mental infirmity.

12. The learned trial Court refused to do the same and in that view of the matter the High Court, in our opinion, while setting aside the said order could only issue a direction directing the learned trial Judge to hold an inquiry so as to enable it to arrive at a finding as to whether the respondent herein was incapable of protecting her interest by reason of any mental infirmity or not. As no such inquiry was held, there cannot be any doubt whatsoever that the learned single Judge committed a jurisdictional error in passing the impugned judgment which,

the Division Bench as noticed hereinbefore upheld.

In recording this opinion the Court had obviously underplayed the palpable contradiction in that the person who was to be adjudged as mentally infirm had herself made this prayer, and Therefore, strictly speaking, was lucid and intelligent enough to arrive at this conclusion. Secondly, the Court took care to draw a distinction between the two legs of the Section; it differentiated between unsound mind and infirm mind. Thirdly, it underscored the need for the Court to make an enquiry on this issue. The Petitioner was duty-bound and to draw the attention of the Court to Respondent No.4's mental retardation at the inception of the litigation so that the Court could complete its mandate of conducting an enquiry on this question, as has been observed in *Om Prakash Sharma Vs. Union of India*, and *Shri B.K. Khanna v. Shri K. N. Khanna and Ors.*, (1997) 2 Delhi 492. I think that it is imperative for the Court to first satisfy all doubts about the mental aptitude of any of the parties before proceeding in the lis. This has been the consistent view of this Court as would be evident even from a reading of *Jairam Gurnani v. Smt. Shanta Gurnani* (1979) 15 DLT 8. Indeed, it is surprising that the Petitioner continues to resist the appointment of a guardian ad litem for Respondent No.4 even in the face of medical opinion indicating the latter's low IQ, the factum of the establishing of a Trust for Respondent No.4 merely on the specious ground that he is the Head of the Family in the Ration Card, has operated a Bank Account on some occasions, has been photographed during the marriage of his daughter, has filed affidavits etc.

3. This Petition pertains to the Will of the Father of the Petitioner and the Applicant/Respondent No.4 dated 27.8.1993, in terms of which the immovable properties of the Testator were bequeathed absolutely and forever to the Petitioner and his sons. The Will further devised that all debts and liabilities including estate duty shall be first paid out of cash and movable properties that may be left by the Testator and the residue cash and movable properties shall belong to and vest in his three sons, Jai Prakash Goel, Satya Prakash Goel and Brahm Prakash Goel absolutely and in equal shares. Shri Satya Prakash had filed Objections as far back as in November, 1987, whereas Brahm Prakash had accorded his No-Objection by means of an Affidavit dated 27.4.1988 which accompanied a similar Declaration by the Widow of the Testator/Mother of the parties, namely, Late Muthri Devi. The Will of Late Muthri Devi dated 7.6.1988 for which Probate has been applied for in the District Court, bequeathed/transfers the "Land on the left side of the main gate containing three tin sheds Along with puce verandah and a triangular puce room, one tin shed measuring 72".6"x 26".6" on the right side of the main gate, marked Red in the plan shall vest in Trust for the benefit of my son Shri Brahm Prakash presently residing at first floor of 30/22, Shakti Nagar, Delhi-110007. The formation of Trust is necessary because of the improper, unattached and estranged behavior of Smt. Meena Goel towards her husband Shri Brahm Prakash (my son)". It has been contended that the Trust was formed only because of the conduct of Mrs. Meena Goel but I cannot agree with this submission. Obviously, Late Muthri Devi was well aware

that Shri Brahm Prakash could not look after his own affairs and, Therefore, a Trust was required for his welfare. It is unheard of that the moment a misunderstanding between spouses or breakdown of a marriage occurs, the property of the Husband are put into a Trust. The formation of a Trust by the Mother of the parties is sufficient proof that Shri Brahm Prakash is of unsound mind in that he cannot properly and effectively safeguard his interests. It is also not in contention that a Probate Petition in respect of the Will of Late Muthri Devi is also pending adjudication in the District Court in which Shri Brahm Prakash was arrayed as one of the Petitioners, but has since been transposed as a Respondent. It is the common case of the parties that a Trust is sought to have been created by this Will whereby Shri Jai Prakash/Petitioner is to act as a Trustee for Shri Brahm Prakash.

4. Prima facie, it appears that the No-Objection had been filed by Shri Brahm Prakash since the Petitioner/Jai Prakash was then looking after Shri Brahm Prakash and his family. There seems to be a discord in this relationship which has resulted in the first salvo of the litigation, that is, is No.11010/1998 which was dismissed as withdrawn on 20.5.1999. In FAO(OS) No.1999/2001 the Hon'ble Division Bench has clarified and directed that is No.9693/1999, is No.12548/2000 and is No.13292/2000 be decided.

5. As has already been noted is No.9693/1999 prays for the appointment of the Wife of Shri Brahm Prakash as guardian ad litem. is No.12548/2000, in essence, prays for the same relief and shall stand decided by the Orders in is No.9693/1999. is No.13292/2000 has been filed on behalf of Shri Brahm Prakash praying that he be permitted to withdraw his No-Objection dated 27.4.1998. By means of is No.5197/2004 the Petitioner has prayed for the dismissal of the afore-mentioned IAs No.9693/1999, 12548/2000 and 13292/2000. All these applications will, Therefore, be disposed of by the present Orders.

6. The nature of the applications which are pending disposal, especially those filed by or on behalf of Shri Brahm Prakash, prima facie disclose a lack of consistency in the manner in which his defense has been conducted. Learned counsel for the Respondent had contended that the only inference that can be drawn from the fact that Shri Brahm Prakash had filed No-Objection to the grant of Probate in respect of a Will which virtually disinherits him, discloses that he is of unsound mind. This argument must be rejected summarily, since it assumes that a person must oppose the genuineness of a Will only for the reason that he stands to lose from it. This proposition is opposed to law since everyone is expected to speak the truth irrespective of whether that is detrimental to his interests or not.

7. It is not in dispute that Brahm Prakash is slow of understanding and is afflicted with mild mental retardation. It is, however, contended that this state of health does not make it imperative for the appointment of a guardian ad litem, since Shri Brahm Prakash cannot be treated as being of "unsound mind". It has been vehemently contended that Shri Brahm Prakash maintains a daily diary in which

one of the entries records his meeting with Shri R.P. Lao, Advocate. As has been noted is No.11010/1998 had been dismissed as withdrawn on 20.5.1999 because of the filing of is No.5208/1999 which was moved through Shri R.P. Lao, Advocate. It has also been contended by learned counsel for the Petitioner that Shri Brahm Prakash maintains accounts of his food at a Dhaba where he has to take his meals because these are not available to him either through his Brothers or his Wife. This also goes to show that all the relatives had shunned the company of Shri Brahm Prakash quite probably because of his mental malady. Mr. Andley, learned Senior Counsel for the Petitioner has also emphasised that a Ration Card exists in the name of Shri Brahm Prakash but this cannot, in itself, indicate that he was in a state of mind or intelligence which would enable him to effectively and fully protect his interests in litigation. It has also been submitted that Shri Brahm Prakash had appeared before the Sales Tax Authorities; but the complete circumstances have to be seen before one can arrive at the conclusion that Shri Brahm Prakash had effectively protected his interests in those proceedings. Mr. Andley has further vehemently argued that Shri Brahm Prakash has filed Affidavits from time to time. The argument is totally without justification since this cannot also indicate soundness of mind. At the time when he filed his No-Objection Shri Brahm Prakash was admittedly under the influence of and in the protection of the Petitioner and the mother of the parties. As far back as on 6.12.1999 it had been recorded that there is no opposition to the fact that Shri Brahm Prakash is slow of understanding. It has been argued by Mr. Andley that the All India Institute of Medical Sciences required Shri Brahm Prakash to be admitted in the Department of Psychiatric for his complete examination but he declined to do so. By Orders dated 29.9.2000 Shri Brahm Prakash was directed to appear before the Director, Institute of Human behavior and Allied Sciences, Shahdara, Delhi on 31.10.2000. The Institute of Human behavior and Allied Sciences, Shahdara, has reported that Shri Brahm Prakash possesses an I.Q. of 50. He is, Therefore, mentally retarded. Faced with this position learned counsel for the Petitioner had addressed a letter to the Director of the said Institute and has stated therein that Shri Brahm Prakash was not examined by a Medical Board. Mr. Andley has clutched at this statement to put forward his argument that the Court ought not to give credence to the Report about Shri Brahm Prakash's mental retardation. It must be borne in mind that these proceedings are not under the Lunacy Act. The Court has to arrive at a conclusion whether Shri Brahm Prakash is either of unsound mind or by reason of mental infirmity is unable to protect his interests.

8. The Petitioner as well as Late Muthri Devi were well aware of the mental infirmity of Shri Brahm Prakash. When the Petition was filed the Petitioner would have been well-advised to apply for the appointment of a guardian ad litem of Shri Brahm Prakash, and having failed to do so cannot now complain that the Petition is being delayed. As mentioned above, Shri Brahm Prakash was being looked after by the Petitioner and their mother, Late Muthri Devi and, Therefore, followed the dictates of the Petitioner. This situation has been altered, with the

result that Shri Brahm Prakash is no longer under the influence of or beholden to the Petitioner. Filing of the application bearing No.11010/1998 through Shri H.L. Tikku, Advocate praying for the withdrawal of the No-Objection and its abrupt withdrawal through a different counsel additionally shows a vacillating state of mind which cannot but lead to conclusion that Shri Brahm Prakash is unable to protect his interests. My attention has been drawn to the observations made by the Hon''ble Division Bench on 9.10.2001 to the effect that Shri Brahm Prakash, who was accompanied by his Wife, is not a person of weak intellect and is capable of looking after his affairs. If the Hon''ble Division Bench was of that opinion, the entire matter could have been laid to rest in the Appeal itself. A final observation has been made by the Hon''ble Division Bench.

9. Having considered all the aspects of the case not only in 1999 when the matter was earlier dealt by me, and having given a fresh consideration, I am of the unequivocal opinion that Shri Brahm Prakash is, incapable, by reason of his mental infirmity, being of abnormally low I.Q., of protecting his interests in the present litigation.

10. Accordingly, I appoint Mrs. Meena Goel, Wife of Shri Brahm Prakash, as his guardian ad litem. All the pending applications stand disposed of with these Orders.