

(2000) 07 DEL CK 0073

In the Delhi High Court

Case No : F.A.O. (OS) No.119 of 2000

Smt. Surinder Kaur and Others

APPELLANT

Vs

S. Rajdev Singh and Others

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 2001 Delhi 77 : (2001) 1 RCR(Civil) 344

Hon'ble Judges : B.A. Khan, J;A.D. Singh, J

Bench : Division Bench

Advocate : Mr. V.K. Makhija, Mr. Ashok Sapra and Mr. Rajesh Yadav, for the Appellant; Mr. Rajiv Sahni, Mr. D.B. Kalia, Mr. Ajay Kalia and Mr. Rakesh Sahni, for the Respondent

Judgement

Anil Dev Singh, J.—This is an appeal directed against the order of the learned Single Judge dated March 21, 2000. By that order, the learned Single Judge dismissed the application of the appellant under Order 32, Rule 3 read with Section 151 CPC, being I.A. 7974/99 in Suit No.1806/99, seeking appointment of a Medical Board to determine the mental capability of respondent No.1 herein, Rajdev Singh. Brief facts giving rise to the appeal are as follows:-

2. Appellants No.1 to 3 and respondents No.1 to 4 are closely related to each other. The appellants and respondent No. 4 are real sisters of respondent No.1. Respondents No.2 and 3 are the sons of respondent No.1, while respondent No. 5 is a partnership firm in regard to which the appellants claimed to be partners Along with respondents No.1 to 4.

3. On July 9, 1937 the Secretary in State granted a perpetual lease of plot in block No.124, Janpath in favor of Sardar Bahadur Ranjit Singh, father of the appellants, respondents No.1 & 4 and grandfather of respondents No. 2 & 3. A Hotel was constructed by S.B. Ranjit Singh which was christened as Hotel Imperial. On August 16, 1968 S.B. Ranjit Singh entered into a lease agreement with respondent No. 5, a partnership firm comprising of the appellants,

respondents No.1, 3 and 4 & his wife Smt. Rajinder Kaur. On April 30, 1972 Smt. Rajinder Kaur retired from the partnership firm and S.B. Ranjit Singh was inducted as a partner on the same date. On July 1, 1979 firm was again reconstituted when S.B. Ranjit Singh retired from the firm and respondent No.2 was admitted in his place. The lease was renewed from time to time. After the death of Sardar Bahadur Ranjit Singh, property devolved upon Rajdev Singh, respondent No.1. It needs to be noticed that respondent No.1 on February 18, 1999 executed a general power of attorney in favor of respondents No.2 & 3 who are his sons. The appellants on August 16, 1999 filed the suit inter alias for declaration and permanent injunction seeking to restrain respondents from dispossessing the appellants from the property in question. In the suit the appellants inter alias claimed that the appellants and the partnership firm have a vested right to have the lease renewed on the expiry of the term of 5 years ending on June 30, 1999. In the suit the appellants filed an application under Order 32, Rule 3 read with Section 151 CPC asserting that respondent No.1 was suffering from mental infirmity and incapacity. It was prayed that a medical board be appointed to examine first respondent and after receipt of the medical report, in the event of respondent No.1 being declared to be suffering from mental infirmity and incapacity, a guardian be appointed to represent him in the case. The learned Single Judge by his order dated March 21, 2000 rejected the application of the appellants holding that the application was made for ulterior purpose of embarrassing the respondents No.1 to 3, who are defendants in the suit. The learned Single Judge also observed that the plaintiffs have failed to make out a prima facie case to show that respondent No.1 was incapable of protecting his interest and that he ought to be examined by the Court or by a Medical Board for the purpose of determining whether a guardian needs to be appointed to protect his interest at this stage.

4. Learned counsel for the appellants submitted that respondent No.1 has lost his cognitive power and is not in a position to think or comprehend independently and Therefore, due to the mental infirmity he is not capable of protecting his interest. It was also submitted that the power of attorney which was executed by respondent No.1 in favor of respondent No.2 & 3 was worthless after he was afflicted with mental infirmity as he was not in a position to continue to exert his authority over his agents with the result their acts can not bind him.

5. Learned counsel in support of his submission relied upon a decision of Allahabad High Court in Mahendra Pratap Singh (deceased) and another Vs. Smt. Padam Kumari Devi, and a division bench of this Court in B.B. Khanna & Co. Vs. K.N. Khanna etc. 1997 RLR 431. In so far as the legal position adumbrated in the aforesaid authorities is concerned, there cannot be any quarrel. The provisions contained in Order 32 empower the Court to take appropriate steps where party to the proceeding is a minor or a person who is incapable of protecting his interest, whether by reason of unsoundness of mind or mental infirmity, to ensure that their interest in relation to the proceedings are protected. But these authorities are hardly of any assistance in this case as we are in complete

agreement with the learned Single Judge that the plea of mental infirmity of respondent No.1 has not been raised bona fide.

6. It needs to be noticed that respondents No.1 to 3 have refused to renew the term of partnership and the lease. We find that according to the case of the appellants the first respondent was afflicted with meningitis in 1992 which affected his brain. From 1992 till the filing of the suit in August 1999, no such question relating to the mental incapacity of the first respondent was agitated or raised either before any judicial forum.

7. We also find that in response to the various letters particularly letters of the first respondent dated 23rd April, 1999, 26th April, 1999, 26th May, 1999 and 28th May, 1999, the appellants did not raise the issue of mental infirmity of the first respondent. Even though reading of these letters show that the first respondent was not willing to renew the lease agreement or the term of the partnership. Rather in one of the letters dated 18th January, 1999 the appellants reposed full faith in the first respondent and stated that they will be with him through thick and thin and there will be never any occasion to differ from his decision. This letter reads as follows:-

Respectful sat Sri Akal in the past Bapuji is very kindly looked after us all and there-after you have been equally kind to us. But for our dear father and yourself we may not have been so comfortable in life as we are which we are be over grateful to you.

We feel that since discussion regarding partnership extension is going to be held in the meeting to be held on the 23rd Jan 99 we all feel and expect in right earnest that you will keep up with you as has been so far.

We all sincerely assure you that we will all be with you through thick and thin and there will never be any occasion to differ from you decisions. Under the circumstances we would be most grateful if you would kindly consider and be magnanimous in keeping us with you in the renewal of partnership deed of Rajdev Singh & Co.

8. In case the first respondent who had suffered an attack of meningitis in 1992 and was not in a position to think properly or understand the views of others due to mental infirmity, appellants would not have expressed faith in him. It is only after the appellants found that the partnership deed and the lease was not being renewed by the first respondent and he would not budge from his statement, the question relating to mental infirmity of the first respondent was raised for the first time in the suit. Therefore, we have no hesitation in endorsing the views of learned Single Judge that the plea of mental infirmity of the first respondent has not been raised bonafide.

9. We do not find any infirmity in the reasoning of the learned Single Judge. The appeal, Therefore, fails and is hereby dismissed.