

Kashi Bai and Another Vs. Kashi Ram and Others

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Court : Madhya Pradesh

Decided On : Sep-13-2000

Reported in : 2001(1)MPHT239

Judge : Mr. Dipak Misra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order XXXII, Rules 1 to 15 (except Rule-2A); [Lunacy Act, 1912](#)

Appeal No. : Civil Revision No. 140/2000

Appellant : Kashi Bai and Another

Respondent : Kashi Ram and Others

Advocate for Def. : Shri Ashok Chakravaty, Adv.

Advocate for Pet/Ap. : Shri Awadh Tripathi, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Dipak Misra, J.

1. Invoking the revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure (hereinafter referred to as 'the Code') the defendant Nos. 2 and

3 have called in question the sustainability of the order dated 11-10-99 passed by the learned First Civil Judge, Class-II, Raisen in Civil Suit No. 19-A/99.

2. The facts as have been undraped are that the non- applicant No. 1 as plaintiff instituted the aforesaid civil suit against the applicants as well as non-applicant Nos. 2 and 3. The present applicants are defendant Nos. 2 and 3 and the non-applicant No. 2 is the defendant No. 1. The present applicants after appearing filed an application under Order XXXII Rules 3 and 15 of the Code stating, *inferred alia*, that the defendant No. 1, Bhairo Singh, is the husband of defendant No. 2 and father of defendant No. 3 and is a person of unsound mind and has been availing treatment at Gwalior Mental Hospital and is unable to defend his rights in the Court. In this backdrop it was prayed that a guardian ad litem be appointed so that through him the defendant No. 1 can protect his rights. The aforesaid application was resisted by the plaintiff by setting-forth that the defendant No. 1 is not mentally unsound and such a plea has been advanced in a malafide manner to wriggle out of the sale-deed executed by him in favour of the plaintiff.

3. After the application was filed and objection was raised by the plaintiff the learned Trial Judge procured the attendance of defendant No. 1 and examined him by putting questions relating to controversy involved in the suit. The learned Trial Judge came to hold that by examination of defendant No. 1 it was not perceptible that he was of unsound mind. The Court below also addressed himself with regard to documents filed to substantiate the plea that the defendant No. 1 is of unsound mind and on scrutiny of the said documents opined that there was no single document which indicate that the defendant No. 1 was of unsound mind. The learned Trial Judge also came to hold that no medical certificate was produced showing that defendant No. 1 was suffering from any mental illness. He also commented that there was over-writing on medical prescriptions. Being of this view he rejected the application preferred by defendant Nos. 2 and 3.

4. Assailing the aforesaid order it is submitted by Mr. Awadh Tripathi, learned counsel for the applicants, that the learned Trial Judge has erroneously recorded the finding that the defendant No. 1 is not of sound mind and is not incapable of protecting his interest in the suit without causing an enquiry. It is further submitted

by him that it was incumbent on the Court below to hold a judicial enquiry and come to a finding whether the defendant No. 1 is incapable of protecting his own rights but as the same has not been done the order passed by him is vulnerable in the eye of law.

5. Combatting the aforesaid submissions it is submitted by Mr. Ashok Chakravaty, learned counsel for the non-applicant No. 1/plaintiff, that the learned Trial Judge has scanned the document brought on record and come to hold that the defendant No. 1 is not a person of unsound mind and such a finding being based on proper appreciation of material brought on record cannot be found fault with. It is further canvassed by him that the learned Trial Judge has examined the defendant No. 1 and asked him pertinent questions and upon perusal of answers has concluded as a matter of fact that the defendant No. 1 is not suffering from mental infirmity, and hence, the order passed by the Court below is defensible. Lastly, it is urged by him that in law the Court is required to hold an enquiry and in the present case the same has been done and when there is no room for doubt the order passed by the learned Trial Judge does not warrant any interference in exercise of revisional jurisdiction.

6. To appreciate the rival submissions raised at the Bar it is apposite to refer to Order XXXII Rule 15 of the Code. It reads as under:--

'15, 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.'

On a bare perusal of the rule it becomes graphically clear that it deals with two distinct classes of persons. The first category relates to the persons who have been adjudged to be of unsound mind. The other category is concerned with persons who are not so adjudged but those whom the Court may find incapable to protect their interest because of any mental infirmity. As far as second category is concerned a mandate is cast on the Court to conduct an enquiry. However, there is no indication about the method and manner in which the enquiry is to be

conducted. It can safely be said that the type of enquiry would depend upon the facts and circumstances of the case. The aforesaid rule has been interpreted by many a High Court and the Courts have expressed the view that if a person who has not been adjudged as a person of unsound mind under the provisions of the [Lunacy Act, 1912](#) is also covered for the benefit of this rule if the Court upon enquiry finds out that the person by reason of any mental infirmity is incapable to protect his interest when suing or being sued. The Court is required to hold a judicial enquiry and come to a finding with regard to incapability of the person concerned. In this context I may profitably refer to the decision rendered by the Delhi High Court in the case of B.K. Khanna v. K.N. Khanna and others, AIR 1978 Delhi 48, wherein it has been held as under :--

'10..... The provisions contained in Order 32 not only empower the Court to take appropriate steps where a party to the proceedings is a minor or a person who is incapable of protecting his interest whether by reason of unsoundness of mind or mental infirmity, but also cast a mandatory duty on the Court to take steps to ensure proper representation for such persons so as to ensure that their interest in relation to the proceedings are fully protected. These provisions are a legislative recognition of the well-known principle that the State, as indeed the Court, which is part of the judicial wing of the State is in locus parentis to its citizens, who are either minors or are incapable of protecting their interests in judicial proceedings by reasons of unsoundness of mind or mental infirmity. There can, therefore, be no doubt that before the Court proceeds with a suit or other proceedings, in which one of the parties is either a minor or otherwise incapable of protecting his interests, the Court is bound to hold a preliminary enquiry and, if satisfied that the conditions of the relevant rules are attracted, to make appropriate directions with regard to the proper representation of such persons....'

It has also been held by the Courts that a person who is mentally infirm by reason of physical ailment can invoke the provision enshrined under Order 32 Rule 15. The main thrust of submission of Mr. Tripathi is that no enquiry has been conducted. To appreciate the submission of the learned counsel I have perused the impugned order with utmost anxiety. It is note worthy to mention here that the plea of unsound mind of defendant No. 1 was canvassed by the defendant Nos. 2

and 3 and in support of their plea they filed certain documents. The learned Trial Judge has carefully scrutinised the said documents and has expressed his opinion in that regard. He has found that the documents are not worthy of credence and I do not find any compelling reason to differ with the same. Quite apart from the above the learned Trial Judge has examined the defendant No. 1 by putting him certain questions which are relevant for the purpose of the controversy and has found that the defendant No. 1 is in a position to answer the said questions and hence, it can be concluded that he is capable of defending himself.

In view of the aforesaid, I am of the considered opinion that an enquiry has been conducted by the learned Trial Judge and finding has been recorded after due enquiry. As conclusions are reached on proper appreciation of facts on record and examination of defendant No. 1, I do not perceive any jurisdictional error or material irregularity in exercise of jurisdiction in passing of the impugned order.

7. Resultantly, the civil revision is sans merit and the same is accordingly dismissed.

8. Civil Revision dismissed.

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