

Shanti Devi Vs. Pushpawati Etc.

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Court : Delhi

Decided On : May-23-1979

Reported in : 1979RLR572

Judge : S.S. Chadha, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 32, Rule 3

Appeal No. : Criminal Revision Appeal No. 272 of 1979

Appellant : Shanti Devi

Respondent : Pushpawati Etc.

Advocate for Pet/Ap. : D.L. Malhotra and; R.K. Anand, Advs

Judgement :

S.S. Chadha, J.

(1) This revision petition under Section 115 of the Code of Civil Procedure is directed against the order dated 12th March, 1979 passed by Shri V.K. Jain, Sub-Judge, 1st Class, Delhi allowing the application of Smt. Pushpa Wati Chadha (Plaintiff-respondent No. 1 herein) under Order 32 of the Code of Civil Procedure for appointment of Smt. Shanti Devi Defendant No. 1 petitioner herein) as guardian-ad- litem of minor defendant Miss Veena Kumiri.

(2) The plaintiff filed a suit for possession against the defendants in respect of shop No. 9941, Nawab Ganj. Library Road, Delhi. Summons of the suit were issued to the defendants. On 6th November, 1978 counsel for defendants 1 to 7 put in appearance and filed the written statement. No appearance was put in on behalf of Miss Veena Kumari (Minor), defendant No. 8 in the suit. The learned counsel for defendants 1 to 7 submitted on that date that defendant No. 1 does not want to be appointed as guardian of defendant No. 8. Defendant No. 1 to 7 also took a preliminary objection in the written statement that no application under Order 32 Rule 3 of the Civil Procedure Code has been filed for the appointment of guardian of minor defendant No. 8 and even as per the mandatory provisions of law no list of relations of minor has been filed and thus the suit merits dismissal on this short ground. The Court adjourned the case on 6th November, 1977 for further proceedings regarding defendant No. 8. The plaintiff then moved an application under Order 32 Rule 3 read with Section 115 of the Civil Procedure Code praying that Smt. Shanti Devi is the real mother of defendant No. 8 and she is the natural guardian of defendant No. 8 (minor), that Smt. Shanti Devi being the natural guardian has no interest adverse to that of the minor and she is a fit person to be appointed as guardian and that under the provisions of Order 32, a guardian is to be appointed on behalf of minor defendant No. 8. Defendants 1 to 7 raised an objection that the application is misconceived and is not maintainable as no list of relations of the minor with their addresses as required under the provisions of law has been filed and even no affidavit that the person who is to be appointed as guardian of the minor is a fit person, has been filed, along with the application.

(3) By the impugned order dated 12th March, 1979, the trial Court noted that it is not disputed that defendant No. 1 is the mother of defendant No. 8. Thereafter, the application was allowed and defendant No. 1 was appointed as guardian of defendant No. 8.

(4) Order 32 of the Civil Procedure Code lays down the procedure for suits by or against minors and persons of unsound mind. Rule 3 provides for the appointment of a guardian by the Court for minor defendant. An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. Such application has to be supported by an affidavit

verifying the fact that the proposed guardian has no interest in the matters of the controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed. Sub-rules (3) and (4) added by the Punjab and Haryana High Court which is also applicable to the High Court of Delhi, provides that the plaintiff shall file with his plaint a list of relatives of the minor and other persons with their addresses who prima facie are likely to be capable of acting as guardian and the list shall constitute an application by the plaintiff under sub-rule (2). The Court is also empowered at any time after institution of suit to call upon the plaintiff to furnish such a list. Under rule 4 of Order 32 of the Gpc, no order shall be made on any application except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or where, there is no such guardian, upon notice to the father or where there is no father, to the mother or where there is no father or mother, to other natural guardian of the minor, or where there is no father, mother or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with the notice under this subrule.

(5) Another glaring illegality committed by the trial Court in exercise of its jurisdiction is the appointment of the guardian against her consent. Sub-rule (3) of Rule 4 of Order 32 of the Civil Procedure Code provides that no person shall without his consent in writing be appointed guardian for the suit. The object of the rule is to safeguard the interest of the minor by ensuring that the guardian who takes upon himself the responsibility of defending the interest of the minor defendant shall be appointed with his consent. On 6th November, 1975, the learned counsel for defendant No. 1 stated that defendant No. 1 does not want to be appointed as guardian of the minor. In view of this categorical statement, defendant No. 1 could not be appointed as guardian-ad-litem even though she is the mother of the minor.