SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Surinder Kaur and Others Vs. Sardar Rajdev Singh and Others

Surinder Kaur and Others Vs. Sardar Rajdev Singh and Others

SooperKanoon Citation : sooperkanoon.com/697128

Court : Delhi

Decided On : Mar-21-2000

Reported in : 2000VAD(Delhi)545; AIR2000Delhi306; 85(2000)DLT527; 2000(54)DRJ117

Judge : Manmohan Sarin, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 151 - Order XXXII, Rule 3

Appeal No. : IA. 7974/99 in Suit No. 1806/99

Appellant : Surinder Kaur and Others

Respondent : Sardar Rajdev Singh and Others

Advocate for Def. : Mr. Gopal Subramanium, ; Mr. P. Chidambaram, ; Mr. Rajiv Sa

Advocate for Pet/Ap. : Dr. A.M. Singhvi and; Mr. V.K. Makhija, Senior Advs.,; Mr.

Judgement :
ORDER

Manmohan Sarin, J.

1. By this order, I would be disposing of is No. 7974/99 moved by the plaintiffs under Order XXXII, Rule 3 read with Section 151 CPC. The plaintiffs pray that a

medical board be constituted to determine the alleged mental infirmity and incapacity of defendant No. 1 and after being satisfied with medical report a guardian be appointed to represent defendant No. 1 in the case. Reply to the said application has been filed by the defendants.

2. Before noticing the pleadings and the respective contentions of the parties and the submissions made by counsel, it would be appropriate to notice the salient facts and circumstances in which this application has come to be made by the plaintiffs in the present suit.

3. The plaintiffs instituted the present suit inter alias for declaration, permanent injunction etc., seeking to retrain the defendants from dispossessing the plaintiffs, from the estate and the building bearing municipal No. 124, Ganja, New Delhi comprising Hotel Imperial in August, 1999. Defendant No. 4 i.e. Bibi Amrit Kaur, as a plaintiff, had also instituted a suit for permanent injunction in June 1999, bearing No. 1306/99 against the defendants in the present suit. Bibi Surinder Kaur, Bibi Gobinder Kaur and Bibi Amarjit Kaur, were also arrayed as defendants. A restraint was sought in the said suit against defendants 1 to 3 from dispossessing the plaintiffs and other partners from the premises Hotel Imperial.

4. The plaintiffs are the daughters of late Sardar Bahadur Ranjit Singh and sisters of defendant No. 1 and Anut of defendants 2 and 3, son of defendant No. 1 Sardar Rajdev Singh. Defender No. 4 is also the sister of defendant No. 1. Defendant No. 5, M/s Rajdev Singh and Co., is a partnership concern of the plaintiffs and defendants and Sardar Gopal Inder Singh.

5. The case of the plaintiffs in brief is that the partnership firm M/s Rajdev Singh and Co. was formed by late Sardar Bahadur Ranjit Singh, to ensure the economic security and well being of his daughters namely the plaintiffs and defendant No. 4 Sardar Bahadur Ranjit Singh was the lessee and owner of the property bearing No. 124, Janpath, New Delhi. This devolved upon Mr. Rajdev Singh, defendant No. 1 to the exclusion of all the legal heirs of Sardar Bahadur Ranjit Singh. The defendant No. 1 granted a lease of the property in question in favor of the partnership firm M/s Rajdev Singh and Company wherein earlier Sardar Bahadur Ranjit Singh was also a partner and upon his death, the plaintiffs and defendants

continued as partners.

6. Plaintiffs claim that term of partnership between the parties was to harmonise with the lease of the property granted in favor of the partnership with renewal options till 2014. The deed of partnership dated 1.7.1979 was for a period of 20 years, expiring with efflux of time on 30.6.1999. The plaintiffs' case is that since lease has renewal options up to 2014, the partnership deed was also to be renewed so as to harmonize with the lease. It is further claimed that the partnership had incurred substantial expenses on renovation and improvements in the hotel building running into cores of rupees.

7. Coming to the application, it is averred that defendant No.1 in the year 1992, suffered an attack of mening IT is leading to severe brain damage. The health of defendant No. 1 had been deteriorating since January, 1995, he is not in control of his cognitive faculties and as such not in a position to carry out the functions of the managing partner of the firm or in a position to protect his interest or defend the suit. It is claimed that defendants 2 and 3, purporting to act as his attorney, are attempting to hijack the business to the detriment of the plaintiffs and the firm, who have spent substantial sums, by illegally not renewing the partnership and determining the lease.

8. It is in this back ground that the plaintiffs filed the present suit seeking inter alias declaration that defendants Nos. 1 and 3, having neither renewed the partnership nor exercised the option to renew the lease, have opted out of the partnership business and the remaining partners were entitled to continue with the partnership business, without interference from defendant Nos. 1 to 3. A restrain on the defendants from dispossessing the plaintiffs or handing over the leased property or partnership property to the owner or third parties or creation of third party interest was also sought. A number of other reliefs including mandatory injunction for execution of lease as well as appointment of committee of wind up the partnership firm were also sought. It is not necessary to advert to all the reliefs sought for disposal of this application.

9. Learned Senior counsel Dr. Singhvi appearing for the plaintiffs urged that defendant No. 1 having suffered severe set backs in his health was not in control

of his cognitive faculties and was incapable of protecting his interests in the suit. In such a situation, it was the duty of the court to summon him and to examine him to assess if he was capable of defending his interest. He submitted that the events from February 1999 to August 1999 had completely exposed the mental infirmity and incapability of defendant No. 1. The execution of the power of attorney dated 18.2.1999, in favor of defendants 2 & 3 curiously provided for its being operative even during incapacity of the executor. This he urged reflected a guilty mind on the part of defendants 2 & 3, who having anticipated the deteriorating health were preparing grounds to avoid any challenge to the said authority by inserting a provision thereforee. He urged that the court as a first step to order the defendant No. 1 to be present and examine him orally to satisfy itself as to his mental and physical state of being capable of defending the suit and protecting his interest. A prima facie view without any detailed examination or enquiry would suffice in the first instance. The defendant Nos. 2 and 3 should have no objection since it was their case that defendant No. 1 was fully capable of protecting his interest. Learned counsel for the plaintiffs placed reliance on the following authorities:

a. Ram Lal v. Laxmi AIR 1949 (36) Ajm 48.

b. A.S. Mohammed Ibrahim Ummal & Shahul Hameed Ummal v. Shaik Mohammad Marakayar & Another AIR (36) 1949 Mad. 292

The Court in the first case had examined the party suffering from paralysis and found him to be mentally weak minded and unable to conduct the suit filed and hence directed appointment of guardian or next friend. In the second cited case, it was held that the court has ample jurisdiction to enquire whether the plaintiff by reason of unsoundness of mind or mental infirmity, was incapable of protecting his interest and this was more so, when the question of unsoundness of ming arose not only under Order XXXII CPC but also as a substantial issue in the suit on the pleadings. In the instant case, the allegation in pleadings being that the attempt of defendants 2 and 3 to usurp and hijack the partnership and the partnership property, had led to disharmony and disputed between partners. Further, the defendant Nos. 2 and 3, were exploiting the mental and physical infirmity of defendant No. 1, by acting to the detriment of the partnership firm and that of the

plaintiffs.

Learned counsel urged that in the instant case all the pleadings on behalf of defendant No. 1 were being signed by defendants 2 and 3 as attorney. The state of health of defendant No. 1 was such that he could not even append his signatures properly and the signatures in several documents have been got attested as having been signed by defendant No. 1 in presence of the person attesting.

10. Mr. Vijay Makhiji, Senior advocate for plaintiff and Mr. Ashok Chhabra, counsel for defendant No. 4 also argued in support of the application to urge that in the instant case the sickness and medical record of defendant No. 1 was not in dispute. Defendant No. 3, in para 3 of the reply admits the allegations made in the application with regard to the health of defendant No. 1. In these circumstances, It was urged that it was the mandatory duty of the court to safeguard the interest of defendant No. 1. The court had only to orally examine the defendant NO. 1 in a preliminary enquiry to satisfy itself. Learned counsel submitted that the reliance on the Clause in the power of attorney, making a provision of its still being operative and valid, in the event of incapacity of the executant would not help the defendants. In this regard reliance was placed on 1993 Allahabad 143, Mahender Pratap Singh (deceased) and another v. Padam Kumari Devi. In this case it was held:-

Where the principle was found to be old, feeble, week and mentally infirm and not in a position to think independently for herself, the power of attorney executed by her would become worthless. The principle must be in a position to take an authorisation, continue to exert his or her authority so that the agent binds the principle.

In the above cited case, it was also held that preventing the court from making an enquiry into the mental infirmity of a party by an agent or attorney was obstructing the course of justice. The court also then referred to the provisions of Order III, Rule 1 and Order V, Rule 3 with regard to the powers of the court directing the parties to be present. Reliance was also placed on B.B. Khanna and Co., v. K. N. Khanna etc., reported at 1994 RLR 431 with regard to scope of Order XXXII, Rule

3 CPC, wherein the court held as under:

Order 32 Rule 3 of the Code of Civil Procedure provides that where the defendant was a minor the Court on being satisfied with regard to the fact of his minority shall appoint a proper person to be guardian in suit for such minor. By virtue of provisions of Rules 1 to 14 of Order 32, relating to minors, are made applicable, so far as may be, 'to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the court on enquiry, by reasons of unsoundness of mind or mental infirmity to be incapable of protecting their interests when suing or being suit'. 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 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 or protecting their interests in judicial proceedings by reasons of unsoundness of mind or mental infirmity. There can, thereforee, be no doubt that before the court proceeds with a suit or other proceedings, in which one of the parties is either a minor of 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. In such a case it would not be open to the court to consider the suit or the other proceedings before complying with these mandatory requirements.

11. Counsel for plaintiffs and defendant No. 4 thus submitted that there was no reason for defendants 2 and 3 to shy away from the examination of defendant No. 1 by the court, specially when they contended that defendant NO. 1 was capable of defending the suit and protecting his interest.

12. There can be no doubt with regard to the jurisdiction and power of the court to direct the personal presence of any of the parties and for its oral examination by

the court or if required a medical examination to ascertain whether the party is either by unsoundness of mind or mental infirmity, incapable of protecting its interest. The legal propositions laid in the authorities cited above, are not in issue. The question which arises for consideration is whether the plaintiffs or defendant No. 4,in the facts and circumstance of the present case, have prima facie shown that defendant No. 1, because of mental infirmity is incapable of protecting his interest and that the court should step in and initiate the process of appointment of a guardian?

13. The present application is vehemently opposed by defendant NOs. 1 to 3 on the ground that the same has been filed malafide with the intention to discredit and embarrass the defendant No. 1 to 3 for collateral purposes as the plaintiffs had addressed letters to the banks also.

14. Learned senior counsel Mr. P. Chidambaram submitted that Order XXXII Rule 3 and Rules 1 to 4 CPC are to apply to persons adjudged before or during the pendency of the suit to be of unsound mind. The provisions also apply to persons, who though not so adjudged are found, on enquiry by the court, to be incapable, be reason of any mental infirmity, of protecting their interest when suing or being sued. He submitted that in the instant case the actual grievance of the plaintiffs was not that the defendant no. 1 was incapable of protecting his interest rather it seemed to emanate from the fact that the interest of defendant No. 1 was being protected rather too well to the liking of the plaintiffs.

15. Counsel for both the parties placed reliance on the correspondence exchanged between the parties and the documents executed. Counsel for both the parties have taken me through the correspondence exchanged in support of their respective contentions.

16. Having perused the pleadings, the documents and the correspondence exchanged between the parties and having heard the learned counsel for both the parties. I find considerable merit in the submissions made by Mr. P. Chidambaram and Mr. Rajiv Sawhney Senior advocates for defendants 1 to 3 that the present application is not a bonafide one. It is a self serving application made by an adversary party for its own benefit and is actuated by the desire to somehow

belatedly question and assail the action of defendant Nos. 1 to 3 of not renewing the partnership term and lease. Besides, the plaintiffs have failed to make out a prima facie case to show that defendant No. 1 was incapable of defending his interest in suit. Accordingly it was not necessary to either have a medical board examine him or for the court to order his presence at this stage for the reasons stated below.

17. As observed earlier, the lease granted by defendant No. 1 to the partnership firm was renewed in the year 1994 for a period of 5 years. It has renewal options up to 2014 as per the original lease of 1979. The partnership term expired on 30.6.1999. It is the non-renewal of the partnership deed which got over by efflux of time and the lease, which has triggered the present litigation. From the events that had transpired, one fact which clearly flows is that that according to the plaintiffs, defendant NO. 1 suffered as attack of mening IT is in 1992, resulting in severe brain damage and his condition is stated to have worsened thereafter. The plaintiffs did not from the year 1992 till 1999, raise the issue of the alleged mental infirmity of defendant No. 1. It is also significant that defendant No. 4, who filed Suit No. 1306/99 in June, 1999, did not make a similar prayer in the suit.

18. Defendant No. 1, who as Managing partner of the partnership firm, defendant NO. 5, had been managing the affairs of the firm. In March, 1997, defendant NO. 1 by a letter addressed to all the partners raised certain concerns with regard to the actions of partners in making the firm and the other partners liable as also the question of tax liability which was under litigation. This letter was responded by partners giving their response and assuring that the pendency of litigation with regard to tax, should not cause any concern, as it was the liability of the partnership firm and even if the same is decided by courts after expiry of term of the partnership, the partners including the defendants in their individual capacity would be liable. The above would show that the partners were fully conscious of the fixed term of the partnership. Defendant No. 1 thereafter again sent a notice on 15.1.1999, fixing a meeting to discuss the issue arising out of the expiry of the partnership term and preparation of final accounts on 15.1.1999. The response of the plaintiffs to this letter was by the letter dated 18.1.1999. The relevant extract from the same is as under:

'We feel that since discussion regarding partnership extension is going to be held in the meeting to be held on the 23rd Jan. 1999 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 these will never be any occasion to differ from your 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 and Co.

Gratefully yours

Surinder Kaur,

Gobinder Kaur,

Amarjit Kaur,

There was no suggestion here that the defendant NO. 1 was not in control of his cognitive faculties due to mental infirmity or that he was incapable of handling the affairs. As a matter of fact, defendant No. 4 in her letter of 1.2.1999, stated that the health of the designate Managing partner was of concern to all. His indisposition and bad health required that all partners make a mutually acceptable arrangement to conduct the day-to-day business, suggesting that in the meantime, all the partners shall take collective decisions in all matters of mutual concern. Thereafter, requests were made for renewal of the lease.

19. It was finally the notice of 23.4.1999, notifying that the partnership firm would determine by efflux of time on 30.6.1999, with the statement of account enclosed therewith together with valuation report, calling plaintiffs. The plaintiffs also addressed letters purporting to exercise their option to renew the lease for a further period of 5 years. These letters were duly addressed to defendant No. 1 only, whom the plaintiffs now claim to be incapable of defending his interest in the suit or having lost control of his cognitive faculties.

20. From the foregoing, it is clear that the present application by the plaintiffs stems out of the actions taken by the defendant Nos. 1 to 3 in not extending the partnership term and moving for its winding up and the non-renewal of the lease. It may also be noticed that the plaintiffs sub-mission that the defendants 2 and 3 were exploiting mental infirmity of defendant No. 1 to hijack the business and terminate the partnership is really of no consequence. Defendants 1 and 3 are partner in their own right and it is well within the rights of any of the partners not to agree to the extension of the partnership which expired with efflux of time. The defendant Nos. 1 to 3 claim that the partnership has come to an end on 30.6.1999. Defendant No. 1 carried on the activities as Managing Partner during its currency. During his absence on account of illness defendant No. 1 was represented by his attorneys defendant Nos. 2 and 3. The day-to-day affairs of hotel were looked after by defendant NO. 1. The genesis of this adversarial litigation lies in the actions of defendant No. 1 and of his attorneys being perceived as prejudicial to and harming the interest of the plaintiffs. The fact that defendant No. 1 is in a delicate state of health is not denied by the other defendants. The defendants 2 and 3 claim that defendant No. 1 was advised complete rest in August 1999 and to be isolated and kept free from tensions, which has prompted the plaintiffs to file this application. It may be that because of his age and physical state, the defendant No. 1 is not capable of actively participating in business and hence is acting through his sons, who are attorneys to protect his interests. However, from this an inference of defendant No. 1 being mentally infirm and incapable of protecting his interest cannot be drawn. From the pleadings and documents or record, it cannot be said that defendant No. 1 is either incapable of protecting his interest or that his interests are not being protected, as discussed in paras 17 to 20 hereinabove. The observations made above are on a prima facie view of the matter and will not affect the trial of suit on merits.

21. On the facts and circumstances of this case as noted above and the correspondence on record and the chain of events and circumstances as discussed, I am of the view that plaintiffs have failed to make out a prima facie case to show that defendant No. 1 was incapable of protecting his interest due to mental infirmity and that he ought to be examined by the court or by a medical board for appointment of a guardian to protect his interest at this stage.

22. The application has been made for ulterior purposes to embarrass the defendants and has no merit and is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com