

Surinder Kumar Gupta Vs. Manju Rani

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Court : Himachal Pradesh

Decided On : Sep-20-1995

Reported in : II(1996)DMC508

Judge : A.L. Vaidya, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 12(1) and 13; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17 - Order 32, Rule 15

Appeal No. : C.R. No. 228 of 1994

Appellant : Surinder Kumar Gupta

Respondent : Manju Rani

Advocate for Def. : Om Parkash and; P.P. Grewal, Adv.

Advocate for Pet/Ap. : K.D. Sood, Adv.

Disposition : Revision petition allowed

Judgement :

A.L. Vaidya, J.

1. Mrs. Manju Rani, respondent, has preferred a petition under Section 12 of the Hindu Marriage Act for annulment of her marriage with the present petitioner. In the alternative, she has prayed for dissolution of the marriage by a decree of

divorce under Section 13 of the Hindu Marriage Act. The annulment of the marriage has been sought for on the ground that the husband has been suffering from mental disorder and the disease was diagnosed as 'Maniac Depression Psychosis' and according to the lady, the husband was under treatment at P.G.I., Chandigarh. It has also been pleaded by the wife that the husband had concealed this material fact from her at the time of marriage and she was not informed about the ailment from which the husband was suffering. According to her, her consent to the marriage was procured by concealment of the aforesaid fact and the consent was obtained by fraud.

2. The aforesaid petition was filed as far back as January, 1993. The husband contested the petition and denied the allegations made therein. The learned District Judge put the parties on trial on the issues framed on 29.4.1993 and thereafter, part of the evidence was examined, by the wife, when she preferred a petition under Order 6 Rule 17, CPC seeking permission to amend the petition.

3. It has been pleaded in the petition preferred under Order 6 Rule 17, CPC that inadvertantly, the petitioner did not seek the appointment of a guardian under Order 32, CPC and Rule 8 of the Hindu Marriage and Divorce Rules, 1982 and the following amendment was sought to be added in the petition, by way of adding para 1-a as under :

'1-a That the respondent is suffering from mental disorder. That the respondent may be allowed to be proceeded through his real brother Ram Prasad, Shopkeeper s/o Parmeshwari Dass r/o Kachehri Adda, Dharamsala and through his mother Smt. Champa wd/o Parmeshwari Dass presently c/o Ram Parshad r/o Kachehri Adda, Dharamsala. That these persons have got no adverse interest in the matter in controversy in the petition above described against the respondent.'

This petition was contested by the husband. It was pleaded in the reply that the respondent was a fit person to contest the petition and was not required to be proceeded through his brother or mother as alleged by the petitioner. It was also averred that the amendment sought to be introduced, was an after-thought and was sought to fill up the gap and to cover up the inherent defect in framing the petition and could not be allowed. According to respondent, the amendment, if

allowed, would change the nature of the petition.

4. The learned District Judge, after hearing the parties, passed the following order:

'The application made by the petitioner under Order 6 Rule, 17 CPC is accordingly allowed and she is permitted to amend her petition to sue the respondent through a guardian adlitem, as prayed. Be it stated that this amendment of the petition and appointment of guardian adlitem for the respondent is only for limited purpose of holding an inquiry as to the unsoundness of the mind of the respondent as envisaged under Rule 15 of Order 32 Code of Civil Procedure. No orders as to costs.'

The aforesaid order has been assailed in the present revision petition on various grounds.

5. I have heard the learned Counsel for the parties and have also gone through the record.

6. The learned District Judge has rightly held that Rule 15 of Order 32, CPC envisages that in the case of a person who has not so far been adjudged as of un-sound mind, the Court is to hold inquiry to find out whether the person alleged to be of un-sound mind, was incapable by reason of any mental infirmity of protecting his interest when being sued. The learned District Judge also came to the conclusion that the question of un-soundness of mind of the respondent was in dispute between the parties, so it would be in the fitness of things to allow the petitioner to amend the petition and the respondent was permitted to be represented through a guardian adlitem for the purpose of holding an inquiry as to the un-soundness of the mind of the respondent.

7. There is no dispute to the proposition that inquiry as envisaged under Order 32 Rule 15 has to be held by the Court, whether the husband in the present case who was alleged to be of un-sound mind, was incapable by reason of any mental infirmity of protecting his interest when being sued. The learned District Judge has, no doubt, allowed the amendment, for limited purpose, but amendment, as asked for, has to be accepted or dis-allowed. There was absolutely no provision under

the Code of Civil Procedure to allow an amendment for some limited purpose. For example, after making an inquiry under Order 32 Rule 15, if the Court comes to the conclusion that the proposed amendment is not to be allowed, then the order has to be passed in that manner and if Court comes to the conclusion that the person was found to be of un-sound mind, then the order has to be passed by the Court allowing the amendment, as has been asked for. So, before an amendment sought to be introduced by the wife can be allowed or dis- allowed, the inquiry under Order 32 Rule 15 has, at first instance, to be conducted by the Court and thereafter any order, as per the result of the inquiry, can be passed to dispose of the application preferred under Order 6 Rule 17, CPC. In this view of the matter, the order passed by the learned District Judge, allowing the amendment for a limited purpose, does not legally hold good.

8. There is no dispute between the learned Counsel for the parties that before passing final order on the application preferred under Order 6 Rule 17, CPC, an inquiry, as contemplated under Order 32 Rule 15, has to be made by the Court. The sole point now which remains to be disposed of is whether in that inquiry the husband is to be represented by the guardian or he is to be represented independently, as he has been represented in the main petition. In order to come to any specific conclusion in this behalf, the circumstances of the case have to be taken note of.

9. In the present case, as referred above, the husband has been sued as a normal person and his address has been, given as Surinder Kumar Gupta, Geologist, Geological Survey of India, Sector 17-C, Chandigarh, meaning thereby that he was serving as a Geologist. The wife also filed an application under Section 24 of the Hindu Marriage Act which was allowed by the learned District Judge vide order dated 7.6.1993. It has been very specifically alleged in this petition that husband was employed with the Union of India and the petitioner was reliably informed that he was well employed and his monthly pay from that source alone was Rs. 7,500/- per month and he had other sources of income from immovable property, which he inherited from his father. This application was supported by an affidavit, meaning thereby that at the time of filing of the petition, at least prima facie, according to the petitioner, the husband was not of un-sound mind and petition proceeded in that

manner, till the petition under Order 6 Rule 17, CPC was filed.

10. From the aforesaid circumstances which are reflected from the pleadings of the wife itself, prima-facie it is clear that at the time of the filing of the petition, the husband was normal and he was sued in that manner, Now, the allegation is being made in the petition under Order 6 Rule 17, CPC regarding the unsoundness of the mind of the respondent, which is being disputed. Therefore, before that application under Order 6 Rule 17, CPC is finally disposed of, the Court is legally required to make an inquiry as to the mental condition of the husband.

11. The District Judge before making an elaborate inquiry in this behalf, at first instance, has to satisfy himself by examining the husband himself or directing his medical examination in order to come to a prima facie conclusion whether during inquiry he is to be represented by a guardian or he can himself legally protect his interest in the proceedings. In case, at the face of it, after making personal examination of the husband by examining him by putting certain questions or/and conducting the medical examination of the husband through an expert, the District Judge comes to the conclusion that he is to be represented in the inquiry through a guardian, then that order, at first instance, can be made, and thereafter a through inquiry in this behalf could be made.

12. Thus, on the basis of the aforesaid discussion, the present revision petition is accepted and the order under reference, allowing the petition preferred under Order 6 Rule 17, CPC for some limited purpose of conducting inquiry, is quashed and the application preferred under Order 6 Rule 17, CPC alongwith the main petition is sent back to the District Judge for holding an inquiry under Order 32 Rule 15, CPC, as per observations, referred to herein above. This revision petition stands disposed of accordingly. Parties are directed to appear before the learned District Judge, Dharamsala on 13.11.1995.