

Saroj Kumari Gupta vs Anita Kumar & Ors on 2 November, 2020

Author: C. Hari Shankar

Bench: C. Hari Shankar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ I.A. 17554/2019, I.A. 8186/2020, CRL.M.A. 445/2015 in
CS(OS) 2104/2013
SAROJ KUMARI GUPTA
Through:

versus

ANITA KUMAR & ORS Defendant
Through: Ms. Monika Arora and
Ms. Ankita Shah, Advs. for D-1 to D-3
Mr. N. K. Kantawala and Mr. Satyender
Chahar, Advs. for LR's of D-4 and D-5

+ CS(OS) 2142/2013 & I.A. 9285/2019
ANITA KUMAR
Through: Ms. Monika Arora and Ms.
Ankita Shah, Advs.

versus

AJAY KUMAR & ORS Defendant
Through: Mr. N. K. Kantawala and Mr.
Satyender Chahar, Advs. for D-1 and D-2

+ CS(OS) 1609/2014
UDAY KUMAR & ORS Plaintiffs
Through: Mr. N. K. Kantawala and Mr.
Satyender Chahar, Advs.

versus

SAROJ KUMARI GUPTA & ORS Defendants
Through: Ms. Monika Arora and Ms.
Ankita Shah, Advs.

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CS(OS) 2104/2013 & other connected matters Pa

+ CS(OS) 2079/2015
MAADHAV ANAND KUMAR Plaintiff

Through: Ms. Monika Arora and Ms.
Ankita Shah, Advs.

versus

SAROJ KUMARI GUPTA & ORS Defendant
Through: Mr. N. K. Kantawala and Mr.
Satyender Chahar, Advs. for D-2 and D-4

+ CS(OS) 625/2019 P
UPPAL HOUSING PRIVATE LIMITED
Through

versus

SAROJ KUMARI GUPTA & ANR. Defendants
Through Ms. Monika Arora and
Ms. Ankita Shah, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
ORDER

% 02.11.2020
(Video-Conferencing)

I.A. 17554/2019 in CS(OS) 2104/2013

1. This application, under Order XXXII Rule 15 of the Code of Civil Procedure, 1908 (CPC), at the stance of Defendant No. 5 in the suit, seeks appointment of a guardian ad litem, to safeguard the interests of the plaintiff.

2. Though the application seeks that the applicant, i.e. Defendant No. 5, be appointed as guardian ad litem, Mr. Kantawala, on the last date of hearing, submitted that, in view of the objection, raised by Defendant Nos. 1 to 3, he would be agreeable to an independent person being appointed as guardian ad litem.

3. By order dated 17th July, 2019, this Court had directed the medical examination, of the plaintiff, to be conducted by Dr. K.J.S. Bansal, CMO In-Charge of this Court, in order to ascertain her medical condition.

4. Dr. Bansal has, thereafter, undertaken medical examination of the plaintiff and has submitted a report, which is on record. The report of Dr. Bansal states, inter alia, as under:

"She is an old adult female of about 92 years of age, who is bedridden and appears conscious, does not respond to verbal commands with fair muscle bulk. She is known case of Hypertension, Diabetes Mellitus Type II with CVA (Cerebrovascular Accident) for which regular treatment is ongoing. Recent prescription of the patient from CGHS was relied upon to state the said diagnosis."

Dr. Bansal has finally opined that the plaintiff is in no position to give any statement, considering her mental state.

5. Order XXXII Rule 15 of the CPC reads thus:

"15. Suits by or Against Minors and Persons of Unsound Mind - Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind - Rules 1 to 14 (except rule 2A) 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."

6. Prior to 1st February, 1977, Order XXXII Rule 15 only covered persons adjudged to be of unsound mind. However, by Section 79 of the Code of Civil Procedure (Amendment) Act, 1976, the afore-extracted Rule 15 was substituted, in place of the Rule as it existed prior thereto.

7. Rule 15, as it now stands, covers persons adjudged to be of unsound mind as well as persons who, though not so adjudged, "are found by the court on inquiry" to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.

8. In view of the fact that the present suit has been instituted by the plaintiff, she is, undoubtedly, "suing" the defendants in these proceedings.

9. The report, of Dr. Bansal, indicates, prima facie, that she has, by reason of mental infirmity, been incapable of protecting her interest.

10. This Court has come across only one decision of the Supreme Court, which was rendered in the context of Order XXXIII Rule 15 i.e. *Kasturibai v. Anguri Chaudhary*¹. Para 12 of the said decision reads thus:

"The learned trial court refused to do the same and in that view of the matter the High Court, in our opinion, while setting aside the said order could only issue a direction (2003) 3 SCC 225 directing the learned trial Judge to hold an inquiry so as to enable it to arrive at a finding as to whether the respondent herein was incapable of protecting her interest by reason of any mental infirmity or not. As no such inquiry was held, there cannot be any doubt whatsoever that, the learned Single Judge committed a jurisdictional error in passing the impugned judgment which, the Division Bench as noticed hereinbefore upheld."

11. This Court cannot, therefore, straightway appoint a guardian ad litem, even in exercise of its jurisdiction under Order XXXII Rule 15 CPC, unless, on enquiry in accordance with the said provisions, a case for such appointment is made out.

12. I was, therefore, inclined to appoint a retired Judicial Officer to conduct such enquiry and submit a report in that regard, before taking a decision on this application.

13. Ms. Monika Arora, Learned counsel appearing for Defendant Nos. 1 to 3, however, opposes this proposed course of action, and submits that, before passing any order to that effect, the contentions, placed on record, by her vide certain written submissions, as well as the authorities cited her, may be taken taken into account.

14. The written submissions, stated to have been filed by Defendant Nos. 1 to 3, are not on record.

15. Ms. Monika Arora is directed to e-mail, forthwith, a copy of the written submissions to Mr. Kantawala as well as to the Court Master of this Court.

16. In order to have the written submissions of Ms. Monika Arora placed on record, renotify for hearing and disposal of this application on 9th November, 2020.

17. The Court Master is directed to email, during the course of the day, at the e-mail ID of learned counsel for parties, the entire record of these five suits.

C. HARI SHANKAR, J.

NOVEMBER 2, 2020 dsn