

Abubaker Mohamad Vs. Amiabai

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Court : Mumbai

Decided On : Nov-26-1930

Reported in : (1932)34BOMLR614

Judge : Mirza, J.

Appeal No. : O.C.J. Suit No. 734 of 1930

Appellant : Abubaker Mohamad

Respondent : Amiabai

Judgement :

Mirza, J.

1. The plaintiff filed this suit as a short cause for the administration of the estate of his father one Mohamed Aboobaker deceased, Defendant No. 1 is the widow of the deceased, and defendant No. 2, who is a minor, is the daughter of the deceased. Defendant No. 1 is appointed guardian adlitem of defendant No. 2. One of the prayers of the plaint is for the appointment of a receiver and another prayer is for an injunction against defendant No. 1. It seems that no steps have been taken to obtain any interim relief.

2. Prior to the suit appearing on board for disposal the plaintiff's attorneys wrote to defendant No. 2's attorneys informing them that the suit had been settled and was

not to be proceeded with. Similarly, defendant No. 1, as the guardian ad litem of defendant No. 2, informed defendant No. 2's attorneys that she had settled the suit out of Court and they should not appear at the hearing. Defendant No. 2's attorneys have briefed counsel who has placed these facts before me. I am of the opinion that as defendant No. 2 is a minor she is represented by defendant No. 1 as her guardian ad litem and the attorneys must look for instructions to the guardian ad litem in this matter. The guardian ad litem cannot validly enter into a compromise on behalf of the minor without the sanction of the Court. If the guardian has wrongly settled the suit out of Court that may be a ground for further steps being taken, but that must be at the instance of the minor after she attains majority or a next friend or a guardian during her minority. I cannot see how the attorneys can go behind the instructions they have received from the guardian ad litem and continue to represent the minor.

3. I dismiss the suit for want of appearance and make no order as to costs.

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