

K. Kumar Vs. Onkar Nath

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Court : Allahabad

Decided On : Aug-17-1971

Reported in : AIR1972All81

Judge : J.S. Trivedi, J.

Acts : [Hindu Minority and Guardianship Act, 1956](#) - Sections 11; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 32, Rule 1

Appeal No. : Second Appeal No. 20 of 1971

Appellant : K. Kumar

Respondent : Onkar Nath

Advocate for Def. : G.N. Sharma, Adv.

Advocate for Pet/Ap. : B. Dixit, Adv.

Disposition : Appeal dismissed

Judgement :

J.S. Trivedi, J.

1. The appellant is admittedly the tenant and respondent the landlord of the accommodation in suit. Plaintiff-respondent, the landlord being a minor, a composite notice of demand and determination of rent was sent under Registered

cover to the appellant on 8-4-1967. This notice is said to have been served on 11-4-1967. As the appellant neither paid the rent nor vacated the shop, hence the suit out of which this appeal arises was filed.

2. The suit was contested by the defendant-appellant on the ground that the natural guardian of the minor being the father who is alive, the mother was incompetent to act as next friend of the minor and in any event the notice by the mother, Smt. Chameli Devi on behalf of the minor was bad in law. It was also contended that payment of the arrears had been made to Choudhary Gur Dayal Singh, father of the minor. The receipt of the notice of demand and determination of rent was also denied.

3. The trial court held that Smt. Chameli Devi was competent to file the suit on behalf of the minor as his next friend, that a notice of ejection and demand had been actually served and that the defendant had not paid the arrears either to the landlord or to Gur Dayal Singh. The suit of the plaintiff was accordingly decreed. In appeal the lower appellate court confirmed the finding of the trial court, hence this Second Civil Appeal.

4. Learned counsel for the appellant has reiterated that Smt. Chameli Devi was neither competent to give notice nor was she competent to file the suit as next friend of the minor. His contention is that under Hindu Minority and Guardianship Act, father alone being the natural guardian is competent to file the suit. In support of his contentions, he has placed his reliance on *Daneyi Gurumurti v. Raghu Podhan*, AIR 1967 Orissa 68, *Narain Singh v. Sapurna Kuer*, AIR 1968 Pat 318; and *Mohd. Sohrab Khan v. Dy. Director of Consolidation, Ghazipur*, 1970 All LJ 288.

5. It is not disputed that no guardian of the minor had been appointed or declared by a Court. It is also not disputed that under Hindu Minority and Guardianship Act, father was the natural guardian of the minor plaintiff. Section 8 of the Hindu Minority and Guardianship Act enumerates the power of natural guardian and Section 11 of the Hindu Minority and Guardianship Act prohibits a de facto guardian from dealing with the minor's property. Section 8 of the Hindu Minority and Guardianship Act is in these words:

'8. (1) The natural guardian of a Hindu minor has power subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court-

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of Sub-section (1) or Sub-section (2), is voidable at the instance of the minor or any person claiming under him.'

Under Section 8, therefore, power is given to the natural guardian to dispose of the minor's property. Section 11 reads as under-

'After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor.'

Section 11, therefore, restricts the power of a de facto guardian from disposing of or dealing with the property of a Hindu minor.

6. Giving of notice of demand and filing the suit is not disposing of or dealing with the property. As a matter of fact Order XXXII, Rule 1 authorises the filing of the suit on behalf of the minor through a next friend. Order XXXII makes a distinction between the powers of a next friend in a case where a suit is filed on behalf of a minor and in a case where a suit is filed against the minor. In cases where the suit is filed on behalf of the minor, no permission or leave of a Court is necessary by the next friend for filing the suit, whereas in a case where the suit is filed against the minor, it is obligatory on the plaintiff to get a proper guardian for the suit for

such minor appointed by the Court. All that Order XXXII, Rule 1 provides is that:

'Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor'.

6-A. Rule 4 lays down the qualification of the next friend and all that it mentions is that any person who is of sound mind and has attained majority can act as next friend of a minor provided the interest of such person is not adverse to that of the minor. Rules 6 and 7 of Order XXXII specifically provided that a next friend or guardian shall not without the leave of the Court receive any money or immovable property and shall not without the leave of the Court enter into any agreement or compromise. The rights and restrictions of the natural guardian given under Hindu Minority and Guardianship Act do not conflict with the procedure for filing a suit by a next friend on behalf of the minor. Not only is there no express prohibition, but a reading of Order XXXII would go to show that wherever the legislature thought proper to restrict the right of the next friend, it has expressly provided in Rules 8 and 8 of Order XXXII

7. The cases relied upon by the learned counsel for the appellant are all cases of transfers made by the de facto guardian in spite of the prohibition under Hindu Minority and Guardianship Act. Narain Singh's case, AIR 1968 Pat 318, supra was a case where the transfer of property by a mother was being challenged on the ground that she was not competent to transfer the property or deal with the property in the presence of the father who was the natural guardian. In the Orissa case AIR 1967 Orissa 68 (Supra) a sale by a natural mother as minor's de facto guardian was the subject of challenge. In Mohd. Sohrab Khan's case, 1970 All LJ 288 the challenge was to a transfer made by a de facto guardian. None of the cases relied upon by the appellant for the reasons given above can be of any help to the appellant. As remarked earlier, giving of notice of demand is not disposing of or dealing with the property and a notice of demand under Section 3 of the Rent Control and Eviction Act and Section 106 of the Transfer of Property Act could validly be given even by an agent or by any next friend of the minor. If a suit can be filed through a next friend there is no justification why the notice cannot be given through a next friend.

8. It has next been contended by the learned counsel for the appellant that the copy of the notice filed does not bear the signature of Smt. Chameli Devi and, therefore, it was not a valid notice. P. W. 1 who is the scribe of the notice has duly proved that the original notice sent to the appellant was signed by Smt. Chameli Devi, the next friend of the minor. The original notice has not been produced by the appellant and he, therefore cannot be permitted in these circumstances to say that the original notice did not bear the signature of Smt. Chameli Devi. The plea of payment has been disbelieved by both the Courts and rightly. It is not open to the appellant in Second Appeal to contend against the concurrent findings of the courts below on the question of payment.

9. This appeal, therefore, has no force and is accordingly dismissed with costs. Three months' time is allowed to the appellant to vacate the premises within which period the decree for ejection shall not be executed. The appellant, however, will be liable to pay damages at the decreed rate till the date of dispossession.

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