

inder Pal Singh Vs. Sarnam Singh

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Court : Allahabad

Decided On : Aug-24-1950

Reported in : AIR1951All823

Judge : V. Bhargava, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 32, Rule 3; [Transfer of Property Act, 1882](#) - Sections 5

Appeal No. : Second Appeal No. 911 of 1947

Appellant : inder Pal Singh

Respondent : Sarnam Singh

Advocate for Def. : N.C. Vaish, Adv.

Advocate for Pet/Ap. : Bhagwan Das Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

V. Bhargava, J.

1. These are two connected appeals which have been filed by the same appellant against the same respondent. These two appeals arise out of two suits which were both for realisation of profits in respect of certain zamindari property. One suit

related to the years 1345, 1346 and 1347 Fasli and the other to the years 1348, 1349 and 1350 Fasli. In both the suits, one important question that arose for decision was as to the share possessed by the plaintiff-appellant in the property in respect of which profits were claimed by him. Amongst other shares claimed was one-sixth share in some property which had gone to Sm. Saraswati Kuar, the sister of the plaintiff's grandmother, by virtue of a decree in a suit which Sm. Saraswati Kuar had filed against the plaintiff and others and which was decreed on the basis of an adjustment between the parties to that suit. The appellant had claimed that he was still entitled to that one-sixth share because the adjustment in that suit was not binding on him and, therefore, the lambardar was liable to pay profits to him in respect of that share in the property also. The lower appellate Court has held that the decree in the suit between Sm. Saraswati Kuar and the plaintiff and others was binding on the plaintiff until it was set aside by means of a separate suit and, therefore, the plaintiff could not claim the one-sixth share in the property which had gone, by virtue of that decree, to Sm. Saraswati Kuar. This finding of the lower Court has been challenged in these second appeals.

2. One more point decided by the learned lower Court was that the profits in respect of the year 1348 Fasli had been paid to Brij Bhukan Singh guardian ad litem of the appellant by the lambardar and, therefore, the plaintiff was not entitled to claim those profits again. This finding of the lower Court has also been assailed in Second Appeal No. 911 of 1947.

3. So far as the first question contested by the parties in these appeals is concerned, it does appear to me that the view of the law taken by the lower Court is not quite correct. According to the lower Court, the decree passed in the suit filed by Sm. Saraswati Kuar against the plaintiff and others could not be avoided by the plaintiff unless the plaintiff had it set aside by means of a separate suit. It has been pointed out to me that on behalf of the plaintiff that decree was sought to be avoided on the ground that the plaintiff was a minor and he had not been properly represented in that suit by his guardian, Brij Bhukhan Singh. I agree with the learned counsel for the appellant that, in order to avoid the decree on the ground that the minor had not been properly represented in the suit in which that decree was passed, it is not necessary to file a separate suit. If it can be shown on

behalf of the minor that he was not properly represented in that suit, the decree must be treated as null and void and can, therefore, be assailed in any proceedings whatsoever where this question may be relevant. In *Rashidunnisa v. Muhammad Ismail Khan*, 31 ALL. 572, it was held by their Lordships of the Privy Council that if a married woman was appointed guardian ad litem of her minor sister contrary to the provisions of Section 457, Civil P. C. (XIV [14] of 1882), the minor had not been properly represented in the litigation and the decree passed in that suit was liable to be set aside. In *Khiarajmal v. Daim*, 32 Cal. 296, it was again held by their Lordships of the Privy Council that if a Court proceeded to sell the property of persons who were not parties to the proceedings or properly represented on the record, the decrees or sales as against such persons were void without any proceedings to set them aside. In this case, if it be held that the plaintiff was not properly represented in that suit by his guardian Brij Bhukhan Singh, then, according to the view taken in the two cases cited above, it would have to be held that the decree passed against the plaintiff minor was null and void and no separate suit need be filed by the plaintiff to have the decree declared void. In *Siraj Fatima v. Mahmood Ali*, 1932 ALL. L. Jour. 437 a Full Bench of this Court held that a minor had a right to institute a suit in the civil Court to avoid a decree or order passed by a competent Court against him on the ground of the negligence of his guardian. The negligence, in order to be a good ground for the avoidance of a decree, must be of such a nature as to justify the inference that the minor's interests were not at all protected and therefore he was not properly represented. It will thus appear that even in a case where there is a validly appointed guardian but he acts with negligence, it may be held that the minor was not properly represented in the litigation and thereupon, applying the view of their Lordships of the Privy Council expressed in the two cases cited above, it must be held that the decree passed would be a nullity. This point was quite clearly decided by a Division Bench of this Court in *Dwarika Halwai v. Sitla Prasad*, A. I. R. (27) 1940 ALL 256 where it was remarked :

'Even where there was an order appointing a person as guardian, if that guardian did not properly represent the minor, the decree would not be binding on the minor. Such a decree would be void ab initio and not merely voidable.'

The case law is thus quite clear that a decree against a minor is void ab initio and a nullity, if it is passed in a suit in which no guardian of the minor is appointed or the appointment of the guardian is invalid or the validly appointed guardian does not properly represent the minor. The proposition of law laid down by the lower Court is, therefore, incorrect.

4. The question that, however, remains for decision is whether in this case the plaintiff's guardian has been proved not to have represented the plaintiff properly in the suit which was brought by Sm. Saraswati Kuar. On behalf of the plaintiff the argument advanced is that, while that suit was pending, an injunction was issued by the District Judge in guardianship proceedings prohibiting Brij Bhukhan Singh, who was the guardian ad litem of the plaintiff in that suit of Sm. Saraswati Kuar, from, in any way, selling or transferring the property of the minor and yet Brij Bhukhan Singh entered into a compromise with Sm. Saraswati Kuar on behalf of the plaintiff by which certain amount of property was transferred to Sm. Saraswati Kuar though it belonged to the plaintiff. I have looked at the injunction order which was issued by the District Judge and I find that the District Judge had merely prohibited Brij Bhukhan Singh from transferring or selling any property belonging to the minor. There was no injunction prohibiting Brij Bhukhan Singh from acting as guardian ad litem of the plaintiff minor in the suit of Sm. Saraswati Kuar, nor was there any injunction prohibiting him from entering into a compromise or setting up any adjustment on behalf of the plaintiff in that suit. It has been held in *Sohan Lal v. Bhagwan Singh*, (A. I. R. (16) 1929 ALL 788) that a bona fide settlement of doubtful claims is not a transfer of property at all but really a recognition of the title of the opposite party and an abandonment of all further claims to it. Such an arrangement cannot be considered to be a transfer within the meaning of the Transfer of Property Act. In the case of Sm. Saraswati Kuar also the adjustment which was entered into by Brij Bhukhan Singh as guardian ad litem of the plaintiff on behalf of the latter was for the purpose of settling the disputed claim of Sm. Saraswati Kuar to the property in suit. In *Khunni Lall v. Gobind Krishna Narain*, 33 ALL. 356 and *Mt. Hiran Bibi v. Mt. Sohan Bibi*, 24 Ind. Cas. 309 it was held that a family arrangement in respect of a property is based on the assumption that there was an antecedent title of some kind in the parties and the agreement acknowledges and defines what that title was. Such a family arrangement is not a

transfer of the property from one person who has title to the property to another person who has no title to it and is, therefore, no transfer of the property. In this case also Sm. Saraswati Kuar was a member of the same family as the present plaintiff and the other persons who were co-defendants with the plaintiff in the suit of Sm. Saraswati Kuar. The property, in which Sm. Saraswati Kuar claimed a share, had obviously been owned by her mother, Sm Umeda Kuar, though she had gifted it in favour of the father of the present plaintiff. In these circumstances, Brij Bhukhan Singh had entered into an adjustment of the suit with Sm. Saraswati Kuar on behalf of the plaintiff. Obviously, it was a family arrangement and cannot be considered to be a conveyance or transfer of property. Consequently, it is clear that in entering into that adjustment of the suit with Sm. Saraswati Kuar, Brij Bhukhan Singh had not disobeyed the injunction of the District Judge which only prohibited him from transferring or selling the property. Brij Bhukhan Singh, who had been appointed as guardian ad litem of the present plaintiff in that suit was, therefore, competent to enter into that compromise and hence it cannot be held that that decree was void ab initio or was a nullity. In these circumstances, the order passed by the lower Court that the plaintiff cannot claim the one-sixth share in that property is correct even though on different grounds. There is, therefore, no reason for interference in these second appeals.

5. The second point with regard to the profits for the year 1345 Fasli is clearly concluded by a finding of fact given by the lower Court which has held that the amount in respect of the profits for that year was paid to Brij Bhukhan Singh before the order of injunction was issued by the District Judge at a time when Brij Bhukhan Singh was entered as guardian of the present plaintiff in the revenue records. It may also be mentioned that, even if the payment had been made after the issue of the injunction by the District Judge, the payment would have been valid because the injunction, in no way, prohibited Brij Bhukhan Singh from managing the property as guardian of the present plaintiff but only prohibited him from selling the property of the minor.

6. Consequently, there is no force in either of these two contentions of the appellant and both these second appeals are dismissed. In view of the circumstance that I have agreed, on the main question of law which was

challenged in these appeals, with the contention raised on behalf of the appellant, I direct that parties shall bear their own costs of these appeals. Leave to appeal is refused.

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