

Abdullah Khan and anr. Vs. Mahbubullah Khan

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Court : Allahabad

Decided On : Dec-06-1922

Reported in : AIR1923All485; 76Ind.Cas.556

Judge : Ryves, J.

Appellant : Abdullah Khan and anr.

Respondent : Mahbubullah Khan

Judgement :

Ryves, J.

1. This appeal arises out of a suit for sale on a mortgage. The mortgage was executed on the 26th of February 1903, for Rs. 60 by Musammat Tissa, the widow of Assu Khan, and by one Azim Kuan. Musammat Tissa executed the mortgage on her own behalf and as guardian of the appellants here who were her minor sons. Azim Khan executed it as guardian of defendants Nos. 7 and 8 with whom we are not concerned.

2. The suit was contested only by the appellants here. They denied the execution of the deed and also denied the authority of their mother to hypothecate their property.

3. The Trial Court dismissed the suit, but on appeal the learned District Judge of Mainpuri decreed it. He held that Musammat Tissa was the de facto guardian of the minors and he also held that as their mother she had to maintain them and goes on to say: 'If she contracted the debt in order to maintain them I think it is binding on the minors.' What he actually holds is that she had a right to make the mortgage, and that as the mortgage was for the benefit of the minors they are bound by it. There is no distinct finding that she had to borrow the money in order to maintain the minors but there is a distinct finding that the money was borrowed for the benefit of the minors.

4. In appeal before me it is contended that the mother who was not the guardian de jure of the minors had no power at all to hypothecate their property, and reliance is placed on *Imambandi v. Mutsaddi* 47 Ind. Cas. 513 : 45 C. 878 : 45 I.A. 73 : 35 M.L.J. 422 : 16 A.L.J. 800 : 24 M.L.T. 330 : 28 C.L.J. 409 : 23 C.W.N. 50 : 5 P.L.W. 276 : 20 Bom. L.R. 1022 : (1919) M.W.N. 91 : 9 L.W. 518 (P.C.). There can be no doubt that up to the decision of that case by the Privy Council there was a considerable conflict of opinion as to the power of so-called de facto guardians to bind the estate of minors, whether moveable or immoveable, generally or especially when the money was borrowed for their benefit. In that case, however, the Privy Council has deeded definitely that, unless the mother is the father's executrix or is appointed by the Judge, guardian of the minors, she can only deal with the minors' property at her own risk and her acts are like those of any other person who arrogates to himself the power of transferring another's property. She can incur liability but can impose no obligation on the infant. It is pointed out that this general rule is subject to certain well defined restrictions such as acts arising out of the wants of an infant, but even in such a case it appears that the mother is only entitled to deal with the moveable property of the infant and cannot pledge or sell the infant's immoveable property. It seems to me that this ruling applies and that, therefore, the decision of the Court below cannot be maintained and the suit as against Mahmud Khan, Abdullah Khan and Ghafur Khan will be dismissed with cost and the appeal will be allowed with costs.