

Dilip Kumar Vs. Luxmi Devi

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Court : Allahabad

Decided On : Aug-09-1996

Reported in : I(1997)DMC29

Judge : S.K. Phaujdar, J.

Acts : [Guardians and Wards Act, 1890](#) - Sections 12; ; Code of Criminal Procedure (CrPC) - Sections 97

Appeal No. : Civil Revision No. 10 of 1996

Appellant : Dilip Kumar

Respondent : Luxmi Devi

Disposition : Petition dismissed

Judgement :

S.K. Phaujdar, J.

1. This application under Section 115, C.P.C. Ts directed against an order dated 4.7.1996 of the Judge, Family Court, Kanpur Nagar, in Case No. 61 /70 of 1996. It appears mat in a proceeding under Section 25 of me Guardians and Wards Act for custody of me child of the parties, the Family Court has issued a search warrant under Section 97 of the Cr. P.C. and compelled me production of minor Aditya Kumar, a 2 years old son of the parties. By the impugned order the Family Court

had entrusted the interim custody of the boy with his mother Smt. Luxmi Devi the present opposite party, who has me applicant before the Family Court. He further directed that me claim of the parties would be heard on 31.7.1996 on which date Smt. Luxmi Devi was to produce the boy in Court.

2. It was submitted mat the Court had no jurisdiction to cause production of the boy by a warrant under Section 97, Cr.P.C. and the order was one under Section 12 of the Guardians and Wards Act and it would be a final order under Section 48 of the said Act, it was stated that this order under Section 48 would be open to revision.

3. The learned Counsel relied on a decision of the Calcutta High Court as reported in : AIR1931 Cal59 . Here was a case where an order was made appointing a guardian. A party to the proceeding desired to put fresh facts before me Court and to bring to the notice of the Court circumstances which might throw a different light on me matters. The Court refused to hear on the fresh facts and it was held that it was a fit case for interference under Section 115, C.P.C.

4. Certain provisions of the Guardians and Wards Act ought to be noted here. The order impugned indicates clearly that the proceedings before the Family Court was one under Section 25 of the Guardians and Wards Act. Sub-section (2) of this section clearly states that for me purpose of arresting a ward the Court may exercise the powers conferred on a Magistrate of the 1st Class by Section 100 of the Code of Criminal Procedure, 1982. This was a power for issuing search warrant which now stands incorporated in Section 97 of the Cr.P.C. of 1978. Thus mere was no wrong in issuing a search warrant for a production of the boy in Court. Section 12 of me Guardians and Wards Act empowers the Court to make an interlocutory order regarding custody of the boy. In making the interlocutory order, therefore, the Court below had not exercised any jurisdiction that was not vested in him nor did he fail to exercise a jurisdiction so vested. There appears to be no material irregularity in recording that order.

5. Section 48 of the Guardians and Wards Act speaks that save as provided in Section 47 (regarding appeals) all orders made under this Act would be final and would not be liable to be contested by suit or otherwise. The case law mat has

been placed before the Court was not in relation to the order under the Guardians and Wards Act directing custody of any child. Rather the order impugned in that case was the order refusing to take new evidence. This order was stated to be revisable. Section 19(1) of the Family Court Act speaks of appeals and revisions. Under this section, notwithstanding anything contained in the C.P.C. an appeal shall lie from every judgment or order not being an interlocutory order, of a Family Court to the High Court. Sub-section (5) of this section says that except as aforesaid (meaning under the first sub-section) no appeal or revision shall lie to any Court from any order of a Family Court. This Sub-section (5) must be read alongwith Subsection (1) of Section 19 to mean that this provision is also applicable notwithstanding anything contained in the C.P.C.

6. It was argued that if Section 48 gave a substantive right of a revision that could not be taken away by another procedural law. The Family Court Act was enacted with a view to provide for the establishment of the Family Courts for speedy settlement of disputes relating to family affairs and under Section 7 a proceeding for custody of a minor is a matter cognizable by the Family Court. The right of appeal given by Section 19 is also a substantive right and the negation of a right to file appeal or revision under Sub-section (5) of Section 19 is also not mere procedural. This sub-section is also intended for securing speedy settlement of dispute. In a conflict between a general law (the Guardians and Wards Act) and the special law (Family Court Act) the latter will prevail.

I hold that the present revision application does not lie and it is accordingly dismissed.