

Umed Ram Etc. Vs. Oevku

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Court : Delhi

Decided On : Jan-10-1969

Reported in : ILR1970Delhi295

Judge : S.N. Andley, J.

Acts : Guardian and Wards Act, 1890 - Sections 41

Appeal No. : Civil Revision Appeal No. 44 of 1965

Appellant : Umed Ram Etc.

Respondent : Oevku

Advocate for Pet/Ap. : S.R. Thakur and; A.C. Sud, Advs.

Judgement :

S.N. Andley, J.

(1) This revision has been filed against the order dated October 24. 1968. of the Senior Subordinate Judge Simla, in case No. 1 of 1966. By this order the Senior Subordinate Judge has directed the delivery of the properties in question to the respondent and also to render accounts of the property up to the date of such delivery.

(2) Badri datt was the minor son of Het Ram. Upon the death of Het Ram, one Gursaran was appointed a guardian of the properties of Badn Datt by an order dated July 13, 1953, of the Subordinate Judge first class, Kandaghat. The ward Badri Datt died on August 20, 1955. Upon the death of the ward, Gursaran the guardian made an application to the Subordinate Judge first class, Kandaghat for being discharged. This application was decided by the Subordinate Judge first class, Kanda

'BUT for the present purpose, it will suffice if he is directed nto to submit any accounts in future. If Gursaran enjoys the usufruct of the property of the minor and subsequently by a competent Court, he is nto found to be the rightful heir, he will have to account for this to' the person who is adjudicated the rightful heir. I do nto think that it is proper to get accounts from Gursaran any more as this could only be for the protection of the right of the minor, who is now dead.'

(3) thereforee, Gursaran was discharged from his responsibility as a guardian from filing accounts as he had been directed when he was appointed guardian of Badri Datt deceased. The learned Subordinate Judge first class. Kandaghat, however, proceeded to observe:

'THE money lying in the Court will only be paid to the person who will produce a succession certificate in this Court. The surety bond executed by Gursaran is hereby cancelled.'

(4) After his discharge by the aforesaid order Gursaran the guardian continued to remain in possession of his. ward's properties but Gursaran himself died on December 2, 1959. After his death his legal representatives, who are the petitioners in this revision, continued to remain in possession of the properties of Badri Datt deceased.

(5) The respondent Smt. Devkoo, widow of Het Ram and mother of Badri Datt aforesaid, filed the present application under section 41 of the Guardians and Wards Act (Act No. Viii of 1890) in the Court of the Senior Subordinate Judge, Simla, against the petitioners praying that possession of the properties of Badri Datt minor may be handed over to her; the income from the said properties

deposited in the Court be also given to her and the petitioners be directed to produce accounts with regard to the properties of Badri Datt aforesaid and moneys found due from them be paid over to her. She had filed this application upon the allegation that she, being the mother of Badri Datt aforesaid, was his natural heir and entitled to succeed to his properties. A reply to this application was filed only on behalf of Umed Ram, one of the petitioners. He objected to the prayers being granted on the ground that the moneys lying in Court could not be handed over to the respondent unless she produces a succession certificate as directed in the order dated March 14, 1957, of the Subordinate Judge first class, Kandaghat; that the respondent had remarried one Ram Dittu and therefore ceased to be the heir of Badri Datt deceased and that the petition was barred by time.

THE Senior Subordinate Judge framed the following issues :- 1. Whether Gursaran was discharged by the Court on March 14, 1957? If so, with what effect? O.P.P. 2. Whether Smt. Devkoo applicant is residing with Ram Dittu as his wife If so, to what effect O.P.R. 3. Is the application within time? O.P.P. 4. Relief.

(6) I may mention that none of the petitioners who 'are the legal representatives of the guardian Gursaran, had raised any plea asserting their right to continue in possession of the properties as heirs or reversioners of Badri Datt as had been - asserted by Gursaran himself in the application which was disposed of by the Subordinate Judge first class, Kandaghat, by the order dated March 14, 1957. What the petitioner and the other legal representatives of Gursaran concentrated on was that the respondent having remarried had ceased to be an heir of Badri Datt and had therefore no right or interest in his property or locus standi to make the application.

(7) On Issue No. 1, the learned Senior Subordinate Judge held that the liability of Gursaran and the liability of his legal representatives to restore the property of Badri Datt did not come to an end by reason of the order of the Subordinate Judge first class, Kandaghat, dated March 14, 1957. On Issue No. 2, he held that there was no remarriage of the respondent with Ram Dittu as alleged. On Issue No. 3, he held that if the legal representatives of Gursaran came into possession of the property of Badri Datt as trustees there was no question of limitation. In the result,

he made the direction mentioned above.

(8) Mr. Sita Ram Thakur, learned counsel for the petitioners, has first contended that in view of the order dated March 14, 1957, of the Subordinate Judge first class, Kandaghat, for payment of the money's deposited in Court to the person who produces a succession certificate, no order could be made in favor of the respondent on the present application. As I have stated above, the respondent was not a party to the application which had been filed by Gursaran for his discharge and which had resulted in the order dated March 14, 1957, of the Subordinate Judge first class Kandaghat. thereforee merely on account of the aforesaid observation, the respondent cannot be held to be precluded from making the application giving rise to this revision.

(9) It has next been contended on behalf of the petitioner that the order which had been made by the Senior Subordinate Judge could not have been made under section 41 of the said Act. Subsections (2) and (3) of section 41 are relevant to the present matter and it is provided in these sub-sections :-

'(2)The powers of a guardian of the property cease- (a) by his death, removal or discharge; (b) by the Court of wards assuming superintendence of the property of the ward; or (c) by the ward ceasing to be a minor. (3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts, in his possession or control relating to any past or present property of the ward.'

(10) SUB-SECTION (2) of section 41 says that upon the happening of the events mentioned therein the powers of a guardian of the property shall cease. This sub-section talks merely of the powers of the guardian. Then we have sub-section (3) which deals with the situation which arise by reason of cesser of the powers of the guardian and according to sub-section (3) the Court may require the guardian or his legal representative to deliver the property in his possession or control 'as it directs'. The question is whether in making the direction as contemplated by sub-section (3) the Court can direct the delivery of the property to any person who may prima facie be entitled thereto. If the Court can do so then it is implicit in the power

that the Court is entitled to adjudicate upon the title, as it is only prima facie of any person who is asking for the delivery of the property. therefore, it is difficult for me to accept the petitioner's contention that the Senior Subordinate Judge was not entitled to direct the delivery of the property to the respondent after an investigation into her alleged title.

(11) Tn Air 1926 Mad 148 (Tulsidass Govindjee v. Madhavadas Laljee and others) it has been held that though section 41 might apply to cases of the death of a minor, still it is applicable only to simple cases where there can be no doubt whatever about the succession to the minor and about the items of property which belonged to the minor or to the accounts relating to the management of the estate. It has further been held that when there is a dispute relating to succession or, the likelihood even of a dispute is to succession, the Court has no powers under the Act to seek to determine the succession to a deceased minor and thereupon make any orders for granting delivery of possession of property. Applying the principles of this case, there is no averment in the written-statement filed by Umed Ram one of the petitioners that he is entitled to the property in question by reason of succession or otherwise. There is, therefore, no dispute relating to succession and the only dispute which was raised by the petitioner was that the respondent has ceased to be entitled to the property by reason of her remarriage. If the alleged remarriage is not proved, there can be no question that the respondent as the surviving mother would be entitled to the property of the deceased Badri Das.

(12) The next case to which reference might be made is another decision of the Madras High Court : AIR1950 Mad574 (Kullappa Mudaliar v. Palaniappa Mudaliar and others) 0 where it has been stated that the operation of sub-section (3) of section 41 of the said Act should not be cut down by a reference to sub-sections (1) and (2) and that sub-section (3) is wide enough to cover a case where the powers of a guardian cease by reason of the death of a minor ward. It has further been observed that the Court having entrusted the property of a minor to the guardian appointed by it, has the duty on the death of the minor to divest itself of its control over the guardian and the property of the minor. It may direct the guardian to deliver the property into Court or to some person entitled to it on the death of the minor and sub-section (3) empowers the Court to pass the necessary

order with reference to the property of the deceased minor. It has further been observed that sub-section (3) does not require a final or conclusive adjudication on the rights of the parties. Even if a Court acting under section 41(3) directs a guardian to handover the properties of a deceased minor ward to a particular person, such direction in no way confers an absolute title on the person to whom the property is delivered. The question of title is not concluded by an order passed under subsection (3). What is final is the order directing possession to be given to a party and nothing more. It is always open to persons aggrieved by the direction or decision under sub-section (3) to have their rights established in a regular suit in a civil Court.

(13) Reference may also be made to another decision reported in A.I.R. 1928 Lah 495 (Shiv Charan Lal v. Bhawani Shankar and another) where it has been observed that it is beyond dispute that when the powers of a guardian of the property cease in the manner contemplated by the sub-section, the Court is entitled to call upon him to render an account of his stewardship and to deliver the property and money belonging to the ward to such persons as the Court directs.

(14) The language of sub-section (3) does not contain any prohibition or even a limitation upon the powers of a Court to determine the person to whom the property of a deceased minor ward is to be delivered upon his death. In view of the fact that the title of the respondent has been determined, even though prima facie by the Senior Subordinate Judge, it is not possible to say that the order under revision is without jurisdiction or in excess of jurisdiction. I may make it clear that even after the delivery of the properties and moneys to the Respondent it will be open to the petitioners or any other persons claiming a superior right to take action by a regular Civil suit against the respondent for recovery or possession of these properties.

(15) As to the other question of limitation, I think the Senior Subordinate Judge was right in his approach that the properties in the hands of the petitioners are with them on trust and, as such, there is no question of the 'application being barred by limitation.

(16) In these circumstances I do not find any merit in this revision. Which is dismissed with costs.

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