

Gopal Dass Vs. Tej Singh

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Court : Rajasthan

Decided On : Feb-06-1996

Reported in : AIR1996Raj214; 1996(2)WLC1; 1996(1)WLN91

Judge : R.R. Yadav, J.

Acts : [Code of Civil Procedure \(CPC\), , 1908](#) - Order 32, Rule 13 - Order 33, Rules 12

Appeal No. : Civil Revn. Petn. No. 116 of 1996

Appellant : Gopal Dass

Respondent : Tej Singh

Advocate for Pet/Ap. : R.P. Dave, Adv.

Judgement :

ORDER

R.R. Yadav, J.

1. Instant revision has been filed against the order impugned dated 18-9-95 passed in Civil Suit No. 111/93 whereby the application of defendant-revisionist filed under p. 32, R. 12 read with Section 151, C.P.C. was rejected on the basis of reply filed by the counsel of next friend Heeralal.

2. Main thrust of the argument of the learned Counsel for the revisionist before me is that minor Tej Singh attained majority in the year 1985, therefore, after attaining majority his next friend Heeralal has become functus officio and counsel engaged by him cannot be permitted to make an application on behalf of Tej Singh alleging therein that the minor after attaining majority intends to continue the suit. According to Shri Dave, learned Counsel for the revisionist the counsel engaged in the present case by Shri Heeralal next friend of Tej Singh who admittedly attained majority during the pendency of the suit cannot ipso facto become the counsel of Tej Singh.

3. It is also brought to my notice that when ten years after attaining majority nothing was done by Tej Singh then in order to avoid legal complications the defendant himself moved an application to make the, record straight after ascertaining the wishes and intendment of Tej Singh as to whether he elects to proceed with the suit or intends to abandon it after attaining majority. It is urged by Shri Dave that his aforesaid application was rejected without giving an opportunity of hearing to defendant-revisionist that too on the basis of reply filed by the next friend Heeralal through his counsel.

4. Learned Counsel for the revisionist vehemently argued before me that although no opportunity of hearing was afforded to the defendant-revisionist yet incorrectly it is written in the impugned order that the said order was passed after hearing both the parties.

5. Learned Counsel for the revisionist invited my attention towards the fact that in the beginning of the order impugned these words have been written: 'VAKIL PRATI-VADI UPASTHITH NAHIN' yet before entering into the merit of the application it is observed that the learned trial Court had heard both the parties.

6. The second objection to the impugned order is that the Vakalatnama of Shri Fateh Singh as well as Shri Mahendra Kumar Mehta was filed by the next friend Heeralal and the minor after attaining majority has not filed any Vakalatnama of the aforesaid two counsel up to the date of order, yet in the impugned order it is mentioned that the minor after attaining majority has filed Vakalatnama in the suit. The learned Counsel for defendant-revisionist has produced a certified copy of

Vakalatnama before the Court on top of which two dates are mentioned i.e. 19-10-1995 and 15-11-1995. According to Shri Dave the said Vakalatnama was not on record on the date of impugned order i.e. 18-9-95. If said Vakalatnama would have been on record on the date of order it ought to have been entered in the process register.

7. There is no quarrel about proposition of law urged before me by the learned Counsel for the revisionist to the effect that whenever and wherever a minor attained majority his next friend become functus officio and has no authority whatsoever to continue the suit within the meaning of Order 32, Rule 12, C.P.C.

8. In support of his aforesaid contention learned Counsel for the revisionist has placed reliance before me on a decision rendered by Division Bench in the case of Ratan Chand Dhulaji v. Jasraj Kasturchand, reported in AIR 1940 Bom 58, as well as a decision rendered by a learned single Judge of Lahore High Court in the case of Ishar Singh v. Bakshish Singh; reported in AIR 1929 Lahore 555 (2).

9. I respectfully concur with the *ratione decidendi* laid down in case of Ratan Chand Dhulaji (supra) rendered by the Division Bench of Bombay High Court as well as decision rendered by learned single Judge of Lahore High Court in case of Ishar Singh (supra).

10. In view of the aforesaid two decisions in abundant caution it is held that where during the pendency of a suit or an appeal on behalf of a minor it is discovered by a learned trial Court or by a learned appellate Court that the minor had attained majority after institution of such suit or appeal then a Court is under legal obligation to call upon the minor if such minor was not present in Court direct him to be present in Court to ascertain his wishes as to whether he elects to proceed with the suit or an appeal or he elects to abandon it? If he elects to proceed with the suit or appeal the Court will proceed further and if he elects to abandon it then the suit or appeal is to be dismissed on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend. If there are more than one minor co-plaintiff then the procedure contemplated under Order 32, Rule 13 is to be followed.

11. There may be a situation where a minor plaintiff on attaining majority may, if a sole plaintiff, apply that a suit or appeal instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper then detailed procedure given under Order 32, Rule 14 is to be followed.

12. Although factual foundations led in the present revision and also argued by the learned Counsel for the revisionist are sufficient to interfere in revision but since the submission made by learned Counsel Shri Dave are based on facts which run counter to the facts recorded by the learned trial Court in the impugned order, therefore, I decline to entertain the present revision. I do not think it proper that the statement of the learned trial Court should be allowed to be contradicted by statements at the Bar or by affidavit and other evidence. It must be deemed to be settled principle of law that statements of fact recorded in a judgment or order should always be treated to be the last word on the subject.

13. However, it is made clear that if the revisionist thinks that the facts recorded in the order impugned have been recorded wrongly it is incumbent upon him to move a review petition before the learned trial Court. This is only way to have the record corrected. In the facts of the case if a review petition is filed before learned trial Court it would be proper to summon Tej Singh who indisputably attained majority in the year 1985 in order to ascertain his wishes as to whether he elects to proceed with the suit or he elects to abandon it. This procedure is to be adopted by the learned trial Court to detain the confidence of the litigant public and also to avoid further mud slinging and to remove dirty linen to the Court proceedings.

14. In the present case in order to maintain purity of administration of justice Shri Tej Singh be directed to file a fresh Vakalat-nama to represent him in the suit if he elects to proceed with the suit otherwise on his statement the learned trial Court would be at liberty to pass suitable order within the meaning of Order 32, Rule 12, C.P.C.

With the aforesaid observations the instant revision is hereby finally disposed of at admission stage looking into long pendency of suit. In case a review petition is filed, the learned trial Court is hereby directed to stay the further proceedings of original Civil Suit No. 111/93 till the decision of the review petition.

