

Pradip Kumar Saha Vs. Laksmi Narayan Dutta

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Court : Kolkata

Decided On : Sep-07-1976

Reported in : AIR1977Cal171

Judge : R. Bhattacharya and ;A.K. Janah, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 115 - Order 32, Rule 3

Appeal No. : Civil Revn. Case No. 209 of 1976

Appellant : Pradip Kumar Saha

Respondent : Laksmi Narayan Dutta

Advocate for Def. : Bankim Dutt and ;Bhaskar Ghosh, Adv.

Advocate for Pet/Ap. : Haridas Ghosh, Adv.

Judgement :

R. Bhattacharya, J.

1. This re-visional application under Section 115 of the Code of Civil Procedure has been filed by the petitioner, Pradip Kumar Sana, alleged to be a minor represented by his natural guardian father, against an order passed by the learned Judge, City Civil Court, Calcutta in Ejectment Suit No. 281 of 1975 refusing to allow the petitioner to be represented by his father.

2. The relevant facts in this case are simple. The plaintiff Lakshmi Narayan Dutt, a lunatic represented by his next friend and wife Parul Dutta filed the ejectment suit against the defendant on the allegation that he was the tenant in respect of the suit premises. The defendant was described as major. On several occasions processes were issued, but it appears that on one occasion the service return was to the effect that Pradip Kumar Saha was a minor. However, Maheswar Prasad Saha appeared in the suit representing Pradip Kumar Saha on the allegation that the said Pradip Kumar was a minor and that the said minor requires to be represented by him, his natural guardian, the father. It was objected to by the plaintiff. Certain documents were filed, but without taking any evidence the learned Judge held that the defendant was described as a major and had no locus standi to be represented by his natural guardian on the allegation that he was a minor. Moreover, it was stated that the plaintiff filed the suit at his own risk. The application filed by Maheswar Prasad for representation of the minor was rejected. Against that order the present application has been filed by the defendant represented by Maheswar Prasad Saha.

3. We have heard Mr. Ghosh, the learned Advocate appearing on behalf of the petitioner and Mr. Dutt on behalf of the opposite party. The contention of Mr. Ghosh is that when there was a petition filed on behalf of the defendant on the allegation that he was a minor and that when according to law his representation through guardian was essential, the Court ought to have made an enquiry into the matter and ascertained whether in fact the defendant was a minor or not.

4. Mr. Dutt, however, contended that Pradip Kumar who was described as major had no locus standi to appear as minor and in this connexion a reference was made to the case of Prabat Kumar Chatterjee v. Latika Debi reported in : AIR1953 Cal196 .

5. Mr. Ghosh has, however, referred us to the decision in the case of Bhubaneswar Baidya v. Rabi Charan Baidya, reported in AIR 1948 Cal 149, in support of his own contention. We have gone through both the cases. The case referred to by Mr. Dutt is a decision of the Division Bench of this Court. But the facts are quite different. In that case an ex parte decree was passed against the

defendant described as major and subsequently an application was filed under Order 9, Rule 13 of the Code of Civil Procedure on behalf of the defendant for setting aside that ex parte decree describing himself as a minor represented by a guardian. It was held that that application was not maintainable. In that case it is clear that already a decree had been passed wherein the defendant was described as a major. In the present case, however, the defendant has been described as major, no doubt, but during the pendency of the suit he appeared describing himself as minor and wanted to be represented by his father, the natural guardian. It should be remembered that it is the duty of the court to see that a party to the suit who is minor should be properly represented and if there is any question as to whether the defendant is a minor or not, the court will certainly make an enquiry in that behalf and be satisfied about the status of the party. In the present case an application was filed alleging that the defendant was a minor and not a major, and that is why, the defendant wanted to be represented by his father, the natural guardian. The duty of the court is there and remains paramount to see that a minor is properly represented. In the present case, the learned Judge relied upon the decision of the Division Bench, we have already mentioned, but he failed to appreciate the real import of the decision and the facts stated therein. He misapplied the principles enunciated therein. On the other hand, we have gone through the decision relied on by Mr. Ghosh, a decision of Harries, C. J. of this Court, and the facts of that case are similar to those before us. The provisions of Order 32, Rule 3 were considered and it has been held that where there has been an allegation that defendant is a minor though sued as major, that question should be decided by the court and then the suit should be proceeded with. We agree with the decision in that case and we cannot say that the other case relied upon by Mr. Dutt is applicable here. We find that in the instant case there has been no proper enquiry by the learned Judge to ascertain whether or not the defendant was a minor, as alleged. The learned Judge ought to have made an enquiry after giving the parties an opportunity to adduce evidence in this respect. We are of the view that the order passed by the learned Judge complained against is quite illegal and with material irregularity, causing injustice to the parties and he refused to act in exercise of the jurisdiction vested in him by law. The order is liable to be set aside. We also find that subsequent to that order another order has been passed

on the same day rejecting applications under Section 17 (2A) (b) and Section 17 (1) of the West Bengal Premises Tenancy Act Without being satisfied as to the status of the defendant the learned Court below ought not to have passed this order. This order is also liable to be set aside.

6. In the result, the application succeeds and the Rule is hereby made absolute. The orders indicated above are hereby set aside and the matter is sent back to the court below with a direction to the learned Judge to make an enquiry to ascertain as to whether or not the defendant was a minor at the date of institution of the suit after giving opportunity to the parties to adduce evidence according to law and after that decision he will deal with the applications under Section 17 (2A) (b) and under Section 17(1) of the Act according to law.

7. We pass no order as to costs in this application.

Let the records be sent down as soon as possible so that the matter may be disposed of quickly.

Janah, J.

8. I agree.